Please note that the original language version of this page es has been amended recently. The language version you are now viewing is currently being prepared by our translators.

Spanish

Swipe to change

Insolvency/bankruptcy

Spain

There is no official translation of the language version you are viewing.
You can access a machine translated version of this content here. Please note that it is only provided for contextual purposes. The owner of this page accepts no responsibility or liability whatsoever with regard to the quality of this machine translated text.

-----English-----

1 Who may insolvency proceedings be brought against?

Insolvency proceedings (known as *concurso de acreedores*) apply to both civil debtors and traders, whether natural or legal persons. The regulations governing this are laid down in the Recast Text of the Insolvency Law (*Texto Refundido de la Ley Concursal*), approved by means of Royal Legislative Decree 1/2020 of 5 May 2020.

Law 25/2015 of 28 July 2015 introduced special provisions on the insolvency of natural persons so as to allow debtors to be released from unpaid debts in insolvency proceedings.

On 14 January 2022, the draft law reforming the Recast Text of the Insolvency Law was adopted in order to transpose Directive (EU) 2019/1023 on preventive restructuring frameworks, on discharge of debt and disqualifications, and on measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt. This indepth reform of insolvency legislation is scheduled to enter into force in June 2022.

Any debtor can be declared insolvent, whether a natural person (including minors or persons lacking legal capacity) or a legal person, an entrepreneur or a consumer, although the law contains some specifications in relation to the type of debtor in question, especially in the case of commercial companies or consumers.

Legal persons can be declared insolvent, even if they are being wound up. It is irrelevant whether they form part of a group of companies, since one or several of the companies that form it may be declared insolvent, but not the group as such.

Insolvency proceedings may be opened with regard to an inheritance, provided that it has not been accepted unconditionally.

Authorities that make up the territorial organisation of the state, public sector bodies and other public law bodies cannot be declared insolvent.

2 What are the conditions for opening insolvency proceedings?

Conditions for opening insolvency proceedings

The law lays down certain subjective and objective prerequisites to be met in order to open insolvency proceedings:

A) Subjective prerequisite: any debtor can be declared insolvent, whether a natural or legal person, an entrepreneur or a consumer, although the law contains some specifications in relation to the type of debtor in question, especially in the case of commercial companies or consumers.

Authorities that make up the territorial organisation of the state, public sector bodies and other public law bodies cannot be declared insolvent.

B) Objective prerequisite: the debtor's insolvency, defined as the inability to pay its liabilities on a regular basis.

Parties that can apply to open proceedings

Depending on whether the application for insolvency proceedings is lodged by the debtor or by the creditors, the requirements for submission vary.

If insolvency proceedings are applied for by the debtor (voluntary proceedings), it must justify before the court that it is currently insolvent or will be so imminently; that is, that it cannot pay its liabilities on a regular basis. If the insolvency is current, the debtor is obliged to apply for insolvency proceedings within two months from when it becomes aware or should have become aware of its insolvency.

However, according to the law, in this two-month time frame, the debtor may notify the court that it is negotiating an agreement with the creditors to refinance the debt; in which case, the deadline is suspended during the negotiations and the creditors cannot initiate separate enforcement proceedings against the assets that the debtor requires for its activity for three months. After this period has elapsed, if they do not reach an agreement with the creditors, debtors must apply for insolvency proceedings within one month.

With the application, debtors must submit certain documents, such as a report on their economic activity, an inventory of assets, a list of creditors indicating credit guarantees, a list of employees and their accounts, if they are obliged to keep them.

Debtors, who may be natural or legal persons, are required to apply for insolvency proceedings when they are in a situation of current insolvency, defined as when a person cannot pay his or her liabilities on a regular basis. On the other hand, if the insolvency is imminent (it does not exist yet but it is anticipated), debtors are simply entitled to apply for an insolvency order.

Submission of the application to the commercial court (*juzgado de lo mercantil*) must comply with certain mandatory requirements provided for in Articles 6 and 7 of the Recast Text of the Insolvency Law: a report on the debtor's financial and legal history; indication of whether it engages in an economic activity; if it is a legal person, it must identify its shareholders, administrators or liquidators and the official auditor; inventory of assets and rights, with the corresponding information for their identification; alphabetical list of creditors, indicating address and amount and maturity of the claims, and the existing guarantees; where applicable, a list of employees; if the debtor is obliged to keep accounts, it must supply the account books; and if it belongs to a group of companies, it must indicate so and submit the group's consolidated accounts.

Debtors have an obligation to collaborate with the judge in charge of the insolvency proceedings and with the administrators, not only in the passive sense of submitting to the requirements made of them, but in the active sense of communicating anything of importance. This obligation also involves the obligation to appear (before the court and before the administrators), to collaborate and to inform. These obligations affect debtors that are natural persons and the de facto or de jure directors of legal persons, whether they are current or have served the role in the previous two years. Non-compliance with this obligation results in the presumption of wilful misconduct or gross negligence, for the purposes of declaring the insolvency culpable (in cases to which the culpability section applies; that is, due to approval of a detrimental arrangement or the opening of winding-up proceedings).

The debtor may be declared responsible for the insolvency and sanctioned. One of the purposes of insolvency proceedings is to analyse the causes of the insolvency and, in particular, whether the behaviour of the debtor, or other persons linked to it directly or in an accessorial manner, has contributed to causing or aggravating it. This involves clarifying the corresponding liabilities using the table of sanctions set out in Articles 455 and 456 of the Recast Text of the Insolvency Law.

Opening of proceedings and time at which proceedings take effect

The judge must examine the documentation submitted and if the insolvency or imminent insolvency is justified, he or she must declare the debtor insolvent on the same day as the application or the following day. If the documentation submitted is incomplete, the judge may allow a single period of five days to complete it.

Insolvency proceedings may also be applied for by any of the creditors, in which case they are compulsory proceedings (*concurso necesario*). Creditors applying for an insolvency order must provide evidence of the debtor's current insolvency and present proof of an enforcement order against the debtor showing that sufficient assets were not obtained for recovery of the debt, or they must provide evidence of certain facts leading to presumption of insolvency, such as: the debtor having ceased payment of liabilities in general; the existence of widespread attachment of the debtor's assets; the hurried concealment or liquidation of assets; or non-payment of certain debts (taxes, social security, workers' claims).

If insolvency proceedings are applied for by a creditor, the debtor is summonsed and may contest the insolvency order. In such cases, the judge convenes a hearing where the parties may put forward evidence with certain limitations, and the judge must decide whether the debtor is currently insolvent or not and, where appropriate, issue the insolvency order. Proceedings are also opened if the debtor accepts the insolvency order, does not contest it or does not appear at the hearing.

Debtors that are natural persons in situations of current or imminent insolvency which have estimated liabilities of no more than five million euro may apply for a procedure to reach an *out-of-court payment agreement*. Legal persons that fulfil the requirements provided for in Article 631 of the Recast Text of the Insolvency Law may also do so.

The decision opening insolvency proceedings takes effect once issued, even if an appeal is lodged.

Publication of the insolvency order

The insolvency order must be published preferably by means of electronic media, and an extract of the decision must be published in the Official State Gazette, although the judge may order its publication in more media if he or she deems this indispensable.

Provisional measures

At the request of the person applying for insolvency proceedings and, if applicable, after providing a security to cover potential liabilities, once the judge admits the application, he or she may adopt the necessary measures to ensure the debtor's assets are not disposed of, in the manner provided for under general procedural law.

3 Which assets form part of the insolvency estate? How are the assets treated which are acquired by or which devolve on the debtor after the opening of the insolvency proceedings?

Assets that form part of the insolvency estate

All assets and rights held by the debtor at the time of the insolvency order form part of the insolvency estate or the 'assets covered by the proceedings', as well as all of those the debtor acquires or that are clawed back during the proceedings. Assets that the law declares non-attachable are exempt.

Creditors with preferential rights over ships or aircraft may separate these assets from the insolvency estate by taking the actions permitted by the sectoral legislation.

In the case of insolvency proceedings with debtors that are natural persons and are married, their separate assets will form part of the assets covered by the proceedings, and if they have a community property arrangement, the shared assets will also be included, if they are required to cover the debtor's obligations.

Insolvency proceedings do not require interruption of the debtor's activity and it may continue with its company's operation, according to the arrangement agreed for authorisation or suspension of its powers. In general, authorisation is required from the administrators for administration or disposal of assets in cases of supervision of the debtor's powers, but it is possible for certain acts of a general nature to be authorised if they form part of the company's normal activity. In principle, until approval of the arrangement with creditors or the opening of winding-up proceedings, assets cannot be encumbered in order to finance the insolvent company without authorisation from the judge. The following section explains the arrangements for suspension or supervision of the debtor's powers.

Half of financing through new cash income in the context of a refinancing process is considered a claim against the insolvency estate.

4 What powers do the debtor and the insolvency practitioner have, respectively?

The debtor's powers

In principle, the point of departure is the distinction between voluntary proceedings and compulsory proceedings (Article 29). In the first case, the debtor continues to administer and dispose of its assets and is subject to the supervision of the administrator, requiring their authorisation or consent. For compulsory proceedings, the debtor's powers to administer and dispose of its assets are suspended, and the debtor is substituted by the administrator. The regulation does not intend to sanction the debtor, but rather its purpose is to preserve the assets and safeguard the result of the proceedings.

The criterion, however, is continuation of the debtor's economic activity, for which Article 111 permits the administrator to establish a catalogue of activities which, due to their nature and amount, are exonerated from the necessary control. The system is flexible since the judge may, by reasoned decision, order the suspension of powers in the case of voluntary proceedings and order mere supervision, under an authorisation or consent arrangement, in the case of compulsory proceedings, indicating the risks he or she hopes to avoid and the advantages hoped to be gained.

Likewise, at the request of the administrator, the initial arrangement for limitation or exchange of powers may be modified at any later stage, also by reasoned decision and having heard the debtor (the change is not automatic), with the requirement that this change be given the same publicity as was given to the insolvency order.

Once the proceedings have ended, the limitation of powers also ends. Otherwise, it is prolonged until approval of the arrangement with creditors, which may establish measures limiting or prohibiting the debtor's powers. If the insolvency proceedings close with winding-up, the opening of this phase means that the debtor's powers are suspended.

The Insolvency Law, as a general rule, intends for the assets of the debtor covered by the insolvency proceedings to remain unaltered; however, in certain cases, it is possible for some of the debtor's assets to be sold during insolvency proceedings with the judge's authorisation, which will not be required in some cases. The sale of production units during insolvency proceedings is also possible, in the manner laid down in Articles 215 et seq. of the Recast Text of the Insolvency Law.

As an exception to the general rule of continuity of the debtor's activity, it is established that at the request of the administrator, and having heard the debtor and the workers' representatives, the debtor's offices may be closed or its activity may be suspended. When this entails the collective termination, suspension or amendment of employment contracts, the judge must act in accordance with special rules.

The law also lays down specific obligations with regard to the debtor's accounts and the effects of insolvency proceedings on the governing bodies of insolvent legal persons are regulated separately.

Appointment and powers of insolvency administrators

The administrator is a necessary person or body that assists the judge and is entrusted with managing the insolvency proceedings. Once insolvency proceedings have been opened, the judge orders the initiation of phase two of the proceedings, which includes everything relating to the appointment, provisions governing, powers and responsibilities of the administrator.

The administrator is chosen from among the natural and legal persons voluntarily registered in the Public Insolvency Register (*Registro Público Concursal*), in accordance with the conditions established by law. For these purposes, a distinction is made between small-, medium- and large-scale insolvency proceedings. The first appointment from the list takes place by draw and subsequently by turn, with the exception of large-scale proceedings, when the judge may appoint the administrator he or she deems most appropriate, stating the grounds and following the criteria laid down by the law. In the case of insolvency proceedings involving credit institutions, the judge must appoint the administrator from among those proposed by the Fund for Orderly Bank Restructuring (*Fondo de Reestructuración Ordenada Bancaria*). The judge must appoint administrators from among those proposed by the National Securities Market Commission (*Comisión Nacional del Mercado de Valores*) when dealing with proceedings involving institutions subject to its supervision or by the Insurance Compensation Consortium (*Consorcio de Compensación de Seguros*) in the case of insurance companies.

Normally, only one administrator is appointed. As an exception, in insolvency proceedings where there are public interest grounds justifying it, the insolvency judge may appoint a public administration creditor or a public law body creditor linked or answerable to that public administration as a second administrator.

Articles 57 et seq. of the Recast Text of the Insolvency Law set out in detail the legal status of the administrator, which assumes the following types of duties: duties of a procedural nature; duties relating to the debtor or its governing bodies; duties regarding labour matters; duties relating to creditors' rights; report and evaluation duties; duties relating to the realisation or liquidation of assets; and secretarial duties. Their most important duty is to submit the report provided for in Article 292, to which they must add an asset inventory proposal and the list of creditors.

The payment of administrators is set by the judge in accordance with a fee scale, as laid down in Royal Decree 1860/2004 of 6 September 2004.

The appointed administrator must accept the role and may be rejected or dismissed by the judge if there is just cause. Administrators may also appoint delegated assistants to aid them in their duties.

The insolvency judge

Competence to hear insolvency proceedings belongs to the area of commercial justice, as a specialised branch of civil justice. The judge declares insolvency and leads the proceedings. Article 86ter of Organic Law 6/1985 of 1 July 1985 on the judiciary (*Ley Orgánica del Poder Judicial*) establishes a catalogue of the competences of commercial court judges, including, in particular, any issues that arise in the area of insolvency proceedings.

In the insolvency order, or beforehand as a precautionary measure, the judge may limit the debtor's fundamental rights. These limitations may involve: (a) interception of postal and telephone communications; (b) the obligation to reside in the same area as its address, with the possibility of house arrest; and (c) entry and search of the residence. If the debtor is a legal person, these measures may also be adopted with regard to all or some of its current directors or liquidators, and those that have carried out the role in the previous two years.

For their part, Articles 52 and 53 of the Recast Text of the Insolvency Law grant 'exclusive and exclusionary' competence to the insolvency judge over a set of matters covering, in general, all actions that are directed towards or have a direct relationship with the debtor's assets. The judge is also competent to collectively accept or suspend employment contracts when the employer is declared insolvent and to hear liability actions against the directors or liquidators of the insolvent company.

For preliminary rulings, and for the purposes of the insolvency process only, the judge's competence also extends to administrative or social matters related directly to the insolvency proceedings.

The Insolvency Law lays down rules on international and territorial jurisdiction and specific rules on the procedural course to be followed, which take precedence over those established in the general procedural legislation.

5 Under which conditions may set-offs be invoked?

Once insolvency proceedings have been opened, there can be no set-off of claims or debts of the debtor. However, set-off is permitted if its requirements were met prior to the insolvency order, even if the decision is issued at a later time. These requirements are provided for in general in Article 1196 of the Civil Code (*Código Civil*) (reciprocity of the claims, uniformity of the debts, and that they are due and payable).

Insolvency proceedings with a foreign element are exempt from this rule if the law applicable to the debtor's reciprocal claim allows this in situations of insolvency.

6 What effect do insolvency proceedings have on current contracts the debtor is a party to?

Effects on the contracts to which the debtor is party

The Recast Text of the Insolvency Law regulates the effects of insolvency proceedings on the contracts entered into by the debtor with third parties under Articles 156 et seq., the provisions of which affect those contracts pending fulfilment prior to the insolvency order. The issue is considered with regard to bilateral contracts, since unilateral contracts will determine recognition of the claims of third-party creditors or the demand for their claims to be included in the assets covered by the proceedings, as expressed in Article 157. Contracts entered into with public administrations are regulated by special administrative law.

As a general principle, Article 156 establishes that the insolvency order alone does not affect contracts with reciprocal obligations pending fulfilment by the debtor or by the other party. The debtor's obligations are charged against the insolvency estate. Any compensation resulting from termination is also considered a claim against the insolvency estate.

Reinforcing the validity of these contracts, the law deems as invalid any clause establishing the power to cancel or terminate the contract due solely to one of the parties being declared insolvent.

If it is in the interest of the insolvency proceedings, the administrator (in the case of suspension) or the debtor (in the case of supervision) may request termination of the contract by the insolvency judge. In such cases, the judge must summons the debtor, the administrator and the other party to the contract to appear before the court. If an agreement is reached between those appearing before the court, the judge will issue an order terminating the contract. Otherwise, the dispute will be processed through an incidental insolvency proceeding and the judge will decide upon anything relating to the return of payments and compensation, which will be charged against the insolvency estate, and clearly may not be advantageous if the amount is considerable.

Termination due to breach of contract

An insolvency order does not affect the termination of bilateral contracts due to subsequent breach by either party. In the case of continuing-performance contracts, the power to terminate may also be exercised if the breach took place prior to the insolvency order. However, even if there are grounds for termination, the judge, bearing in mind the interests of the insolvency proceedings, may order fulfilment of the contract, with the payments due or which must be performed by the debtor being charged against the insolvency estate.

Actions to terminate contracts must be brought before the insolvency judge, through the channel of incidental insolvency proceedings. Once the request is upheld (and, therefore, the termination of the contract agreed), any outstanding liabilities will cease to be valid. With regard to liabilities due, the insolvency proceedings will include the claims of creditors that have fulfilled their contractual obligations, if the debtor's breach was prior to the insolvency order; if it was subsequent, the claims of parties that have fulfilled their obligations will be charged against the insolvency estate. The claims will include any compensation for damages.

Articles 169 et seq. of the Recast Text of the Insolvency Law contain provisions regulating the effects on employment contracts, and the following article regulates the effects on senior management contracts.

7 What effect does an insolvency proceeding have on proceedings brought by individual creditors (with the exception of pending lawsuits)?

Prohibition of new declaratory judgment actions

Civil and labour court judges cannot admit actions which should be heard by the insolvency judge (essentially, those directed against the debtor's assets). If by error one of these actions were admitted, the closure of all proceedings will be ordered and any actions taken will be invalid. Commercial court judges must also abstain from admitting any actions lodged after the opening of insolvency proceedings and until their completion, if those actions involve claims relating to corporate obligations against the directors of insolvent capital companies that have breached their duties if there are grounds for winding-up.

Effects of the insolvency order on enforcement and collection proceedings against the debtor's assets

The general rule is that once insolvency proceedings have been opened, individual, court or out-of-court enforcement proceedings may not be initiated, nor may administrative or tax collection proceedings against the debtor's assets continue. If this prohibition is infringed, the sanction will be that the action is declared null and void. The rule establishes two exceptions where enforcement may continue despite the insolvency order and until approval of the winding-up plan: (a) administrative enforcement proceedings in which attachment orders have been handed down; and (b) labour-related enforcement proceedings involving attachment of assets belonging to the debtor prior to the order, and provided that the attached assets are not necessary for the continuance of the debtor's business or professional activity.

For pending enforcement proceedings, Article 55(2) stipulates that actions that are underway must be suspended as of the date of the insolvency order, though the corresponding claims may be processed in the insolvency proceedings.

There are special rules for enforcing collateral, which are set out in the next section, since this involves dealing with the effects on certain claims.

8 What effect does an insolvency proceeding have on the continuation of lawsuits pending at the moment of the opening of the insolvency proceeding?

Effects on declaratory proceedings pending at the time of the insolvency order

Declaratory proceedings involving the debtor that are pending at the time of the insolvency order will continue until the final judgment, although, notwithstanding this, proceedings of legal persons claiming damages against their directors, liquidators or auditors will be joined to the insolvency proceedings and will continue their procedural course.

Arbitration proceedings: arbitration agreements involving the debtor become invalid during insolvency proceedings (Article 52); therefore, the initiation of arbitration proceedings is prohibited after the insolvency order. Those that are underway will continue until the final arbitration award.

The debtor's right to bring actions

The law determines the debtor's legitimacy to bring actions according to the powers it retains. In general terms, if the debtor is under administration, the administrator has the right to bring actions of a non-personal nature; if the debtor is under supervision, it has the right to bring actions with proper authorisation from the administrator if the actions affect the debtor's assets. In the case of supervision, if the administrator considers that bringing an action is advisable in the interests of the insolvency proceedings and the debtor does not pursue it, the judge may authorise the administrator to do so.

9 What are the main features of the participation of the creditors in the insolvency proceeding?

Participation of creditors in insolvency proceedings

Creditors may apply to the judge for insolvency proceedings and the debtor may contest the application, in which case a hearing is held and the judge issues a decision by way of order. If the judge opens insolvency proceedings, they will be considered 'compulsory', which normally means that the debtor is suspended from administration and disposal of its assets and is replaced by the administrator.

When insolvency proceedings are opened, creditors are granted a period of one month from publication of the order in the Official State Gazette to make their claims, and the administrator must inform each of the creditors identified in the debtor's documentation of the responsibility to communicate their claims. The period is no different for creditors domiciled abroad. This communication must be written and addressed to the administrator, and it must identify the claim with the necessary information on amount, the dates on which the claim arose and became due, characteristics and expected classification, and if a special preferential right is alleged, the assets or rights subject to payment and their registry details must be indicated. The supporting documentation must also be included. These communications may be carried out electronically.

The administrator must decide on the inclusion or exclusion of each claim and its amount, as well as its classification, in a list of creditors which will accompany their report. Creditors that are dissatisfied with the classification or amount of the claim or those that were not included can challenge the report within a period of 10 days by filing for an incidental insolvency proceeding, on which the judge will issue a judgment. Prior to submitting the report (in the 10 days before its submission), the administrator will send an electronic communication to the creditors whose address it has informing them of the draft list of creditors and inventory. Creditors that are dissatisfied may write to the administrator for the purpose of rectifying any error or providing any other necessary information.

Creditors also take part in the arrangement and winding-up phases. In the arrangement phase, they may submit an arrangement proposal and may also offer their adherence to the early arrangement proposal submitted by the debtor. In any case, they will be summonsed to a creditors' meeting where the arrangement will be debated and its approval voted on. This requires the attendance of the majorities provided for in Article 124 of the Insolvency Law. This process may also take place in writing when the number of creditors exceeds three hundred.

Some creditors may contest the approval of the arrangement (those that do not attend the meeting or those that are illegitimately deprived of their right to vote) and, once approved, creditors may request non-compliance with the arrangement.

In the winding-up phase, creditors may submit comments on the winding-up plan presented by the administrator and on the final report, before the insolvency proceedings are declared closed.

In the classification phase, creditors have party status and may submit comments on the report by the administrator and on the opinion of the public prosecutor's office, although they cannot legitimately make independent classification claims.

Lastly, with regard to the closure of insolvency proceedings, creditors may also submit comments contesting the closure in certain cases.

10 In which manner may the insolvency practitioner use or dispose of assets of the estate?

Disposal of assets of the insolvency estate in the initial phase

Given that insolvency proceedings do not suspend the debtor's activity, once insolvency is declared, the debtor may continue to dispose of its assets in accordance with the established supervision arrangement: if it is under supervision, it will be subject to the authorisation or consent of the administrator, and if it is under administration, the administrator will be responsible for disposal of its assets.

Until the arrangement is approved or until the winding-up phase begins, in principle, the assets of the insolvency estate may not be disposed of or encumbered without the judge's authorisation. This does not include: (a) the sale of assets that the administrator deems indispensable for guaranteeing the viability of the company or the cash requirements required by the proceedings; (b) the sale of assets that are unnecessary for continuance of the debtor's activity, with the assurance that the price corresponds substantially to the value assigned to the asset in the inventory; and (c) disposal of assets that are intrinsic to the continuation of the debtor's activity.

In this last case, when the debtor is not suspended from administration and disposal of its assets, the administrator may determine in advance the actions or operations inherent to the company's business or trade, which the debtor may carry out itself depending on their nature and amount. The debtor may also carry out these actions from the time of the insolvency order until the administrator takes up their duties.

Disposal of assets of the insolvency estate in the winding-up phase

There are two main phases in the winding-up process:

(a) Handling of winding-up operations in accordance with a plan written up by the administrator, which is subject to comment from the debtor, the creditors and the workers' representatives, and which is subject to court approval. The law aims, wherever possible, to safeguard the company and for this purpose it lays down special rules for the sale of production units. The plan may be challenged before the judge, and the winding-up operations must be carried out following the provisions of the plan. If the plan is not approved, the law provides for default rules.

(b) Payment of creditors, with the proviso that payment can begin even if the winding-up operations have not ended.

However, it must be specified that not all winding-up operations take place at this stage of the proceedings. Certain assets may be realised during the initial phase for purposes other than payment of creditors, such as in the following cases: assets covered by the proceedings may be preserved with the goal of maintaining the debtor's economic activity; creditors with preferential rights over ships or aircraft may separate those assets from the insolvency estate as part of the actions they are entitled to under special legislation; and, lastly, certain enforcement proceedings initiated by individual preferential creditors prior to the insolvency proceedings may continue their process, as well as administrative enforcement proceedings if the attachment order was issued before the insolvency order.

The sale of assets during winding-up takes place, in principle, with considerable freedom, in accordance with the provisions of the winding-up plan approved by the judge. The administrator may also hire a specialised entity to sell certain assets, normally at the expense of its own remuneration. However, the reform brought about by Law 9/2015 of 25 May 2015 laid down mandatory rules, especially with regard to assets and rights subject to preferential claims. In matters not covered by the plan, the rules on the disposal of assets in individual enforcement actions in civil proceedings will be applied. Normally, the assets are sold through an outright sale system, with certain publicity guarantees depending on the nature of the asset in question. Assignment in or towards payment of non-public creditors is also permitted.

The law lays down specific rules for the sale of production units throughout the phases of the insolvency proceedings (led by the principle of safeguarding the company), so that with a single sales contract all of the assets are transferred and with special rules for the transfer of the liabilities of the activity in question. In principle, the sale of production units means the transfer of all contracts that are instrumentally linked to the activity, but not the assumption of debts from before the insolvency proceedings, except if the purchasers are linked to the debtor or the labour rules on business succession apply. In such cases, the judge may give consent for the purchaser not to assume the amount of wages or compensation pending payment prior to the disposal and for it to be covered by the Salary Guarantee Fund (*Fondo de Garantía Salarial*). In order to ensure the company's survival, the new purchaser and the workers may enter into agreements to modify the collective working conditions.

11 Which claims are to be lodged against the debtor's insolvency estate and how are claims arising after the opening of insolvency proceedings treated?

Once insolvency proceedings are opened, the claims of all of the creditors, whether unsecured or preferential, and regardless of their nationality and domicile, are included among the debtor's liabilities. The purpose here, based on the principles of *par condicio creditorum* and compliance with the 'dividend law' (*ley del dividendo*), is to give all claims equal treatment in the context of the debtor's verified insolvency and when it comes to settling all of its debts. There is an initial essential distinction between insolvency creditors and creditors that are not affected by the insolvency proceedings: insolvency estate creditors.

Claims against the insolvency estate are outlined in Article 242 of the Recast Text of the Insolvency Law with a restricted list, meaning that claims that are not included are considered insolvency claims. In principle, and in the vast majority of cases, these are claims generated after the insolvency order, as a result of the proceedings or of the continuation of the debtor's activity, or claims that arise due to non-contractual liability. However, other cases are also included, such as wage claims for the last 30 days of work prior to the insolvency order and in an amount that does not exceed twice the minimum guaranteed interprofessional wage, and maintenance claims of the debtor or the people it is legally obliged to provide maintenance for.

In other cases, these claims arise from decisions issued during the proceedings; for example, in determining the consequences of revocatory actions or as a result of the termination of contracts.

Half of the amount of the claims arising from new cash income granted in the framework of a refinancing agreement can also be considered claims against the insolvency estate.

In the case of winding-up proceedings, claims granted to the debtor in the context of an arrangement and in accordance with the provisions of the article are also claims against the insolvency estate.

Claims against the insolvency estate are 'pre-deductible'; that is, they have preference over all other claims and they are not affected by the suspension of interest accrual.

Salary claims for the last 30 days of work must be paid immediately. The rest of the claims against the insolvency estate are paid as they fall due, but the administrator may change this rule if required in the interests of the insolvency proceedings and if there are sufficient assets for payment of all of the claims against the insolvency estate.

However, the law lays down specific rules (Article 473) for cases in which the debtor's assets are presumably not enough to pay the claims against the insolvency estate. In such cases, closure of the insolvency proceedings is compulsory. If the administrator anticipates this, they must inform the judge and proceed to payment of the claims against the insolvency estate according to a specific order.

12 What are the rules governing the lodging, verification and admission of claims?

When insolvency proceedings are opened, creditors are granted a period of one month from publication of the order in the Official State Gazette to make their claims, and the administrator must inform each of the creditors identified in the debtor's documentation of the responsibility to communicate their claims. There is no special form for this. The period is no different for creditors domiciled abroad, although the provisions of Articles 53 and 55 of Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings will apply.

The communication of the claim must be written and addressed to the administrator, and it must identify the claim with the necessary information on amount, the dates on which the claim arose and became due, characteristics and expected classification, and if a special preferential right is alleged, the assets or rights subject to payment and their registry details must be indicated. The supporting documentation must also be included. These communications may be carried out electronically.

The administrator must decide on the inclusion or exclusion of each claim and its amount, as well as its classification, in a list of creditors which will accompany their report. Creditors that are dissatisfied with the classification or amount of the claim or those that were not included can challenge the report within a period of 10 days by filing for an incidental insolvency proceeding, on which the judge will issue a judgment. Prior to submitting the report (in the 10 days before its submission), the administrator will send an electronic communication to the creditors whose address it has informing them of the draft list of creditors and inventory. Creditors that are dissatisfied may write to the administrator for the purpose of rectifying any error or providing any other necessary information.

If creditors do not communicate their claims in a timely manner, they may still be included in the list by the administrator or by the judge when deciding upon challenges to the list of creditors, but they will have subordinate status. However, the claims in Article 86(3), claims arising from the debtor's documentation, claims that are recorded in an enforceable document, claims secured by collateral recorded in a public register, claims that are recorded in another manner in insolvency proceedings or in other legal proceedings, and claims whose verification is required from the public administrations will not be subordinated on these grounds and will be classified accordingly.

Claims that do not meet even these criteria for inclusion in the list, having been communicated after the deadline, lose all possibility of being paid in the insolvency proceedings.

13 What are the rules governing the distribution of proceeds? How are claims and the rights of creditors ranked?

The law classifies insolvency claims into three categories (Article 269): preferential, unsecured and subordinate. Preferential claims, for their part, are subdivided into special and general and then into different classes in the manner provided for in Article 287. The classification of claims in the Insolvency Law operates following an automatic approach. The category of unsecured claims is residual: all claims that do not enter into the other two categories of preferential or subordinate are unsecured.

A) Claims with special preference (Article 270) include:

1. Claims secured with a real estate mortgage, a chattel mortgage, or with a registered lien on the mortgaged or pledged assets or rights.
2. Claims secured by the pledging of income from encumbered property.
3. Loan claims on restored assets, including the claims of workers on the objects manufactured by them while they are the property or in the possession of the debtor.
4. Claims on financial lease payments or purchase in instalments of movable or immovable assets, to the benefit of the lessors or sellers and, if applicable, the financial backers, on assets leased or sold with reservation of title, with a prohibition on disposal or with a condition subsequent in the case of non-payment.
5. Claims guaranteed with securities represented in account entries, on the encumbered securities. 6. Claims secured by a pledge established in public documents, on pledged assets or rights that are in the possession of the creditor or of a third party.

Special preference will only affect the part of the claim that does not exceed the value of the respective guarantee recorded in the list of creditors. The amount of the claim that exceeds the amount recognised as having special preference will be classified according to its nature.

B) Claims with general preference (Article 280) include:

1. Wage claims that do not have special preference, of the amount resulting from multiplying triple the minimum guaranteed interprofessional wage by the number of days of wages pending payment; compensation arising from the termination of contracts, of the amount corresponding to the legal minimum calculated on a basis of no more than triple the minimum guaranteed interprofessional wage; compensation arising from workplace accidents and occupational illness, accrued prior to the insolvency order.
2. The amounts corresponding to tax and social security withholdings owed by the debtor in compliance with a legal obligation.
3. Claims of natural persons arising from freelance work and those that correspond to authors for the assignment of the exploitation rights of works subject to intellectual property protection, accrued during the six months prior to the insolvency order.
4. Tax claims and other public law claims, as well as social security claims that do not enjoy special preference. This preferential right may be applied to up to 50% of the overall claims of the tax authority and the overall claims of the social security system, respectively.
5. Claims for non-contractual civil liability.
6. Claims arising from new cash income granted in the context of a refinancing agreement that meets the conditions laid down in Article 71(6) and of the amount not recognised as a claim against the insolvency estate.
7. Up to 50% of the amount of the claims held by the creditor that applied for the insolvency proceedings and which are not considered subordinate.

C) Subordinate claims are contained in Article 281:

1. Claims that have been communicated late, except where these relate to claims under forced recognition or due to court decisions.
2. Claims that, on the basis of contractual agreement, are subordinated.
3. Claims for surcharges and interest.
4. Claims for fines and penalties.
5. Claims held by any persons with a special relationship with the debtor under the terms established in this Law.
6. Claims arising from revocatory actions due to a person having been declared to have acted in bad faith in the contested act.
7. Claims arising from contracts with reciprocal obligations or, in the case of reinstatement, in the situations laid down in the provision.

Payment of claims

The payment of claims with special preference is charged to the assets and rights covered by the proceedings, whether subject to individual or collective enforcement. There are special rules with regard to these claims, which authorise the administrator to pay them from the insolvency estate without the realisation of specific assets, freeing the encumbrances. It is also possible for the assets to be sold with the continued existence of the lien, and with the purchaser assuming the debtor's liabilities. For the sale of these assets, the law lays down specific rules in Articles 429 et seq.

Claims with general preference are paid according to their order and on a pro rata basis within each category. Afterwards, unsecured claims are paid, although the order of payment may be changed by the judge at the request of the administrator and under certain conditions. Unsecured claims are paid on a pro rata basis and according to the liquidity of the assets of the insolvency estate.

Subordinated claims are paid last and according to the order provided for in Article 309.

14 What are the conditions for, and the effects of closure of insolvency proceedings (in particular by composition)?

Reorganisation proceedings

'*Reorganisation proceedings*' can refer to two different situations: the creditors' arrangement as a way of resolving insolvency proceedings, and the possibility for the debtor to avoid insolvency proceedings through a debt reorganisation or restructuring agreement with its creditors. Both situations are regulated in the Insolvency Law.

(A) Creditors' arrangement

After the initial phase of the insolvency proceedings, when the assets and liabilities covered by the proceedings have been definitively established, there are two possible solutions: creditors' arrangement or winding-up. Achieving a creditors' arrangement takes precedence, since the law establishes that the arrangement phase must always be opened unless the debtor has requested winding-up proceedings.

Both the debtor and the creditors that exceed a fifth of its liabilities may submit an arrangement proposal once the initial phase is over. The debtor is also authorised to submit an early arrangement proposal, although some debtors are excluded from this option (debtors convicted of certain crimes and those that do not submit annual accounts when they are obliged to).

The early arrangement proposal is aimed at the debtor and its creditors making an arrangement quickly and without exhausting all of the phases of the insolvency proceedings. In order to process the proposal, it must be subscribed to by a certain percentage of creditors. Once the proposal is submitted, it must be evaluated by the administrator and the rest of the creditors may subscribe to it; if they reach the required majorities, the judge will issue a judgment approving the arrangement submitted.

Normal processing of the arrangement phase begins with a court decision ending the initial phase; in it, the judge will set a date for the creditors' meeting, although if the number of creditors exceeds three hundred, the process can take place in writing. As of this point, a period commences for the debtor and the creditors to submit their arrangement proposals, which must have basic minimum content. If they fulfil all of the conditions, the judge will admit the proposals and they will be sent to the administrator for evaluation.

The creditors' meeting will be presided over by the judge and in order for it to be considered validly convened, creditors representing over half of the unsecured claims must appear. The debtor and the administrator are obliged to attend. At the meeting, the arrangement proposals will be debated and voted on, and in order to be approved, they must obtain the majorities provided for in Article 124 of the law, depending on their content. Next, the judge will issue a judgment approving the proposal accepted by the meeting, and there is a prior procedure for the administrator and the creditors that did not attend or were deprived of their rights to contest the proposal.

The arrangement comes into effect as of the day of the judgment approving it and as of that moment the effects of the insolvency proceedings come to an end and are replaced by those established in the arrangement. The role of the administrator also comes to an end. The arrangement binds the debtor and the unsecured and subordinate creditors, as well as the preferential creditors that voted in favour. It may also bind the preferential creditors depending on the majorities reached in its approval. Once the arrangement has been implemented, the judge will declare this fact and order the closure of the insolvency proceedings.

If the arrangement is not complied with, any creditor may request a declaration of non-compliance from the judge.

(B) Debt reorganisation through refinancing agreements to avoid insolvency proceedings

The experience gained since publication of the Insolvency Law has revealed the failure of insolvency proceedings as a means to achieve business continuity on the basis of the solution agreed. Therefore, the Commission Recommendation of 12 March 2014 on a new approach to business failure and insolvency urged Member States to adopt measures to avoid insolvency proceedings through debt refinancing agreements between the debtor and the creditors. In the most recent reforms to the Insolvency Law, the Spanish legislator introduced four types of measures in this regard: (a) the establishment of a prior communication system for the debtor to inform the commercial court judge that it has commenced negotiations with its creditors in order to reach a refinancing agreement, which suspends the obligation to apply for insolvency proceedings and permits the staying of individual enforcement actions in certain cases and for a certain period of time; (b) the establishment of protective mechanisms to safeguard refinancing agreements against revocatory actions; (c) the establishment of an official approval procedure for refinancing agreements in order to reinforce their effects; and (d) incentive measures for the conversion of debt into equity. In this section, we focus on the regulation of court approval of refinancing agreements, contained in the fourth additional provision of the Insolvency Law.

Refinancing agreements signed by creditors representing at least 51% of the financial liabilities may be approved by the court. The law lays down specific rules regarding the calculation of the percentages of financial liabilities and regarding syndicated loans.

The process involves the submission by the debtor or the creditors of an application accompanied by a certificate from the auditor confirming the participation of the majorities required in each case, according to the level of protection sought, with the minimum of 51% of the financial liabilities. The judge will examine the application and if it is admitted, he or she will issue an order declaring a stay on individual enforcement actions during the approval procedure.

Once the approval order is published, a period of 15 days commences for dissenting financial creditors to challenge it. The only grounds for challenging are either non-compliance with the formal requirements, or the disproportionate nature of the sacrifice demanded. Challenges are processed in an incidental insolvency proceeding involving the debtor and the rest of the creditors that are party to the agreement, and a non-appealable judgment is given. It is also expressly stipulated that, in relation to the effects of the court-approved agreement, which are valid as of the day after the publication of the judgment in the Official State Gazette, the judge may order cancellation of any attachment carried out through individual enforcement proceedings on debts affected by the refinancing agreement.

The effects of court approval are not limited to extending, in a move away from the principle of relativity of contracts, the effects of the agreed extension. The general effect is protection against revocatory actions, but the extension of effects to dissenting creditors will depend on the percentage of approval. Thus: a) the protection of creditors with collateral is removed; b) the effects of the agreement are adjusted on the basis of the majorities reached in its approval and in relation to whether or not the claim is effectively covered by the collateral.

Creditors with financial claims that have not signed the agreement but are affected by the court approval will maintain their rights over those held jointly and severally liable with the debtor and over sureties or guarantors, who may not invoke acceptance of the refinancing agreement or the effects of the court approval. With regard to financial creditors that have signed the agreement, maintaining its effects for sureties or guarantors will depend on what was agreed in their respective legal relationships.

Any creditor, whether or not they signed the agreement, may request a declaration of non-compliance before the judge that approved it, through the channel of an incidental insolvency proceeding. The judgment cannot be appealed against. If non-compliance is declared, the creditors may call for insolvency proceedings or initiate individual enforcement proceedings.

If collateral rights are enforced on claims affected by the agreement, and unless otherwise agreed, the creditor may take possession of the amounts obtained under certain conditions.

Exemption from unpaid claims for debtors that are natural persons

Law 25/2015 of 28 July 2015 introduced what is known as the 'second chance' mechanism to the Insolvency Law, in the new Article 178bis.

The provision exempts natural persons from the general rule of Article 178(2), according to which, in cases of closure of insolvency proceedings due to winding-up or due to the insufficiency of the assets covered by the proceedings, debtors that are natural persons are responsible for payment of the remaining claims.

In order to benefit from this exemption, the debtor must have acted in good faith, for which the following requirements apply:

1. that the insolvency has not been declared culpable;

2. that the debtor has not been convicted by a final judgment of property crime, fraud or white collar crime, falsification, crimes against the tax authority and the social security system or against workers' rights in the 10 years prior to the insolvency order;
3. that, meeting the requirements laid down in Article 231, the debtor has entered into or at least tried to enter into an out-of-court payment agreement;
4. that the debtor has settled the claims against the insolvency estate and the preferential insolvency claims in full and, if it has not tried to reach a prior out-of-court payment agreement, at least 25 % of the amount of unsecured insolvency claims;
5. that, as an alternative to the previous point:
i) the debtor submits to a payment plan;
ii) it has not failed to comply with the obligations to collaborate with the judge and the administrator;
iii) it has not enjoyed this exemption within the last 10 years;
iv) it has not rejected an offer of employment suitable to its abilities in the four years preceding the insolvency order;
v) it explicitly accepts, in the application for exemption from unpaid claims, that its access to the exemption will be recorded in the special section of the Public Insolvency Register for a period of five years.

Granting this exemption requires proceedings initiated at the request of the debtor and which involve the participation of the administrator and the creditors that are party to the action. The debtor is required to submit a payment plan for the claims that are excluded from the exemption, which must be paid within a maximum period of five years.

Once the period set for complying with the payment plan has elapsed, without the exemption having been revoked, the insolvency judge, at the request of the debtor, will issue an order definitively awarding exemption from claims not paid during the insolvency proceedings. The judge may also, depending on the circumstances of the case and following a hearing with the creditors, order definitive exemption from the unpaid claims of debtors that have not fully complied with the payment plan but have allocated to it at least half of the income received (and not considered unattachable) during the period of five years since the provisional granting of the exemption or a fourth of that income when the debtor meets the circumstances provided for in the legislation on the protection of mortgagors lacking resources, with regard to the income of the family unit and particularly vulnerable family circumstances.

All of the unsecured and subordinated claims that are outstanding on the date of closure of the insolvency proceedings will be affected by the exemption, except for public law and maintenance claims. With regard to claims with special preference, it will affect the part of such claims that could not be settled by enforcement of the collateral.

The exemption may be revoked at the request of any insolvency creditor if, during the five years following its granting, the existence of undisclosed income, assets or rights belonging to the debtor is verified.

Revocation may also be applied for if during the period set for complying with the payment plan: (a) the debtor finds itself in one of the circumstances which, in accordance with the provisions of Article 178bis(3), prevent granting the exemption from unpaid claims; (b) where applicable, the obligation to pay non-exempt debts is not complied with in accordance with the content of the payment plan; or (c) the debtor's financial situation substantially improves due to inheritance, legacy or donation, or games of luck or chance, such that it could pay all outstanding debts without detriment to its maintenance obligations.

If the judge orders revocation of the exemption, the creditors fully recover their entitlement to take actions against the debtor in order to enforce claims that remain unpaid at the closure of the insolvency proceedings.

Closure of insolvency proceedings

The causes for closure of insolvency proceedings are laid down in Article 465 of the Recast Text of the Insolvency Law. Basically, insolvency proceedings are closed due to the following causes:
(a) the insolvency order is revoked by the Provincial Court (*Audiencia Provincial*);
(b) compliance with the arrangement is declared;
(c) it is verified that the assets covered by the proceedings are insufficient to pay the claims against the insolvency estate;
(d) payment of all of the recognised claims or the full satisfaction of the creditors by other means is verified;
(e) once the initial phase is over, all of the creditors abandon or withdraw from the proceedings.

The closure must be approved by the judge and there is a procedure for the parties concerned to contest it. The law has special provisions for the case of closure of insolvency proceedings due to the insufficiency of the debtor's assets when it comes to paying the claims against the insolvency estate. This may be verified with the debtor's own application for proceedings, in which case, the judge will declare the insolvency proceedings and their closure in the same decision and at the same time.

When the closure of insolvency proceedings is declared, all limitations on the debtor's powers come to an end. If the debtor is a natural person, the law lays down special rules for the debtor to enjoy exemption from payment of claims that were not settled during the insolvency proceedings. The requirements for this exemption are laid down in Articles 486 et seq. The debtor must have acted in good faith and must fulfil certain obligations. The debtor itself must apply for this exemption and both the administrator and the creditors may make representations. The exemption may be revoked in certain cases, such as, for example, if the debtor improves its financial situation or if it does not comply with the payment plan which it committed to in order to pay the debts unaffected by the exemption.

15 What are the creditors' rights after the closure of insolvency proceedings?

In the case of closure of the insolvency proceedings of legal persons due to winding-up, they lose their legal personality.

If the closure takes place due to implementation of the arrangement, the creditors will have had their claims paid in accordance with its provisions.

Preferential creditors that did not sign the creditors' arrangement may continue or initiate individual enforcement proceedings, under certain circumstances.

During implementation of the creditors' arrangement, it is also possible for the debtor to lose its legal personality through a process of structural modification, resulting in the assumption of the liabilities by a new company or an acquiring company.

In the case of debtors that are natural persons, closure of insolvency proceedings due to winding-up or the insufficiency of the assets means that the creditors may initiate individual enforcement actions against the debtor, unless it has been exempted from unpaid claims in the manner provided for in Article 178bis.

Reopening insolvency proceedings

If an insolvency order is issued for a debtor that is a natural person within the five years following the closure of previous insolvency proceedings due to winding-up or the insufficiency of the assets, this will be considered a reopening of the earlier proceedings.

In the case of debtors that are legal persons, the reopening of insolvency proceedings that were closed due to winding-up or the insufficiency of the assets will be ordered by the same court that heard the first proceedings, will be processed in the same proceedings and will be limited to the phase of liquidation of assets and rights that appeared subsequently.

In the year following the date of the decision closing insolvency proceedings due to the insufficiency of the assets, the creditors may apply to reopen the proceedings for the purpose of initiating recovery actions, indicating the specific actions to be initiated or providing, in writing, relevant facts that could lead to classification of the insolvency as culpable, except if a judgment were issued on classification in the closed insolvency proceedings.

16 Who is to bear the costs and expenses incurred in the insolvency proceedings?

According to Article 242 of the Recast Text of the Insolvency Law, all legal expenses required to apply for insolvency proceedings and to carry them out are claims against the insolvency estate. In particular, this includes all claims arising from legal costs and expenses required to apply for and order insolvency proceedings, the adoption of precautionary measures, the publication of the decisions provided for in this law, and the attendance and representation of the debtor and of the administrator throughout the insolvency proceedings and the incidental proceedings, when their participation is legally mandatory or is in the interests of the insolvency estate, until the arrangement comes into effect or, otherwise, until closure of the insolvency proceedings, except for claims arising from appeals lodged against the court's decisions when they are totally or partially dismissed with an express order to pay the costs.

Also included as claims against the insolvency estate, according to the third paragraph of the same article, are the legal costs and expenses arising from the attendance and representation of the debtor, the administrator or the legitimate creditors at proceedings that, in the interests of the insolvency estate, continue or are initiated in accordance with the content of this law, except for the provisions relating to cases of withdrawal, acceptance, settlement or separate defence of the debtor, and, if applicable, up to the quantitative limits established therein.

In cases of closure of insolvency proceedings due to the insufficiency of the insolvency estate, claims for legal costs and expenses are paid before the rest of the claims against the insolvency estate, with the exception of workers' and maintenance claims (Article 473).

The administrator's fees are claimed against the insolvency estate and are set by the judge in accordance with a legally approved fee scale; at the moment, the fee scale approved by Royal Decree 1860/2004 of 6 September 2004 is still valid. Article 84 lays down special rules for their determination and effect.

The law provides for the possibility of appointing delegated assistants to aid the administrator and their remuneration is covered by the latter.

17 What are the rules relating to the voidness, voidability or unenforceability of legal acts detrimental to the general body of creditors?

The regulation of revocatory actions in insolvency proceedings is contained in Articles 226 et seq. of the Recast Text of the Insolvency Law. These provisions have undergone successive amendments, mainly in relation to the nature of the '*protective mechanisms*' of the refinancing agreements.

Article 226 contains the legal system for claw-back actions, based on a general clause declaring all acts carried out by the debtor that are 'detrimental to the assets covered by the proceedings' as 'revocable', whether or not there was 'intention to mislead'. In order to safeguard the effects of revocation, a specific period of time is established: the two years prior to the date of the insolvency order.

(A) Revocation period

The law opts for the establishment of a specific revocation period: two years dating back from the date of the insolvency order.

(B) The concept of 'pecuniary detriment'

Actions carried out during the 'suspect period' by the debtor are revocable if they are detrimental to the assets covered by the proceedings. Pecuniary detriment must be satisfactorily proven by the party making the complaint. However, given the difficulties normally entailed in proving detrimental acts, the Insolvency Law facilitates bringing actions through the establishment of a set of presumptions. As happens in other parts of the law, the presumptions may be irrebuttable or rebuttable. Thus: (a) pecuniary detriment is presumed irrebuttable in two cases: (i) when dealing with the free disposal of assets, except donations for use, and (ii) when dealing with payments and other acts settling obligations that fall due after the insolvency order, unless they are secured by collateral, in which case the presumption admits evidence to the contrary; (b) pecuniary detriment is presumed rebuttable in three cases: (i) when dealing with the disposal of assets against payment to persons with a special relationship with the insolvency debtor, (ii) when dealing with the creation of charges on property in favour of pre-existing obligations or in favour of new obligations incurred to replace the former, and (iii) payments or other acts settling obligations secured by collateral and that fall due after the insolvency order.

(C) Procedure

Legal standing to bring revocatory actions in insolvency proceedings falls to the administrator. However, for the purpose of protecting creditors against the inactivity of administrators, the law provides for a subsidiary or second grade legal standing for creditors that have urged the administrator in writing to bring a revocatory action, if within a period of two months since the date of the request the action is not brought by the administrator. The law contains rules aimed at ensuring that administrators effectively carry out the role of ensuring that the assets covered by the proceedings are not disposed of. For actions against refinancing agreements, legal standing is exclusive to the administrator, excluding any subsidiary standing.

In order to protect the refinancing agreements, there are special rules resulting from recent legislative amendments, which define protective mechanisms that make these agreements (approved under certain conditions) resistant to revocatory actions (Article 604 of the Recast Text of the Insolvency Law).

Last update: 12/04/2024