

# Spain: Removing obstacles from insolvency legislation



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**Faced with the COVID-19 crisis, the legislator has chosen to remove obstacles from insolvency legislation and “force” business viability. This movement is clearly intended to maintain the production network in the hope that the current crisis is situational rather than structural.**

Two Spanish laws have been drafted in one month amending the significance of the presumption of insolvency when applying for proceedings: Royal Decree-Law 8/2020, of 17 March and Royal Decree-Law 16/2020, of 28 April. The legislator has attempted to adapt the legislation to the crisis.

The previous Spanish insolvency legislation foresaw the debtor’s duty to apply for insolvency proceedings within two months from detecting the situation of insolvency. The legislation also authorised creditors to present a bankruptcy petition against the debtor, the so-called “necessary bankruptcy proceedings”. Furthermore, if the application was not made within the two-month period, the proceedings could be classified as fraudulent insolvency due to the delay.

With COVID-19, insolvency proceedings against companies have become less “necessary” for our economy and the new legislative measures are an attempt to prioritise business continuity.

First, RDL 8/2020 extended the presentation period and limited the opportunity for creditors to request insolvency proceedings for a company. Just one month later, however, RDL 16/2020 amended the previous legislation and extended the time horizon for applications for insolvency proceedings until 31 December 2020, regardless of when the state of insolvency is acknowledged, thereby providing



companies with a shield in this crisis.

In the same spirit, this emergency regulation takes a fresh approach to debt renegotiations. The debtor may modify the initial creditors’ agreement and may even accept credits in the insolvency proceedings that were entered into as part of the agreement, with the creditors’ consent. A renegotiation mechanism is available for insolvent debtors who have breached the terms of the agreement. At the same time, the obligation to apply for the opening of the liquidation phase due to breach of the agreement has been relaxed.

The door has also been opened for shareholders to contribute funds, without prejudice to their credit entitlement over other creditors for the next two years. Company law has been amended permitting non-liquidation due to losses arising in the 2020

financial year.

While governments are seeking a vaccine against COVID-19, they are also looking for a vaccine against the economic crisis. Further legislative change will be required, especially in relation to public credit, which is a priority in Spain’s insolvency legislation. The government will have to understand that in the public credit field as well there will have to be debt relief, the interruption of executions from public credits and managers’ personal liability, in short, it must understand that now is not the time for privileges but for debt mutualisation. In the 2008 crisis the government helped the financial sector, now it will undoubtedly have to help the business sector. ■



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