

Legal Status in Spain

APR 3, 20

- Insolvency



Brief guide to bankruptcy proceedings

The situation of the Spanish economy arising from the paralysis of virtually all business activities, may lead many companies, regardless of their sector, to go into a state of insolvency due to a lack of cash flow caused by a cessation of activity or by a chain of defaults by clients facing the same difficulties.

We offer below a series of guidelines to evaluate the various options provided by the law to protect the companies that may face insolvency.

1. When to file for bankruptcy and effects of the State of Alarm.

Before the declaration of the State of Alarm, company owners had two months from the moment the company became insolvent. Such a situation is considered to have occurred in any the following circumstances:

- Failing to meet obligations related to current payments.
- Existence of embargos on debtors' assets due to pending executions.
- Asset stripping or forced liquidation of debtors' assets.
- General failure to comply with tax payment obligations, social security contributions, or wages and compensations for the previous 3 months.

The above terms have been suspended by the various regulations that have been approved during the State of Alarm and thus it is not mandatory to file for bankruptcy while it remains in force.

However, it should be borne in mind that the relevant time limits will be resumed from the point where they were suspended due to the State of Alarm rather than from the beginning once the latter is lifted.

This does not mean that insolvency proceedings cannot be initiated if the company considers it to be urgent and necessary.

By filing an application for voluntary bankruptcy, company owners protect themselves against the possibility that a creditor may file it first (in this case it would be involuntary bankruptcy) and it would lead to an even more difficult situation to manage, with the consequent additional risks for the protection of their personal assets.

2. The possibility of negotiating with creditors: pre-bankruptcy proceedings

Within the aforementioned period of two months from the emergence of the insolvency situation, the company can file a communication of negotiation with the creditors before a commercial court judge to try to reach refinancing agreements or an advance agreement. This is the well-known Article “5 bis” on pre-bankruptcy proceedings in Spanish Bankruptcy Law.

In principle this would be a more advisable option than the initiation of voluntary bankruptcy if the company owner sees possibilities to continue with the business project. It could also be useful in order to make time for the preparation of the documentation required to initiate insolvency proceedings later on.

The pre-bankruptcy process suspends a creditor’s time to file a claim for involuntary bankruptcy, which means the company has three months to negotiate, and an additional one month to file for bankruptcy if it has not been able to reach a negotiated settlement with the majority of its creditors.

3. Steps to activate the bankruptcy proceedings: required documentation

The following documentation is required for the submission of a voluntary bankruptcy application:

- Special power of attorney to file for bankruptcy.
- A report on the economic and legal history of the debtor's activities in the last three years.
- Inventory of assets and rights.
- List of creditors.
- List of employees.
- Annual accounts.
- Report on significant changes subsequent to the last annual accounts.
- Interim financial statements.

This documentation is not necessary for the initiation of pre-bankruptcy process.

Applications to initiate pre-bankruptcy or bankruptcy proceedings must be presented by means of a statement signed by a lawyer and legal representative in the commercial courts, which are located in the capital of each province.

4. Mechanisms for preventing bankruptcy

In order to try to avoid or save a company from bankruptcy, it is advisable to analyze the situation of the company and to evaluate, if necessary and if possible, the implementation of certain measures that may alleviate the difficulties in the short term:

- Request a moratorium on tax and social security payments from the relevant authorities.
- Negotiate a debt reduction or extended terms with the creditors who have sued the company (legal proceedings are currently suspended).
- Negotiate a refinancing with the banks.
- Submit ERTes for non-essential workers.
- Negotiate a rent reduction or moratorium with landlords in the case of tenants of business premises.
- Communicate the suspension or even termination of contracts that cannot be fulfilled due to force majeure and that may involve penalty or compensation.

Alejandro Casas, Partner, acasas@bartolomebriones.com

Antoni Faixó, Senior Associate, afaixo@bartolomebriones.com

www.bartolomebriones.com

**This text is for information purposes only and does not constitute legal advice.*