

The Law 9/2015 includes the following novelties:

1. In Regard to the Insolvency Agreement

Law 9/2015 presents a series of novelties regarding the insolvency agreement, such as:

- Valuation of the guarantees carrying special privilege: the calculation of the value of the guarantee cannot be regarded as a reduction of the guaranteed credit, but as a differentiated valuation of the principal right and the accessory right.
- Quorum for constitution of the creditor's meeting: Law 9/2015 includes preferential creditors in the quorum insofar as they may be affected by the agreement. Therefore, the meeting shall be deemed as validly created once half of the liabilities affected by the agreement have been reached, even if attendance of half of the ordinary liabilities has not been achieved. Moreover, the provision that established that attendance to the meeting would not affect the calculation of the quorum (art. 123.1 of the Bankruptcy Law) has been removed, as Law 9/2015 has set forth that, for the purposes of the majorities required to approve the agreement, preferential creditors who have voted in support of the proposal shall be included in the ordinary liabilities.
- Votes and calculation of majorities in the agreement: the general limitation on reduction of debt and extension of time applied to the agreement has been removed. However, in order to exceed such limits (reductions of 50% and extensions of five years), reinforced majority of 65% is required. In addition, the rule already applied to pre-bankruptcy agreements in regard to maximum majorities required for syndication agreements – of 75% – has also been introduced.

2. In Regard to Liquidation

As for liquidation, the power of the judge to award the assets to the lowest bid when it does not differ by more than 15% from the rest has been added (it was 10% before), but only if the continuity of the business activity is guaranteed, as well as employment contracts and repayment of creditors.

On the other hand, the new reform allows subrogation of contracts and administrative licences, and mechanisms of prior debt exemption are contemplated.

In the case of tax and social security debt, the subrogation thereof is forbidden (article 149 of the Bankruptcy Law). In addition, the preferential creditor may take over the amount from the realised assets of the insolvent party provided this does not exceed the amount owed, as the remainder shall pertain to the asset mass.

3. In Regard to the Qualification of the Bankruptcy

As for the qualification of the bankruptcy, Law 9/2012 of the Bankruptcy Law has introduced two presumptions in art. 165.2: firstly, the bankruptcy shall be presumed culpable when the attendance to the meeting for the purpose of reaching an agreement is negligible or insufficient; and, secondly, the *iuris tantum* presumption of culpable bankruptcy shall be presumed when the agreement is thwarted by the partners or administrators of the company.

4. In Regard to Refinancing Agreements

The first novelty in the refinancing agreements mainly focuses on article 5 bis of the Bankruptcy Law (communication of negotiations), whose new wording attempts to respond to the doubts which had arisen to date in regard to the communication to the court of the start of negotiations with the creditors of the insolvent party. Thus, Law 9/2015 establishes that the communication that is sent by the debtor to the court must include the executive proceedings brought against its assets, indicating those which it considers necessary to continue with its business activity. In the event of controversy, the power to decide whether or not an asset is necessary for this purpose shall pertain to the bankruptcy judge.

In addition, and in regard to the legal certification of refinancing agreements, the 4th Additional Provision of the Bankruptcy Law introduces a number of modifications in order to clarify the voting system for syndicated agreements and the calculation of the value of guarantees in rem, which may not exceed the value of the maximum mortgage or pledge liability that has been agreed. Moreover, Law 9/2015 renders unnecessary the report from an independent expert in the case of cash, current accounts or electronic money, but maintains the obligation in regard to the valuation of real estate assets.

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