

## **Regulation 2015/848 of the European Parliament and of the Council of 20 May 2015**

With commercial activities increasingly having an impact across borders in the European market, it has become increasingly necessary to introduce supranational legislation to regulate those activities. In particular, there is a need to make cross-border insolvency proceedings convenient, consistent, effective and efficient across Europe.

In response to this need, in June 2015, Regulation 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings (the "Regulation") was published. **This applies to insolvency proceedings that may begin in any Member State as from 26 June 2017.**

The Regulation aims to improve the application of its predecessor regulation and solve certain interpretive gaps and ambiguities, as well as recast the applicable regulation in a single text.

Its purpose is to guarantee the effective administration of insolvency proceedings that involve private individuals or businesses with activities or economic interests in an EU country that is not the country of their regular headquarters. It contains provisions pertaining to the recognition and enforcement of judgments issued within said insolvency proceedings, and establishes rules on the coordination of those proceedings pertaining to the same debtor or several members of a same group of companies.

Among the **modifications and novelties introduced by the Regulation** is one that pertains to its **scope of application**, which is expanded and includes **not only insolvency proceedings themselves, but also hybrid or pre-insolvency mechanisms designed to prevent the opening of a formal insolvency proceeding**. Thus, proceedings that promote the rescue of European companies that are economically viable but distressed are incorporated.

Specifically, the national pre-insolvency proceedings that are subject to the provisions of the new Regulation are the following:

- Official approval proceedings of refinancing agreements and proceedings that promote the rescue of economically viable businesses.
- Out-of-court agreements for payment and all agreements that provide for a debt discharge or a debt adjustment in relation to consumers and self-employed persons.

- Communications referenced in Article 5 bis of Act 22/2003 of 9 July (the Bankruptcy Act), for the adoption of refinancing agreements or early arrangements with creditors, as well as any other pact leading to the temporary suspension of individual enforcement actions that could have a negative effect on the restructuring perspectives of a business.

Insolvency proceedings that have been declared confidential are excluded from the scope of application of the Regulation, as well as insolvency proceedings pertaining to insurance undertakings, credit institutions, investment firms and other firms that may be subject to special schemes.

Regarding the **jurisdiction for initiating the main insolvency proceeding**, the Regulation reserves it for the court where the **main centre of interests of the insolvent company is located**. The aforementioned notwithstanding, if the company in question has establishments in different member states, the Regulation allows the opening of secondary proceedings before the courts where said establishments are located, but limited to the assets that are located there.

For the purpose of determining the main centre of interests, the Regulation establishes that this will be understood as that where the debtor regularly and ascertainably by third party conducts the administration of their interests. Consequently, this new definition foresees the possibility that the main centre of interests might not be located at the registered office that is recorded in the corresponding Mercantile Register. In this regard, the Regulation presumes the following as the centres of main interests:

- For **legal persons**, the location of **their registered office**
- In the case of **self-employed persons and independent professionals**, it will be presumed to be located in **the place where they develop their professional activity**
- For **individuals who are not professionals**, it will be understood to be located in their place of usual residence

In any event, in order to avoid forum shopping and changes of address aimed to achieve the jurisdiction of a specific court, the Regulation establishes that said presumption will not apply whenever there may be a change of address of a legal person, of independent professionals or of self-employed persons within the three months immediately preceding the filing for the declaration of bankruptcy. Regarding individuals, that period of three months extends to six months prior to the filing for the declaration of bankruptcy.

One of the other novelties introduced by the Regulation is the **obligation of member states to establish and maintain in their territory one or several registers in which information concerning cross-border insolvency proceedings is published**, for the sake of avoiding the opening of parallel insolvency proceedings. According to the provisions of the Regulation, the insolvency registers must be interconnected through the [European e-Justice Portal](#), which will serve as a central public electronic access point to information.

Finally, the **inclusion of a new chapter dedicated to insolvency proceedings of companies of the same group** should be mentioned, which was a matter not provided for in the preceding regulation. Thus, a series of procedural rules is provided for, designed to ensure the effective administration of these types of insolvency proceedings. For these purposes, the Regulation regulates what is called “group coordination proceedings”. The idea is to have a tool that allows insolvency proceedings opened in various states for different companies included in a group to be processed in coordination. Thus, **it is established that the insolvency practitioner appointed in the proceeding with respect to a member of the group will cooperate with any insolvency practitioner appointed in a proceeding pertaining to another member of the same group**, to the extent that such cooperation is appropriate for the effective administration of the proceedings and is not incompatible with the rules applicable to the respective proceedings and does not represent a conflict of interests. Cooperation may take any shape, which includes entering into agreements or protocols.

In brief, this Regulation, which must be taken into account for all insolvency proceedings that begin in any member state as from 26 June 2017, represents an advance in relation to the preceding regulation by incorporating novelties that are due to internationalisation of the market and the need for cooperation between member states of the European Union in order to successfully process insolvency proceedings without suffering from legal gaps.