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ACT 22/2003, DATED 9TH JULY (HEAD OF STATE), ON INSOLVENCY

(Official State Gazette number 164, dated 10th July 2003)

PREAMBLE

I

The aim of this Act is to satisfy a profound, long–awaited aspiration felt in Spanish Economic Law, that is: reform of the insolvency legislation. The severe, well-grounded criticism the current law has deserved has not been followed, to date, by legislative solutions that, in spite of their recognised urgency and the valuable attempts made to prepare them, have been delayed and have led, in turn, to a worsening of the defects from which the legislation in force suffers, namely: archaism, lack of adaptation to the social and economic reality of our time, dispersion, lack of a harmonic system, prevalence of certain private interests over other more general ones disregarding the principle of equality in treatment of creditors, thus leading to unfair solutions, frequently caused in practice by manoeuvres in bad faith or with abuse or simulation, which the rules that regulate the insolvency institutions do not manage to effectively suppress.

The archaic nature and dispersion of the provisions in force in these matters are defects that arise from the Spanish legislation of the 19th Century, structured on the basis of the duality of Codes of Private Law, namely a Civil Code and a Code of Commerce, and the separate regulation of procedural matters with regard to substantive law, in a Civil Judicial Procedure Act. Additionally, the large number of types of insolvency proceedings has also contributed to increasing these defects and to hinder the correct integration of the system; thus, along with the classic bankruptcy and creditor insolvency proceedings, to deal with insolvency of traders and non–traders respectively, other preventive or preliminary proceedings were introduced, such as receivership or the discharge of debts and stay of payment procedure, the objective principles of which were not very clear and, thus, had very diffuse limits with regard to others. The Receivership Act dated 26th July 1922, introduced as a provisional piece of legislation, since it was adopted to resolve a specific case, became a basic pillar of our Insolvency Law thanks to the flexibility of its regulation but, even although it aided the management of situations of asset crises among traders, added further complications to the absence of coherence of a set of provisions that lacked general principles and a systematic elaboration inherent to a harmonic system, allowing notorious cases of fraud.

The situation of Spanish Insolvency Law was aggravated even more by such anachronisms as the present validity of a fair number of Articles from our first Code of Commerce, enacted by Ferdinand VII on 30th May 1829, by virtue of the invocation of these made by the Civil Judicial Procedure Act, dated 3rd February 1881, prior to the Code of Commerce dated 22nd August 1885, and in force in this sphere, pursuant to Paragraph 1 of the Sole Repealing Provision of Act 1/2000, dated 7th January, on Civil Judicial Procedure, until this Insolvency Act came into force.

The Spanish legislator has not put right these shortcomings until now. In spite of the prompt reform to the Code of Commerce of 1885 introduced by the Act dated 10th June 1897 and the very important one arising from the aforesaid Receivership Act of 1922, legislative amendments have been partial and limited to specific matters, which, far from improving the insolvency system, has contributed to complicating it with a greater dispersion of the special and exceptional rules and, frequently, with introduction of preferences and alterations in the order of priority of creditors, not always based on criteria of justice.

However, there has been no lack of worthy pre–legislative work aimed at reforming Insolvency Law. In addition to that carried out by the General Commission for Codification, by virtue of the Royal Order dated 10th June 1926, that concluded with preparation of a draft bill of the Code of Commerce, published, with regard to this matter, in the

Gazette of Madrid, dated 15th October 1929, and aimed at the most precise distinction of cases of bankruptcy and receivership Law, the following ones must be basically pointed out:

a) The draft bill prepared by the Justice Section of the Institute of Political Studies, concluded in 1959, and not published officially, in which, for the first time, an attempt was made for a joint, substantive and procedural regulation of the insolvency institutions, for traders and non–traders, although a duality of procedures was maintained according to the diverse objectives that determined that of their respective solutions, namely: winding–up or composition.

b) The draft bill prepared by the General Commission for Codification by virtue of the provisions contained in the Ministerial Orders of 17th May 1978, published in its articulated text by the Technical General Secretariat of the Ministry of Justice on 27th June 1983, that was based on the principles of legal unity – of material and procedural law –, of discipline – for traders and non-traders – and of a system – a sole flexible procedure, with diverse possible solutions: composition, winding-up and controlled administration –. This text, subsequently revised was followed, in 1987, by another draft bill of an Act of Bases, which provided the Government the delegate power to enact provisions with the rank of an Act of Parliament on insolvency.

c) The proposed draft bill prepared by the General Commission for Codification according to the general criteria ordered by the Ministry of Justice and the Interior on 23rd June 1994, concluded on 12th December 1995, and which was published by the Technical General Secretariat on 15th February 1996, in which the principles of legal unity and discipline were maintained, but reverting to the duality of insolvency proceedings and receivership, on the basis of the difference between insolvency and illiquidity, reserving that latter procedure, with a high degree of non–judicial intervention, as a benefit for solvent debtors in good faith.

d) The draft bill of the Insolvency Act prepared by the Special Section for Insolvency Reform, created during the life of the previous Parliament, within the General Commission for Codification by Order by the Ministry of Justice dated 23rd December 1996, and concluded in May 2000, which is what constitutes an antecedent to the draft giving rise to this Act, with which the Government has fulfilled Final Provision Nineteen of Act 1/2000, dated 7th January, on Civil Judicial Procedure, pursuant to which, within the term of six months from the date of enactment of this Act, the Government had to submit an Insolvency Bill to Parliament.

Thus, the long awaited, as well as necessary, reform of Spanish Insolvency Law is undertaken, this undoubtedly being one of the most important legislative tasks pending to modernise our legal system.

The reform does not amount to a break with the long Spanish insolvency tradition, but the Act does bring about a profound change in the laws in force, in which the doctrinal and pre-legislative contributions made nationwide and the most recent specifications arising in Compared Law have been taken into account, as well as the supranational instruments prepared for unification and harmonisation of the laws on this matter.

The result of this delicate task is a legal text that aims to correct the shortcomings of the previous law with solutions in which the purposes of co-ordinating the originality of a new insolvency system with its harmonic insertion in the our set of laws may be appreciated, a concern reflected in the care placed in the Additional, Transitional, Repealing and Final provisions that conclude this Act.

II

The Act opts for the principles of unity: legal, of discipline, and of system.

Regulation of the material and procedural aspects of insolvency in a sole legal text, with no further exception than that of the rules that, due to their nature have required the rank of an Organic Act, is a legislative policy option that was already determined by the new Act 1/2000, on Civil Judicial Procedure, on excluding this matter from the scope thereof and referring it specifically to the Insolvency Act.

Overcoming the diversity of insolvency institutions for traders and non-traders is a formula that, in addition to being justified by the disappearance of the repressive nature of mercantile insolvency, is determined by the tendency to simplify the proceedings. This does not amount to ignoring certain specialities of insolvency of entrepreneurs subject to their own statute (obligatory keeping of accounts, inscription at the Business Register) and the presence in the estate of units that produce goods or services, specialities that are taken into account

throughout the regulation of the insolvency, from the lodging of the petition to its conclusion by composition or winding–up.

The insolvency procedural unity is achieved by virtue of the flexibility the Act endows it with, that allows adaptation thereof to diverse situations and solutions, through which satisfaction of creditors –the essential purpose of insolvency proceedings– may be attained. Moreover, specially agile rules have been provided for minor insolvencies.

The name chosen to call the sole procedure is that of "*concurso*" [Translator's note: literally, concurrence], a classic expression that, dating back to Spanish publicists of the 17th Century, fundamentally Amador Rodríguez (*Tractatus de concursu, 1616)* and Francisco Salgado de Somoza (*Labyrinthus creditorum concurrentium, 1646*), became part of the European procedural vocabulary and that, *par excellence*, describes the proceedings brought by creditors against the assets of the common debtor. The aim of this is not just to recover a traditional expression in Spanish legal terminology, but also to use it to define the phenomenon that unifies the diverse insolvency proceedings and to thus to graphically identify the sole procedure, as has happened in other legislations.

The unity of the procedure imposes that of its objective premise, identified with insolvency, which is conceived as the state of assets of a debtor who cannot regularly honour his obligations. However, that unitary concept is also flexible and works in a different manner according to whether compulsory or voluntary insolvency is involved. Those entitled to petition for insolvency proceedings to be opened against the debtor (his creditors and, if a legal person is concerned, those who are held personally liable for its debts), must be based on any of the facts listed by the Act as supposed signs of insolvency: from unique failed enforcement, to general or sectorial setting aside, according to whether this affects the set of obligations or any of the classes that the Act considers especially sensitive in the liabilities of the debtor, among other rated facts.

The petitioner for compulsory insolvency proceedings to be opened must provide evidence of the facts on which that petition is based; in all cases, the declaration must be made respecting the debtor's procedural guarantees, who must be summoned and may oppose the petition, based on the non–existence of the fact on which it is based or of his state of insolvency, having in this case to provide evidence of his solvency. The guarantees provided to the debtor are complemented by the possibility of lodging an appeal against the declaration opening the insolvency proceedings.

If the petition for insolvency proceedings to be opened is lodged by the actual debtor, he must justify his indebtedness and his insolvent status; although in this case, it may not only be current in nature, but also future, foreseen as "imminent". The debtor has the duty to petition for a declaration opening the insolvency proceedings when he knows of, or should have known of, his state of insolvency; but while he still has the capacity to anticipate this.

The legal system thus combines the guarantees of the debtor with the convenience of bringing forward the declaration opening the insolvency proceedings in time, in order to prevent deterioration of the financial status preventing or hindering finding more appropriate solutions to satisfy creditors. Petitioning for voluntary insolvency is incentivised, with penalties for the debtor for breach of the duty to petition for it and granting credit to the petitioner creditor generating a general preference for of up to a quarter of the amount of his credit; these being measures intended to achieve that objective.

The unity and flexibility of the procedure are embodied in its actual structure, which is articulated, in principle, under a common phase, that may lead to another of composition or winding–up. The common phase begins with the declaration opening the insolvency proceedings and concludes once the report by the insolvency administrators has been submitted and the term to lodge an appeal has elapsed, or he appeals brought against the inventory or list of creditors have been resolved, thus obtaining a more precise knowledge of the financial situation of the debtor through determination of the assets and liabilities in the proceedings. In addition thereto, there is the possibility of using an abbreviated procedure in certain cases.

III

The flexibility of the procedure is also perceived with regard to the effects caused by a declaration opening the insolvency proceedings. With regard to the debtor, those established by the previous legislation are attenuated and those of a repressive nature regarding insolvency are abolished. "Barring" is reserved for cases of insolvency deemed tortious, in which case a temporary barring on the persons concerned is imposed. Once the insolvency proceedings are declared open, exercise by the debtor of his economic rights is subject to intervention or suspended,

being replaced by the insolvency administrators in the latter case. In principle, the former of these situations is that of voluntary and the latter of compulsory insolvency, although the insolvency Court is granted ample powers to adopt or amend these. The penalisation of acts performed by the debtor in breach of these limitations is also attenuated to become a possibility of annulment, in addition to prohibition on access to public registers.

The Act limits the effects of a declaration opening the insolvency proceedings, reducing these, in a functional sense, to those that benefit the normal carrying out of the proceedings and, to the extent required by this, granting the Court the power to graduate and adapt them to the specific circumstances of each case. Apart from, in addition to the effects that, due to debtor's fundamental personal rights being involved, such as those of freedom, secrecy of communications, residence and movement nationwide, are regulated in the Organic Act on Insolvency Reform.

In a positive sense, the duty of the debtor to collaborate with the insolvency authorities is established including: to inform them of all matters of interest to them; to aid them in conservation and management of the estate and to make the books and documents on the exercise of the professional or business activities available to the insolvency administrators.

A declaration opening the insolvency proceedings, alone, does not interrupt performance of the debtor's professional or business activities, notwithstanding the effects causes thereby on his economic capacity; although the insolvency Court enjoys ample powers to resolve decide on closure of his offices, establishments or operations, and even, in the case of a business activity, to totally or partially cease or suspend it, after hearing the debtor and the representatives of the employees.

Special attention is devoted by the Act to the cases of insolvency of legal persons, a matter of major importance, given the significance of these entities and, fundamentally, that of companies in modern trading. Thus, as the Organic Act allows the measures on communications and residence of the debtor to be extended, in the case of legal persons, to their directors and liquidators, the Insolvency Act imposes the duties of collaboration and information on these and on the general proxies of the debtor.

The bodies of the debtor legal person are maintained during the insolvency proceedings. The insolvency administrators are authorised to lodge liability actions against the directors, auditors, and liquidators, without the need for a prior resolution by the meeting of shareholders or partners. The most severe effect the Act establishes is that of seizure of assets and rights of the directors and liquidators, which the Court may resolve when there are grounds to consider the insolvency may be considered tortious and that the estate may be insufficient to settle all the debts.

Compared with the previous law, an original feature is the regulation of the effects of the insolvency of the company on shareholders or partners who have subsidiary liability for its debts, which is reduced to attributing the insolvency administrators the exclusive authority to lodge the relevant action once the composition has been approved or the winding-up is open. Thus, the automatic extension of the insolvency proceedings to persons who, even when liable for the corporate debts, may be solvent is avoided, as well as preventing individual claims by creditors against shareholders or partners, which may disturb the proper order of the insolvency proceedings.

The Act also applies functionality criteria to regulate the effects of declaring insolvency proceedings open on creditors, ordering paralysis of individual actions brought by them against the insolvent debtor's estate. This paralysis, a natural consequence of the amalgamation of creditors in the passive side of the insolvency, does not affect those procedures in the civil or labour jurisdictional orders that are already under way at the time the insolvency proceedings are declared open, which shall continue until the ruling is final, nor those of a contentious-administrative or criminal nature with an effect on the debtor's assets, even if these are exercised after the declaration. Nevertheless, it does affect, of course, all those proceedings of an executive nature, including administrative or tax enforcements procedures, that are suspended if already under way, except those resolved prior to the insolvency being declared, and which, furthermore, may not be commenced once the insolvency has been declared.

One of the most important novelties of the Act is the special treatment it gives to the exercise of actions of execution of *in rem* charge on the insolvent debtor's assets. The inherent nature of the *in rem* security interest in the other party's property is respected and this imposes a different regulation to that applicable to claims integrated in the aggregate liabilities of the insolvency proceedings. Although, at the same time an effort is made to ensure the separate enforcement of the charge does not disturb the proper course of the insolvency proceedings, nor prevents solutions that may be convenient to the interests of the debtor and of the aggregate liabilities.

The formula that combines these aims is that of temporary paralysis of enforcements, while a composition is negotiated or the winding-up commences, up to a maximum term of one year after the insolvency proceedings are declared open. Except if the auction had already been announced at the time the insolvency proceedings being declared open, the foreclosing actions commenced previously shall be suspended and shall not resume, nor may others be initiated, until the set terms have elapsed. That effect of mandatory, limited stay of payment for the holders of a credit secured *in rem* is considered fair in the context of the treatment of all the interests involved in the insolvency proceedings, which must suffer some sacrifice in order to obtain a definitive, more beneficial solution to the state of insolvency.

Naturally, claims secured *in rem* enjoy special privileges in insolvency proceedings and the composition shall only affect them if their holder signs the proposal, votes in its favour or adheres thereto or to the composition approved.

If not affected by a composition, the claims with special preference shall be paid against the assets and rights upon which the charge is secured. Foreclosure shall be effected before the insolvency Court. However, while there is temporary suspension of these actions, the insolvency administrators may opt to honour payment of these claims from the estate. Even in the case of realisation, the Court may authorise the subsistence of the charge and subrogation by the acquirer in the obligation of the debtor, who shall be excluded from the aggregate liabilities, or by direct sale, with application of the price to payment of the especially preferential claim. Thus, a series of flexible formulas are articulated, aimed at avoiding foreclosing unnecessarily disturbing the other interests involved in the insolvency proceedings.

To these ends, the Act extends treatment of foreclosure actions to the recovery of moveable goods sold by instalments and those under financial lease, as long as the relevant contracts or documents are duly entered in the respective registers, as well as to clauses of rescission of sale affecting immoveable goods due to lack of payment of the instalment price.

An attempt has thus been made to allow for realistic approaches that, without detracting from the nature of these rights or disturbing the credit market–highly sensitive to protection of guarantees in the case of insolvency of the debtor- so as not to prevent, but rather to provide feasible and beneficial solutions for the interests of the insolvency proceedings.

Flexible formulas are established in the interest of the insolvency proceedings and without prejudice to the interests of the counterparty also being recognised to allow rehabilitation of the credit contracts or of acquisition of assets by instalment, as well as impeding eviction in urban leases affected by breach of the insolvent debtor.

Special attention has also been paid to regulation of the effects of the declaration opening the insolvency proceedings on contracts, one of the matters most deficiently dealt with in the previous law and, thus, of greater originality in the new law. According to this, the declaration opening the insolvency proceedings does not, in principle, affect the life of contracts with reciprocal considerations pending fulfilment by both parties. Notwithstanding this, in the interest of the insolvency proceedings and while providing guarantees for the rights of the counterparty, the Act foresees both the possibility of a judicial declaration of termination of contract or its enforcement even in the case of there being a cause of rescission due to infringement. Contractual termination or extinction clauses in the event of a declaration opening insolvency proceedings are not allowed, although application of legal rules that provide for expiry or that specifically allow the parties to agree such expiry or to denounce the contract is permitted.

Special care has been paid to the matter concerning existing employment contracts on the date of the insolvency proceedings being declared open, when the insolvent debtor is an employer. Under the reform introduced in the Organic Act on the Judiciary by the Organic Act on Insolvency Reform, the insolvency Court is attributed jurisdiction to hear and determine matters that, in principle, are the competence of the Labour Courts, although due to their special transcendence on the situation of insolvent debtor's estate, and in order to ensure unity of the proceedings, must not be resolved separately. However, this must all be reconciled with the material provisions currently contained in the Labour Laws.

The effects of a declaration opening the insolvency proceedings on contracts of an administrative nature entered into by the debtor refer to what is established in the special regulations.

The Act provides a new treatment to the difficult matter of the effects of the declaration opening the insolvency proceedings on acts performed by the debtor in the suspect period due to their nearness to such openings. The

disturbing system of retroaction of the insolvency is substituted by some specific reintegration actions aimed at revoking acts that are detrimental to the estate, a detriment that is presumed by the law in some cases, and in others it would have to be proved by the insolvency administrators or, on a subsidiary basis, by the creditors legitimated to exercise the relevant action. Third parties acquiring assets or rights affected by these actions enjoy the protection granted, when applicable, in *bona fide* cases, by extinguishing actions *in rem* or afforded by the public registers.

IV

The Act simplifies the organic structure of insolvency proceedings. The Court and the insolvency administrators alone form the necessary bodies in the proceedings. The creditors' meeting shall only have to be constituted in the composition phase when the composition is not approved by the system of written adhesion to an early proposal. Intervention by the Public Prosecutor as a party is limited to Section Six, of classification of the insolvency proceedings, when such opening is appropriate, notwithstanding his intervention under this Act when criminal offences against property or the social and economic order are involved.

The reduction of the insolvency bodies has the logical consequence of attributing to these wide- ranging and significant powers. The Act establishes the Court as the governing body of the proceedings, equipped with enhanced powers when compared to those held under the previous law and with greater discretion as to their exercise, always reasoning decisions.

The competence to hear and determine insolvency proceedings is attributed to the new Mercantile Courts that are created, as a consequence of this Act, in the Organic Act on Insolvency Reform, via the relevant amendment of the Organic Act on the Judiciary.

The criterion of territorial competence is based on the real economic datum of the location of the centre of main interests of the debtor, already adopted under international rules, in preference to that of domicile, which has a prevailing legal and formalistic nature. However, if the centre of main interests and the domicile of the debtor do not coincide, the creditor petitioning for insolvency proceedings to be opened is granted the option to choose either of them for the purposes of territorial competence. In the case of a legal person, it is presumed that both places coincide, although a change of domicile made in the six months prior to petition for insolvency shall be considered ineffective for these purposes, to avoid competence being set up with fictitious criteria.

Pursuant to the general rules of the new Civil Judicial Procedure Act, no other matter of competence other than that formulated by declination of jurisdiction proceedings can be raised and even though competence is finally declined although this shall not suspend the insolvency proceedings and everything performed that far shall be valid.

The Organic Act on the Judiciary, amended by the Organic Act on Reform of Insolvency, attributes the insolvency Court exclusive and excluding jurisdiction in those matters that are considered of special transcendence for debtor's estate, although they may be labour in nature, as well as those of enforcement and the injunctive powers, whatever the body which may have been issued them. The universal nature of insolvency justifies concentration of competence in all these matters in one jurisdictional body, the dispersion of which breaks up the necessary unity of procedure and decision–making.

Moreover, the Insolvency Act grants the insolvency Court ample discretion in the exercise of its powers, which contributes to facilitating the flexibility of the proceeding and their adaptation to the circumstances of each case. The discretional powers of the Court are visible in such matters as adoption of preservation measures prior to their declaration or implementation of the administration or voluntary arrangement under Insolvency Law; extension of the publicity that must be given to the declaration opening the insolvency proceedings and other resolutions of interest to third parties; accumulation of insolvency proceedings; the appointment, severance and rules of operation of the insolvency administrators; the classification of the effects of the declaration opening the insolvency proceedings on the person of the debtor, creditors and contracts; approval of the winding-up plan or the rules for payment of claims.

Administration under Insolvency Law is regulated according to a totally different model to that in force up to present and the choice is made for a collegiate body whose composition combines professionalism in matters of importance for all insolvency proceedings – both legal and financial – with the representative presence of a creditor who is the holder of an ordinary claim, or with a general preference, that is unsecured. The only exceptions to the rules of

composition of this body are determined by the nature of the insolvent person – when it is an issuer of stock exchange listed securities, an investment services company, a lending or insurance undertaking- or due to the scarce importance of the insolvency, in which case the Court may appoint a sole administrator on a professional basis.

Insolvency administrators are entrusted with highly important duties, which must be exercised collegiately, except those that the Court attributes individually to any of the members. When the complexity of the procedure so requires, the Court may authorise delegation of certain functions to assistants.

The Act foresees regulation of the insolvency administrators' remunerations by tariff and sets criteria with regard to the amount of the assets and liabilities and the foreseeable complexity of the insolvency proceedings. In any case, it is the remit of the Court to approve the remuneration.

The liability rules of the insolvency administrators to the debtor and creditor and that of their revocation for due causes is regulated.

The essential duties of that body are those of intervening in the acts performed by the debtor in the exercise of his economic rights or to stand in for the debtor when he has been suspended from practice, as well as to draft the voluntary arrangement under Insolvency Law report to which the inventory of estate must be attached, as well as the list of creditors and, when appropriate, the evaluation of the proposals for compositions submitted.

The Act establishes the precise rules for preparation of these documents. The inventory shall contain the list and valuation of the assets and rights forming the estate. The treatment of marital assets is regulated according to the matrimonial property regime of the debtor when married, as well as the right to separation of the items of third party property in the possession of the debtor.

The list of creditors shall include a list of those recognised and those excluded, as well as an additional separate one of those that, pursuant to the Act, are considered claims against the estate.

The insolvency administrators must issue an opinion on the inclusion of all the claims discovered during the proceedings, as well as those that have been notified on time and in the manner established by the Act, as well as those that arise from the books and documents of the debtor, or that are recorded in the proceedings by any other means. With regard to those recognised, the claims shall be classified pursuant to the Act as preferential – with special or general preferences –, ordinary and subordinated.

V

The regulation of this matter of ranking of the claims constitutes one of the most important innovations introduced by the Act, because it drastically reduces the privileges and preferences for the purposes of insolvency, notwithstanding those that may subsist in unique enforcements, by virtue of prevailing third party rights. It is considered that the principle of equal treatment of creditors must be the general rule of insolvency proceedings, and that exceptions thereto must be very few in number and always justified.

The exceptions the Act allows are positive or negative, in relation to the ordinary claims. The former are specified in the preferences, either special or general, due to the guarantees enjoyed by the claims or due to their cause or nature. In principle, preferential creditors shall only be affected by the composition with their approval and, in the event of winding-up; they shall be paid with priority over the ordinary ones. However, these privileges are reduced in number and are even limited in their amount in the case of some of those traditionally recognised, such as taxes or Social Security contributions (up to 50 per cent of their amount in each case). On the other hand, salaries in the last 30 days of work prior to the declaration opening the insolvency proceedings and in an amount that does not exceed double the minimum interprofessional salary, and those accrued after declaring the insolvency, as well as those of compensation for extinction of the employment contract, as resolved by the insolvency Court, shall be considered claims against the estate and shall be paid preferentially with regard to the insolvency claims; salaries, pursuant to Article 32.1 of the Statute of Workers, shall be paid prior to the rest of the insolvency claims; and the salary ones under Article 32.3 of the same text shall enjoy general preference, like those of compensations arising from industrial accidents and surcharges on compensation for breach of obligations in matters of health at work accrued prior to the insolvency being declared. The aim is thus to prevent the insolvency terminating by payment of some claims and, without ignoring the general interest of these being settled, setting this off against the aggregate

set of liabilities, while establishing composite solutions that are supported by the workers and the public authorities to the extent to which their claims do not enjoy preference.

The negative exceptions are those of the subordinated claims, a new category introduced by the Act to classify those that deserve to be placed after ordinary ones, due to their late lodging, or due contractual agreement, or due to their accessory nature (interest), or due to their penalisation nature (fines) or due to the personal condition of their holders (persons who are specially related to the insolvent debtor or parties in bad faith in acts that are detrimental to the insolvency proceedings). To these ends, it is convenient to specify that the category of subordinated claims includes the interest accrued and penalties imposed due to exaction of public claims, both taxes as well as those of the Social Security. The holders of these subordinated claims lack the right to vote at the creditors' meeting and, in the event of winding–up, may not be paid until the ordinary ones have been fully settled.

Subordination due to special personal relations with the insolvent debtor are not only based on those of relationship or de facto cohabitation, and include, in the case of a legal person, partners who are liable for corporate debts or who have a significant stake in the share capital, as well as legal or de facto directors, the liquidators and companies in the same group. In all cases, the ranking also affects the assignees or awardees of claims belonging to persons especially related to the insolvent debtor if their acquisition has taken place within two years prior to insolvency being declared.

VI

The insolvency solutions foreseen in the Act are composition and winding-up, for the respective implementation of which specific phases of the proceedings are articulated.

A composition is the normal solution to insolvency and the Act promotes it with a series of measures, aimed at achieving satisfaction of the creditors through the composition contained in a legal transaction in which the free will of the parties has a great scope.

Among the measures to facilitate that solution to the insolvency, the admission of the early proposal of composition that the debtor can submit in the case of voluntary arrangement under Insolvency Law or, even in the case of compulsory insolvency, until expiry of the term to lodge claims, as long as this is accompanied by adhesions by creditors in the percentage the Act establishes. The regulation of this early proposal even allows judicial approval of the composition during the common phase of the insolvency proceedings, with an evident sparing of time and expenses with regard to the present insolvency proceedings.

On the other hand, if an early proposal is not approved and the insolvent debtor does not opt for liquidation of his estate, the composition phase is opened once the lodging of appeals against the inventory and list of creditors is over.

The Act attempts to expedite processing of the composition proposals. The early proposals that have not achieved sufficient adhesions for approval may be maintained at the creditors' meeting. The insolvent debtor who has not submitted an early proposal or applied for winding-up and the creditors who represented a significant part of the liabilities may submit proposals, even up to forty days prior to that set to hold the meeting. Adhesions to the proposals may be accepted right up to the moment of closing the attendance list. This shall contribute to expedite the calculation of votes and, in general, the conducting of the meeting.

The Act is also flexible in regulation of the content of the composition proposals, that may consist of proposals of discharge of debts or stay of payment, or accumulate both; however, the former may not exceed half the amount of each ordinary claim, nor the latter five years following approval of the composition, excepting cases of insolvency of companies of special importance to the economy and of submission of an early proposal of composition, when this is authorised by the Court. Alternative proposals are admitted, as well as offers to convert claims into shares, stakes, or corporate quotas, or to participation loans. What the Act does not admit is that, through the vesting of assets and rights in payment, or for payment of claims, or other forms of global liquidation of the insolvent debtor's estate, the composition covers a different solution to that which is fitting to it. In order to assure this and the possibility of fulfilment, the composition proposal must be accompanied by a payments plan.

The purpose of conserving the professional or business activity of the insolvent debtor may be fulfilled through a composition, the proposal of which shall be accompanied by a feasibility plan. Although the object of the insolvency

proceedings is not to rescue companies, a continuation composition may be an instrument to save those that are considered total or partially viable, to benefit not only creditors, but also the insolvent debtor himself, the employees and other interests. The required report by the insolvency administrators is yet another guarantee for that solution.

On regulating the majorities required to accept the compositions proposals, the Act prioritises those that provide a lesser sacrifice to the creditors, reducing the majority necessary in the case of ordinary creditors.

The composition requires judicial approval. The Act regulates opposition to approval, the persons legitimated and the reasons for opposition, as well as those of rejection by the Court on its own motion of the composition accepted.

Approval of the composition does not bring about conclusion of the insolvency proceedings, which is only achieved by its fulfilment.

VII

The Act grants the debtor the ability to opt for a winding-up solution in the insolvency proceedings, as an alternative to that of composition, but it also imposes upon him the duty to petition for the winding–up when, during the term of a composition, he arrives to the conclusion it is impossible to fulfil the payment undertakings and obligations contracted after its approval. In cases the winding–up phase is opened at the Court's initiative or that at the request of the creditor, the winding-up is always a subsidiary solution, which operates when the composition is not achieved or is thwarted. The unity and flexibility of the proceedings permits moving on rapidly and easily to the winding-up phase in such cases. That is one of the main and most advantageous novelties introduced by the Act, compared with the former diversity of insolvency proceedings and, specifically, compared with the need to petition for a declaration of bankruptcy in cases in which the composition was not achieved or was breached during receivership.

The effects of winding-up are, logically, more severe. The insolvent debtor shall be subject to the situation of suspension in the exercise of his economic powers of management and disposal and shall be substituted by the insolvency administrators; if a natural person, he shall lose his right to be supported by the estate; if a legal person, its dissolution shall be declared, if not already ordered and, in all cases, severance of its insolvency administrators or liquidators shall ensue.

The Act reserves the classic insolvency effects of early maturity of instalment loans and conversion to money of those consisting of other services for this winding–up phase.

Notwithstanding the greater imperative nature of the rules that regulate this phase, the Act also provides them with the appropriate flexibility, as shown in the winding–up plan, which must be prepared by the insolvency administrators and with regard to which remarks may be made before it is approved by the Court. Only if this does not happen and, if appropriate, in all matters not foreseen by the plan approved, shall the legal rules on realisation of property and rights of the insolvent debtor's estate be applied under subsidiary terms.

Even in the latter case, the Act aims to conserve businesses or goods or services of production units integrated in the estate through their disposal as a whole, except when it is more convenient to the insolvency interests to divide them or perform stand-alone realisation of all or any of their component parts, with preference to solutions that guarantee continuity of the business.

The Act intends to avoid excessive prolongation of the winding–up operations, to which end the insolvency administrators are obliged to provide quarterly reports on their state and the term of one year is set to conclude them, with penalisations, if this is breached, including severance of the insolvency administrators and loss of their right to remuneration.

The operations to pay the creditors are regulated within the winding–up phase. The claims against the estate operate as pre–deductible ones, in the sense that, prior to proceeding to payment of the insolvency ones, the assets and rights not vested in favour of uniquely preferential claims, which are necessary to settle those on their respective maturity dates, must be deducted from the aggregate set of assets and rights.

As has already been stated on dealing with the effects of declaration opening the insolvency proceedings on secured claims, the Act regulates payment of claims with special privileges in a very flexible way, to avoid, in the interests of the estate, realisation of the assets or rights affected, authorising this with subsistence of the encumbrance or by direct sale.

The legal provisions establish the order of payments with general preferences, the ordinary ones and the subordinated ones, and it considers the special cases of advanced payments, of debts *in solidum* and those made in the phase of fulfilment of the composition prior to that of winding–up.

VIII

One of the matters in which the reform has been most profound is that of classification of the insolvency. The Act limits formation of the classification paragraph to very specific cases: the approval of a composition that, due to the amount of discharge of debts or duration of the stay of payment, is especially burdensome to the creditors, and opening the winding–up.

In these cases, the insolvency shall be classified as fortuitous or tortious. The latter classification is reserved for cases in which the generation or aggravation of the state of insolvency might has involved malicious intent or gross negligence by the debtor or his legal representatives, insolvency administrators, or liquidators.

The Act formulates the general criterion of classification of the insolvency as tortious, and then establishes a series of cases that, in all cases, determine that classification, due to their intrinsic nature, and another of cases that, in the absence of evidence to the contrary, lead to the assumption of malicious intent or gross negligence, since they involve a breach of certain legal obligations related to the insolvency proceedings.

If the required report by the insolvency administrators and the learned opinion of the Public Prosecutor coincide in classifying the insolvency as fortuitous, the proceedings in this regard shall be archived with no further formalities. Otherwise, the tortious classification shall be decided after contradictory hearings, to which the Public Prosecutor, the insolvency administrators, the debtor and all the persons who may be affected by the classification shall be party. The opposition shall be substantiated by the insolvency procedural pleas procedure. The ruling classifying the insolvency as tortious must determine the persons affected and, when appropriate, those declared accomplices. The Court shall impose disqualification from managing the assets of others and to represent any person on all of these, a penalty that shall be temporary, for a period from two to fifteen years; they shall also lose any right they may have as insolvency creditors or to the estate, and shall be ordered to return the assets and rights they may have unduly obtained from the debtor or received from the estate, with compensation for the damages and losses caused.

A novelty is that the Act foresees a procedure to assure the public registration of the rulings declaring the insolvent debtor responsible and the resolutions that order designation or barring of the insolvency administrators in the cases the Act itself foresees.

The effects of the classification are limited to the civil sphere, without transcending to the criminal one, nor constituting a prejudicial condition to prosecute the conduct that may constitute a criminal offence. The Act maintains a clear separation of civil and criminal offences in this matter.

IX

The Act provides detailed regulation of the causes of conclusion of the insolvency proceedings, the nature of which may be very diverse: either because the opening did not comply with the law (revocation of the court order declaring insolvency), or because the procedure achieved its aim (fulfilment of the composition, full satisfaction of all the creditors), or due to it being thwarted (lack of assets and rights with which to satisfy the creditors), or due to exercise of the right of disposal by the parties with regard to the proceedings (desisting or renunciation by all the creditors, recognition of transaction by the debtor with them. These being causes that, due to their characteristics, may only be operational once the common phase of the proceedings has concluded and they require acceptance or homologation by the Court, following a report by the insolvency administrators).

In cases of conclusion due the non–existence of assets and rights of the insolvent debtor or liable third parties, with which to satisfy the creditors, who shall preserve their right to take liability action against the debtor with regard to those that might appear in the future, the Act also considers reopening of the insolvency proceedings, both if a natural or a legal person is involved. In the latter case, as conclusion due to the non–existence of assets inherently leads to extinction of the legal person, reopening due to future appearance of assets and rights would be specifically for the winding–up thereof; but if a natural person is involved, continuation of his economic activities may have been reflected both by the appearance of assets, as well as of new liabilities, which must be taken into account in updating the inventory and list of creditors.

X

The flexibility that inspires the whole of the insolvency proceedings is combined with the features of speed and simplicity. The Civil Judicial Procedure Act is a supplement to the Insolvency Act, as far the latter does not contain specific procedural provisions. The purpose intended is to reorganise the complexity of insolvency in a procedure that allows the most prompt, effective and economic processing thereof, without detracting from the guarantees required of effective judicial protection of all the parties concerned.

A basic part of this procedural system of the new Act is the insolvency procedural plea, a special procedure through which all matters arising during the insolvency proceedings, for which a specific procedure is provided for in the Act, may be dealt with. This insolvency procedural plea is configured with two different procedural modes, according to the matter to be considered: one with the objective of resolving matters of a labour nature that arise within the framework of the insolvency proceedings, and another mode to deal with strictly insolvency matters. With these two insolvency procedural plea modes, a greater effectiveness of the insolvency process is attained.

The swiftness of these proceedings is complemented by an adequate appeal system in which, in principle, only that of appeal to the same Court against resolutions and orders is admitted, and that of appeal to a Superior Court against rulings that approve or reject the composition, its fulfilment or infringement, and conclusion of the insolvency proceedings, although the appellant may again raise the matters resolved in appeals to the same Court or in the insolvency procedural pleas during the common or composition phase. A remedy of appeal may also be lodged against the rulings terminating insolvency procedural pleas raised after or during the winding–up phase.

The remedy of an appeal in cassation and extraordinary appeal over breach of procedure shall only be admitted in the case of rulings approving or rejecting a composition, declaring its fulfilment or infringement, classifying the insolvency, resolving on reintegration actions, or resolving conclusion of the insolvency proceedings.

Likewise, and to make application of the labour legislation for such subjects fully effective and to unify case law in such a sensitive matter, the remedy of supplication is introduced and the others foreseen by the Act against the resolutions by the Mercantile Courts of the Autonomous Community in labour matters and those resolving insolvency procedural pleas concerning the same matter.

Thus, in line with the orientation of the new Civil Judicial Procedure Act, the multiplicity of interlocutory remedies of appeal, of a partial nature or relating to non- final resolutions are eliminated, as these presently hinder and draw out processing insolvency proceedings and the Act provides for, without detracting from the procedural guarantees, a system of appeals that obliges the parties to concentrate and rationalise their reasons for disapproval and facilitates resolution with the necessary overall view.

XI

The Act devotes special attention to matters arising from insolvency with a foreign element, a phenomenon lacking adequate regulation in the previous law and increasingly more frequent in a globalised economy.

The Insolvency Act contains rules of Conflict of Laws on this matter, which adhere, with the appropriate adaptations, to the model of Regulation (EC) no. 1346/2000, on insolvency proceedings. Thus, application of both texts is facilitated within the intracommunity scope and the same regulatory model is applied to the regulation of other legal relations that fall beyond that scope. In that sense, the new provisions are also inspired by the United Nations Commission on International Trade Law (UNCITRAL) Model Law on Cross-Border Insolvency, recommended by the Assembly General of the United Nations Organization in its Resolution 52/158, dated 15th December 1997.

The international competence to declare and deal with the insolvency proceedings is based on the place of location of the centre of the main interests of the debtor, with the insolvency declared on that basis having “main” nature, notwithstanding it being possible to establish other “secondary” insolvency proceedings in the countries in which the debtor has establishments.

The Act regulates relations between main and secondary proceedings and their respective effects, recognition in Spain of those opened abroad and of their insolvency administrators or representatives, in order to establish better co–ordination between them, for the benefit of legal security and economic efficiency in treatment of these phenomena, which constitutes one of the fields in which the modernisation introduced by the insolvency reform is made most apparent.

XII

The depth of the reform has its clearest expression in the Additional, Transitional, Repealing, and Final Provisions that conclude the Act. The scope of the new regulation covers multiple sectors of our legal order and affects numerous laws that must be amended due to the reform, in some cases, and repealed, in others. The aim is thus to harmonise the law in force with the reform introduced by this Act and, at the same time, to limit its scope to insolvency matters. This explains why of the provisions contained in Book IV of the Civil Code ("On the concurrence and ranking of claims"), those concerning collective discharge of debts and stay of payment and insolvency proceedings are subject to repeal and the preference of claims in cases of singular foreclosure is maintained . Likewise, in these cases, the so–called mercantile "privileges" subsist, although in the insolvency proceedings only those specifically recognised in this Act are admitted. The privileges on ships and aircraft are subject to specific regulation, the owners of which are recognised the right to separation in insolvency proceedings for enforcement outside those proceedings.

The delimitation of the procedural and extra-procedural scope of insolvency for concurrence and ranking of claims, although in line with a correct definition of the proper scope of this Act, may, in practice, give rise to problems of maladjustment, due to the very diverse regulation maintained by the former law, with regard to which the insolvency reform is effected, although the scope thereof may not be extended to a complete review of all the matter of claim preferences now in force outside insolvency proceedings. This review is necessary, and not only now due to the archaic nature of a system formed by historic sediments that lacks the logical order that must preside this matter, but rather due to the pressing requirement of its harmonisation with insolvency reform. Due to this, Final Provision Thirty- One calls on the Government to submit a bill to Parliament within the term of six months from the date of enactment of this Act, on reform of the Civil Code and Code of Commerce on matters of concurrence and ranking of claims in the case of singular enforcement.

The Act has respected the specific legislation applicable to credit institutions, to insurance undertakings and operations related to securities payment and clearing systems, or derivative financial instruments, mainly imposed by European Union Law, and that affects certain aspects of insolvency. Only if special rules are lacking, and to the extent that they are compatible with the nature of those systems, shall those of this Act be applied in this matter.

An especially delicate matter is that related to Transitional Law, in which the Act has opted to respect the principle of non-retroactivity with some exceptions, two of them being most notable: the first, to make it possible to apply the Act to proceedings that are in process under the rules on conclusion of insolvency; the second, to allow the more flexible regime of proposed composition and adhesions established by this Act to be applied to those proceedings. This shall contribute to facilitating processing of those that are in course and even, in some cases, to lead to the conclusion of those that are paralysed. Transitional competence of the Courts of First Instance has also been foreseen until the Mercantile Courts come into force.

These legislative measures, with full constitutional guarantees, allow the insolvency reform to be inserted in the Spanish legal order, this Act being one of the most important pieces of legislation that was pending till now in the process of modernising our legal system.

TITLE ONE

On the declaration opening the insolvency proceedings

CHAPTER ONE

Premises necessary for insolvency proceedings

Article 1. Subjective premise.

1. A declaration opening the insolvency proceedings shall be appropriate with regard to any debtor, whether a natural or legal person.

2. Insolvency proceedings may be opened with respect to an inheritance provided it has not been accepted unconditionally.

3. Insolvency proceedings may not be opened with respect that form the territorial organisation of the State, public bodies and other Public Law entities may not be declared insolvent.

Article 2. Objective premise.

1. A declaration opening the insolvency proceedings shall be appropriate in the event of insolvency of a common debtor.

2. A debtor who cannot regularly fulfil the obligations he may be required to is in a state of insolvency.

3. If the petition for a declaration opening the insolvency proceedings is submitted by a debtor, he must justify his indebtedness and state of insolvency, which may be current or imminent. A debtor who foresees he may not regularly and punctually fulfil his obligations is in a state of imminent insolvency.

4. If the petition for a declaration opening the insolvency proceedings is submitted by a creditor, it must be based on a title by virtue of which enforcement or collection proceedings have been dispatched without the seizure discovering sufficient free assets for the payment, or when any of the following situations concurs:

1. General suspension of the current payment of the debtor's obligations;

2. The existence of seizures for executions pending with an overall effect on the debtor's estate;

3. Unlawful removal or hasty or ruinous liquidation of his assets by the debtor;

4. Generalised breach of obligations of any of the following classes: those of payment of the requisite tax obligations during the three months prior to applying for insolvency; those of payment of Social Security contributions, and other joint collection items during the same period; those of payment of salaries and compensations and other remunerations arising from the relevant employment relations of the last three monthly payments.[1]

Article 3. Legitimacy.

1. The debtor and any of his creditors are entitled to petition for insolvency proceedings to be opened.

If the debtor is a legal person, the governing or winding–up body shall be competent to decide on the petition.

[1] See Articles 5, 14.1, 19.3 and 142 of this Act.

2. The provisions of the preceding Paragraph notwithstanding, creditors who have acquired claims by *inter vivos* acts and by a singular title, after maturity thereof, within the six months prior to lodging the petition, shall not be legitimated.

3. Shareholders, partners, members, or parties who are personally liable for the debtor's debts under the laws in force shall also be entitled to petition for a declaration opening the insolvency proceedings of a legal person.

4. Creditors of a deceased debtor, his heirs, and the executor of the estate may petition for a declaration opening the insolvency proceedings of an inheritance not accepted unconditionally. The petition made by an heir shall take the effects of acceptance of the inheritance with the benefit of the inventory.[2]

5. A creditor may instigate a joint judicial declaration opening the insolvency proceedings of several of his debtors when there is confusion concerning their estates or, if they are legal persons, when they form part of a same group, with a substantial identity of its members and unity in decision–making.

Article 4. On intervention by the Public Prosecutor.

When, in actions over offences against property and against the social and economic order, indicative evidence points to a state of insolvency of any presumed party who is criminally liable and of the existence of a plurality of creditors, the Public Prosecutor shall call on the Court hearing the case to serve notice of the facts on the Mercantile Court with territorial competence to hear and determine the insolvency of the debtor, to the relevant ends, in case insolvency proceedings are under way with regard to thereto.

The Public Prosecutor shall also call on the Court hearing the case to serve notice on those facts to the creditors whose identity is ascertained in the ongoing criminal investigations, in order that, if appropriate, they may petition for a declaration opening the insolvency proceedings or exercise the actions to which they are entitled.[3]

Article 5. Duty to petition for a declaration opening the insolvency proceedings.

1. A debtor must petition for a declaration opening the insolvency proceedings within the two months following the date of having known, or should have known, his state of insolvency.

2. In the absence of evidence to the contrary, it shall be presumed that the debtor knew of his state of insolvency when any of the facts that may act as the basis for a petition for compulsory insolvency pursuant to Paragraph 4 of Article 2 has arisen and, in the case of any of those foreseen in Paragraph 4, when the relevant term has elapsed.

3. The duty to petition for a declaration opening the insolvency proceedings shall not be required of a debtor who, in a state of present insolvency, has commenced negotiations to obtain adhesions to an early proposal of composition and, within the term established in Paragraph 1 of this Article, makes this known to the competent Court to declare insolvency proceedings open in his regard. When three months have elapsed from informing the Court, the debtor, whether or not he has obtained the necessary adhesions to have the early proposal of composition admitted to proceedings, must petition for a declaration opening the insolvency proceedings within the following month.[4]

Article 5 bis. Notification of negotiations and effects on the duty to petition for insolvency.[5]

1. A debtor may notify the Court that is competent to declare his insolvency that he has entered into negotiations to reach a refinancing agreement, or to obtain adhesions to an early proposal of composition put forward under the provisions foreseen in this Act.

2. Such a notice may be lodged at any time prior to expiry of the term established in Article 5. If notice is given prior thereto, the duty to petition for a voluntary declaration of insolvency shall not be applicable.

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2 See Articles 1,010 to 1,034 of the Spanish Civil Code.

3 Articles 257 to 261 of the Criminal Code regulate punishable insolvencies.

4 Paragraph added by Royal Decree–Law 3/2009, dated 27th March (Official State Gazette number 78, dated 31st March) on urgent measures in tax, financial and insolvency matters considering the evolution of the economic situation.

5 Act 38/2011, dated 10th October, on reform of Act 22/2003, dated 9th July, on Insolvency

3. With no further formalities, the Court Clerk shall proceed to record the notification lodged by the debtor.

4. When three months have elapsed from the notification to the Court, whether or not the debtor has reached a refinancing agreement or the necessary adhesions for an early proposal of composition to be admitted to consideration, he must petition to be declared insolvent debtor within the following working month, unless he is not in a state of insolvency.

Article 6. Petition by the debtor.

1. In the writ of petition for the insolvency proceedings to be declared open, the debtor shall state whether his state of insolvency is present or whether it is foreseen as imminent.

2. The petition shall be accompanied by the following documents:

1. Special power of attorney to petition for insolvency. This document may be replaced by the grating of an *apud acta* empowerment.[6]

2. The report stating the historic and legal history of the debtor, of the activity or activities he has performed in the last three years and on the establishments, offices or operating facilities he owns, of the causes of the state in which he finds himself and of the valuations and proposals on the viability of his estate.[7]

   If the debtor is a married person, the report shall indicate the identity of the spouse, stating the matrimonial property regime.

   If the debtor is a legal person, the report shall identify the recorded shareholders or partners, the directors or liquidators and, when appropriate, the accounts' auditor, as well as whether it is part of a group of companies, listing the firms forming it, and whether its securities are listed on an official secondary market.

   In the case of an inheritance, the report shall provide the particulars of the deceased.

3. An inventory of assets and rights, stating their nature, the place where they are located, register identification data when appropriate, acquisition value, appropriate valuation corrections, and estimation of the present real value. An indication shall also be given of the encumbrances, liens, and charges that affect these assets and rights, stating their nature and the identifying data.

4. List of creditors, in alphabetical order, stating the identity, address and electronic mail address of each, as well as the amount and maturity of the respective claims and the personal or *in rem* guarantees established. If any creditor has claimed payment judicially, the relevant procedure shall be identified and the state of the proceedings be declared.[8]

5. The staff, as appropriate, and the identity of the body that represents the workers, if any.[9]

3. If the debtor is legally bound to keep accounts, he shall also attach:

1. Annual accounts and, when appropriate, management reports or audit reports for the last three business years.

2. Report on the significant changes occurred in his estate following the last annual accounts drawn up and deposited and the operations that, due to their nature, object or amount, exceed the ordinary business or trading by the debtor.

3. Intermediate financial statements prepared after the last annual accounts presented, in the event of the debtor being bound to serve notice of these or to submit these to the supervisory authorities.

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6 See Article 24 of the Civil Judicial Procedure Act.
7 See Article 75.1.1. of this Act.
8 Act 38/2011, dated 10th October, on reform of Act 22/2003, dated 9th July, on Insolvency
9 Act 38/2011, dated 10th October, on reform of Act 22/2003, dated 9th July, on Insolvency

4. In the event of the debtor being part of a group of companies, as parent company, or as controlled company, the consolidated annual accounts and management report of the last three business years and the audit report issued with regard to those accounts shall also be attached, as well as a report stating the operations performed with other companies of the group during that same period.[10]

4. In the event foreseen in Article 142.1.1., it should be accompanied by a proposed winding–up plan.

5. When not accompanied by any of the documents mentioned in this Article, or if any of them lack the requisites or data demanded, the debtor must state the cause giving rise to this in his petition.[11]

Article 7. Petition by the creditor and other parties legitimated.

1. The creditor instigating a declaration opening the insolvency proceedings must state in the petition state the title or fact on the basis of which, pursuant to Article 2.4, he bases his petition, as well as the origin, nature, amount, dates of acquisition and maturity and present status of the credit, to which he shall attach documentation as evidence.[12]

The other parties legitimated must state in their petition the capacity in which they are acting, accompanied by the document that evidences their legitimacy, or proposing the evidence to accredit it.

2. In any case, the petition shall state the means of evidence of which the petitioner avails himself or intends to avail himself to accredit the facts on which it is based. Witness evidence only shall not suffice.

10 See Article 75.12. of this Act.
11 See Article 21.1.3. of this Act.
12 Act 38/2011, dated 10th October, on reform of Act 22/2003, dated 9th July, on Insolvency

CHAPTER II

ON THE DECLARATION PROCEEDINGS

SECTION 1. JURISDICTION AND COMPETENCE[13]

Article 8. Insolvency Court.

The Mercantile Courts of Law are competent to hear and decided on insolvency proceedings. The jurisdiction of the insolvency Court is exclusive and excludes all others in the following matters:

1. Civil actions with an economic impact lodged against the insolvent debtor's estate with the exception of those exercised in proceedings on capacity, filiation, marriage and minors referred to in Title I of Book IV of the Civil Judicial Procedure Act.[14] They shall also hear and determine the action referred to in Article 17.1 of this Act.

2. Labour actions intended for collective extinction, amendment or suspension of employment contracts in which the employer is the insolvent debtor, as well as suspension or extinction of top management contracts, nevertheless

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[13] Articles 86 bis and 86 ter of Organic Act 6/1985, dated 1st July, on the Judiciary, added by Organic Act 8/2003, dated 9th July (Official State Gazette number 164, dated 10th July), the latter amended by Organic Act 13/2007, dated 10th November (Official State Gazette number 278, dated 20th November), establish:"Article 86 bis. 1. In general terms, in each province, with jurisdiction throughout it and base in its capital, there shall be one or several Mercantile Courts.2. These may also be established in towns other than the capital of the province when, in view of the population, the existence of industrial or trading centres and those of economic activity, this is advisable, their scope of jurisdiction being delimited in each case.3. Mercantile Courts may be established with a jurisdiction covering two or more provinces in the same Autonomous Region, with the exception of what is set forth in paragraph 4 of this Article.4. The Mercantile Courts of Alicante shall also have competence to hear, at first instance and exclusively, all suits lodged under the provisions established in Regulations 40/94 of the European Union Council, of 20th December 1993, on the Community trade mark, and 6/2002, of the Council of the European Union, dated 12th December 2001, on Community designs. In exercise of that competence, those Courts shall extend their jurisdiction nationwide, and for these sole purposes shall be called Community Mark Courts."

"Article 86 ter. 1. The Mercantile Courts shall hear and decide all matters arising in insolvency matters, under the provisions established in their regulatory Act.

In any case, the jurisdiction of the insolvency Court shall be exclusive and exclude others in the following matters:

1. Civil actions affecting assets lodged against the insolvent debtor's estate, with the exception of those exercised in proceedings concerning capacity, filiations, marriage and minors to which Title I of Book IV of the Civil Judicial Procedure Act refers;
2. Labour actions whose object is collective extinction, amendment or suspension of employment contracts in which the employer is the insolvent party, as well as suspension or extinction of top management contracts, notwithstanding when these measures involve amendment of the conditions established in the collective bargaining agreement applicable to these contracts the approval by the employees' representatives shall be required. In considering these matters, and notwithstanding application of the specific rules of the Insolvency Act, the Court shall take into account the principles that inspire the organisation of the statutory regulations and the labour process;
3. All enforcement on properties, goods and rights comprised in the insolvent debtor's estate, whatever the authority that has ordered it;
4. All preservation measures that affect the assets of the insolvent, except those adopted in civil proceedings that are excluded from their jurisdiction in Subparagraph 1);
5. Those which in the insolvency proceedings must be taken in relation to legal aid;
6. Actions at law intended to demand civil liability of company directors, auditors or, when appropriate, liquidators, or for the detriment caused to the insolvent debtor during the proceedings.

2. The Mercantile Courts shall also hear and decide all matters that are the competence of the civil jurisdictional order, with regard to:

a) Applications in which actions are lodged pertaining to unfair competition, patents, copyright and advertising, as well as all matters brought within this jurisdictional order under the provisions of mercantile and co-operative companies;
b) The claims promoted under the provisions on matters of national or international transport;
c) Claims regarding application of Maritime Law;
d) Actions at law related to the general conditions of contracting in the cases foreseen in the laws on these matters;
e) Appeals against resolutions by the Directorate-General of Registers and Notaries on matters of appeals against the classification by the Business Registrar, pursuant to the provisions contained in the Mortgage Act for these proceedings;
f) On proceedings applicable to Articles 81 and 82 of the Treaty establishing the European Community and its derivative law.
g) All procedural pleas or claims lodged as a consequence of application of the provisions in force on arbitration in the matters to which this paragraph refers.

3. The Mercantile Courts shall have competence to recognise and enforce foreign rulings and other foreign judicial and arbitration resolutions, when these concern matters of their competence, unless, pursuant to the provisions of treaties and other international provisions, their hearing and determination are the competence of another court."

[14] Articles 748 to 781 of the said legal body.

when these measures amount to amendment of the conditions established in the collective bargaining agreement applicable to these contracts the approval of the representatives of the employees shall be required. In adjudging these matters, and notwithstanding application of the specific rules of this Act, the Courts shall take into account the principles that inspire the organisation of the statutory provisions and the labour process.[15]

Collective suspension is understood as that foreseen in Article 47 of the Workers' Statute, including temporary reduction of the ordinary working day.[16]

3. All enforcement on properties, goods and rights pertaining to the insolvent debtor's estate, whatever the authority that may have ordered them;

4. All injunctive measures that affect the assets of the insolvent debtor except those adopted in proceedings that are excluded from its jurisdiction in Paragraph 1 of this provision and, when appropriate, pursuant to the provisions set forth in Article 52, those adopted by the arbitrators in the arbitral proceedings, without prejudice to the competence of the Court to order their suspension, or to request their removal, when it considers they may cause damage to the insolvency proceedings;[17]

5. Those which in the insolvency proceedings must be adopted in relation to legal aid, and specifically those attributed by Act 1/1996, dated 10th January, on Legal Aid;[18]

6. Actions to claim corporate debts filed against the partners subject to subsidiary liability for the credit of the debtor company, whatever the date on which they were contracted, and actions to demand that the partners of the debtor company disburse the deferred capital, or settle their accessory dues.[19]

7. Liability actions against the *de jure* or *de facto* managers or liquidators, and against auditors for damages and losses caused, before or after the judicial declaration of insolvency, to the legal person subject to insolvency proceedings.[20]

Article 9. Extension of the jurisdiction.

1. The jurisdiction of the Court covers all prejudicial civil matters, except those excluded in Article 8, the administrative or corporate ones that are directly related to the insolvency proceedings, or whose resolution to properly conduct the insolvency proceedings.[21]

2. A decision on the matters referred to in the preceding Section shall not take effect outside the insolvency proceedings in which it is adopted.[22]

Article 10. International and territorial competence.[23]

1. The competence to declare and deal with the insolvency lies with the Mercantile Court of Law in whose territory the debtor has the centre of his main interests. If the debtor has his domicile in Spain and such domicile does not coincide with the centre of his main interests, the Mercantile Court of Law in whose territory the domicile is situated shall also be competent, at the petitioner's creditor choice.

The centre of main interests shall be understood as the place where the debtor usually performs the management of those interests, in a form recognisable by third parties. In the case of a legal person, the centre of its main

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15 See Article 44.4 of this Act.
16 Act 38/2011, dated 10th October, on reform of Act 22/2003, dated 9th July, on Insolvency
17 Amended by Final Provision 3.1 of Act 11/2011, dated 20th May
18 Published in Official State Gazette number 11, on 12th January 1999, bear in mind that it has undergone several amendments.
19 Act 38/2011, dated 10th October, on reform of Act 22/2003, dated 9th July, on Insolvency
20 Act 38/2011, dated 10th October, on reform of Act 22/2003, dated 9th July, on Insolvency
21 Act 38/2011, dated 10th October, on reform of Act 22/2003, dated 9th July, on Insolvency
22 Act 38/2011, dated 10th October, on reform of Act 22/2003, dated 9th July, on Insolvency
23 Act 38/2011, dated 10th October, on reform of Act 22/2003, dated 9th July, on Insolvency
Section 4 of Article 10 is hereby repealed and Section 5 is renumbered as 4

interests is presumed to be at the place where the registered office is located. Changes of registered office performed in the six months preceding the petition for insolvency shall be ineffective for these purposes.

The effects of this insolvency, which shall be considered the "main insolvency proceedings" from an international perspective, shall have a universal scope, including all the assets of the debtor, whether they are located within or without Spain. In the event of insolvency proceedings being commenced upon assets located in a foreign state, the rules of co–ordination foreseen in Chapter III of Title IX of this Act shall be taken into account.

2. If petitions to declare insolvency have been submitted before two or more competent courts, preference shall be granted to the one where the first petition was lodged.

3. If the centre of main interests is not in Spanish territory, but the debtor has an establishment there, the Mercantile Court of Law in whose territory it is located shall be competent and, if there are several, where any of them is situated, at the petitioner's choice.

An establishment is understood as any place of operations at which the debtor carries out a non-transitory economic activity with human means and goods.

The effects of this insolvency, which in the international scope shall be considered a "secondary insolvency"; shall be limited to the assets of the debtor; whether or not they are vested for his activity, that are located in Spain. In the event of the State where the debtor has the centre of main interests opening insolvency proceedings, the co-ordination rules foreseen in Chapter IV of Title IX of this Act shall apply.

4. The Court shall examine its competence on its own motion and shall determine whether it is based on Paragraph 1 or Paragraph 3 of this Article.

Article 11. International scope of the jurisdiction.

In the international field, the jurisdiction of the insolvency Court only includes hearing and deciding actions that have their legal grounds in the insolvency legislation and that are immediately related to the insolvency proceedings.

Article 12. Plea of jurisdiction.

1. The debtor may raise the matter of territorial competence by plea of jurisdiction within the five days following that on which he has been summoned. The other legitimated parties may also raise it when petitioning for a declaration opening the insolvency proceedings, within the term of 10 days from the publication ordered in Subparagraph Two of Paragraph 1 of Article 23.[24]

2. Filing a plea of jurisdiction, in which the petitioner shall be bound to indicate what the competent body to hear and determine the insolvency proceedings is, shall not suspend the insolvency proceedings. Under no circumstances whatsoever shall the Court issue a pronouncement on the opposition by the insolvent debtor without previously having resolved the matter of competence with a hearing of the Public Prosecutor. In the event of admitting the incompetence, the Court must inhibit itself in favour of the relevant competent body, summoning the parties to appear before the latter and sending the written record of the proceedings up to that moment.

3. Everything performed in the insolvency proceedings shall be valid even though the plea of jurisdiction is admitted.[25]

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[24] Paragraph drafted pursuant to Royal Decree–Law 3/2009, dated 27th March (Official State Gazette number 73 of 31st March), on urgent measures on tax, financial and insolvency matters due to the evolution of the economic situation.

[25] See Articles 63 and following of the Civil Judicial Procedure Act.

SECTION 2. ON DECIDING ON THE PETITION

Article 13. Term to decide.

1. On the same day, or if not possible, the following working day after distribution, the Court shall examine the petition for to declare the insolvency proceedings open and, if the Court deems it complete, shall decide on the admissibility thereof pursuant to Articles 14 or 15.

If the petition refers to a credit institution or an investment services company, once the Court has adopted a preliminary decision thereon, the Court Clerk shall serve notice thereof on the Bank of Spain and on the National Stock Exchange Commission, and shall request the list of the payment and clearing systems for securities and derivative financial instruments to which the firm affected belongs and the name and registered office of their manager, pursuant to provisions contained in the applicable special legislation.

The Court Clerk shall also serve notice of the petition on the Directorate–General of Insurance and Pension Funds, if it refers to an insurance undertaking; or on the Ministry of Labour and Social Affairs, if it concerns an industrial accident and diseases mutual company, or on the National Stock Exchange Commission if it concerns a company that has issued securities or financial instruments traded on an official secondary market. [26]

2. If the Court considers that the petition or documentation attached thereto is in any way insufficient in procedural or material terms, he shall grant the petitioner a term for justification or correction, which may not exceed five days.[27]

When justification or correction is effected within that term, the Court shall, on the same day or, if not possible, on the following working day, decide pursuant to the provisions of Articles 14 or 15. If this were not so, the Court shall hand down an order declaring it is not appropriate to admit the petition. Only an appeal to the same Court may be lodged against this resolution.

Article 14. Decision on the petition by the debtor.[28]

1. When the petition has been lodged by the debtor, the Court shall issue an order declaring the opening of the insolvency proceedings if from the documentation produced, appreciated overall, the existence of any of the facts foreseen in Paragraph 4 of Article 2 can de deduced or of others that evidence the insolvency alleged by the debtor.

2. Only an appeal to the same Court may be lodged against the resolution refusing the initiation of insolvency proceedings.

Article 15. Decision regarding petition by another legitimated party and accumulation of petitions.[29]

1. When the petition has been submitted by a creditor and is based on a seizure or on an unsuccessful investigation of assets or that has given rise to an administrative or judicial declaration of insolvency, the Court shall issue an order declaring insolvency on the first working day thereafter.

The debtor and other parties concerned may file the appeals foreseen in Article 20 against said order.

2. When the petition has been filed by any legitimated party other than the debtor and for a fact other than that foreseen in the preceding Section, the Court shall hand down an order admitting it to consideration and ordering the debtor to be summoned pursuant to the provisions foreseen in Article 184, notifying the petition, in order for the party to appear within the term of five days, within which he shall be notified of the proceedings, to be

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[26] Paragraphs and 2 and 3 drafted pursuant to Act 13/2009, dated 3rd November (Official State Gazette nº 266, dated 4th November)

[27] Act 38/2011, dated 10th October, on reform of Act 22/2003, dated 9th July, on Insolvency

[28] Act 38/2011, dated 10th October, on reform of Act 22/2003, dated 9th July, on Insolvency
Section 2 of Article 14 is hereby repealed and the present Section 3 henceforth becomes Paragraph 2

[29] Act 38/2011, dated 10th October, on reform of Act 22/2003, dated 9th July, on Insolvency

able to formulate opposition to the petition, proposing the means of evidence of which he attempts to avail himself.

Once the petition is admitted to consideration, the petitions submitted previously shall be accumulated to that first assigned and attached to the proceedings, deeming the new petitioners as parties without any stepping back in the proceedings.

3. When the notification foreseen in Article 5 bis has been served and while the term of three months has not elapsed as foreseen in that provision, petitions for insolvency at the instance of other parties entitled other than the debtor shall not be admitted.

Petitions filed thereafter shall only be processed when the term of one working month has elapsed, as foreseen in the said Article, if the debtor has not petitioned to be declared an insolvent debtor. Should the debtor file a petition for insolvency within that term, this shall be processed in first place pursuant to Article 14.

When the insolvency has been declared, the petitions previously filed and those that are filed thereafter shall be attached to the proceedings, deeming the petitioners to have appeared.

Article 16. Forming Section One[30]

Once the insolvency proceedings have been declared, or the petition for them to be declared has been admitted, as appropriate, the Court shall order the Section One to be formed, which shall be headed by the petition.

Article 17. Preservation measures prior to a declaration opening the insolvency proceedings.

1. At the request of the party legitimated to petition for compulsory insolvency, the Court, on admitting the proceedings, may adopt the preservation measures the Court deems necessary to assure the integrity of the debtor's estate, pursuant to the provisions foreseen in the Civil Judicial Procedure Act.

2. The Court may ask the petitioner to provide a bond to cover eventual damages and losses that the preservation measures may cause to the debtor, if the petition to declare the insolvency proceedings open is finally rejected.

3. Once the insolvency proceedings are declared open, or the petition rejected, the insolvency Court shall decide on the maintenance of the preservation measures.[31]

Article 18. Admission of the claim or opposition thereto by the debtor.

1. In the event of the petition being admitted, if the debtor summoned admits the petitioner's claim, or does not file opposition within the term, the Court shall hand down an order declaring the insolvency proceedings open. The same resolution shall be adopted if, after petition by any party legitimated and before being summoned, the debtor has instigated his own insolvency.

2. The debtor may base his opposition on the untruthfulness of the facts on which the petition is based or that, even when the facts are true, that he is not in a state of insolvency. In the latter case, the burden of proof of solvency shall lie with the debtor and, if legally obliged to keep accounts, that evidence must be based on those kept by him pursuant to the law.

When opposition has been formulated by the debtor, on the following day the Court Clerk shall summon the parties to a hearing, to be held within the term of three days, advising them that they must appear there with all the means of evidence that may be produced at the hearing and, if the debtor is legally bound to keep accounts, warning him that he must appear with the accounting books it is mandatory for him to keep.[32]

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30 Act 38/2011, dated 10th October, on reform of Act 22/2003, dated 9th July, on Insolvency

31 See Articles 721 and 747 of the Civil Judicial Procedure Act and 8.1 of this Act.

32 Act 38/2011, dated 10th October, on reform of Act 22/2003, dated 9th July, on Insolvency

Article 19. Hearing.

1. The hearing held shall be chaired by the Judge, within ten days following the opposition having been formulated.

2. If the debtor were not to appear, the Court shall hand down an order declaring the opening of the insolvency proceedings. If he appears, and the claim held by the creditor instigating has matured, the debtor shall deposit the sum of that claim at the hearing, at the creditor's disposal, or shall accredit having done this before the hearing or shall state the cause of failure to do so.

Should several creditors have appeared and their insolvency petitions have accumulated, the debtor must deposit the sums owed to all of them, under the same conditions stated.

3. Should the petitioner not appear or, having done so, not ratify his petition, and the Court considers there is an objective case to declare the insolvency proceedings open, pursuant to the provisions set forth in Article 2, and when the proceedings show the existence of other possible creditors, before handing down the order to resolve the petition, the Court shall granted these creditors a term of five days to formulate the allegations they may deem convenient.

4. In the event of failure to deposit and in those that, in spite of this having been done, the creditor has ratified his petition, as well as when the claim of the party instigating has not matured, or he does not have creditor status, the Court shall hear the parties and their Solicitors as to the appropriateness or otherwise of declaring open the insolvency proceedings and shall decide on the adequacy of the means of evidence proposed or that may be proposed at that hearing, resolving to immediately perform those that may be carried out on the same day. The Court Clerk shall set the briefest possible term for the remaining ones, without such term exceeding twenty days.

5. The Court may directly question the parties, experts, and witnesses and shall examine the evidence brought before it pursuant to the evaluation rules foreseen in the Civil Judicial Procedure Act.[33]

Article 20. Resolution on the petition and appeals.

1. Once the evidence declared pertinent has been obtained, or once the term set for this has elapsed, within the following three days, the Court shall hand down an order declaring the opening of the insolvency proceedings or rejecting the petition. In the first case, the costs shall be considered claims against the aggregate assets; in the second, they shall be imposed on the petitioner, except if the Court considers and so reasons that the case had severe doubts of fact or law. In the event of the petition for the opening of insolvency proceedings being rejected, once the order is final and at the request of the debtor and using the procedure laid down Articles 712 and following of the Civil Judicial Procedure Act, the Court shall determine the damages and losses that, if any, may have been caused as a result of the petition for insolvency proceedings and, once determined, the party petitioning for the opening of the insolvency proceedings shall be required to pay them, proceeding without delay to their forcible exaction should they not be paid.

2. The remedy of appeal to the Higher Court shall be allowed against the decision of acceptance or rejection of the petition for opening insolvency proceedings in all cases. Such an appeal shall not have the effect of suspension unless, exceptionally, the Court resolves to the contrary; in this case, it must decide on the total or partial maintenance of the preservation measures that may have been adopted. If the aim is to appeal solely any of the other pronouncements contained in the order declaring the opening of the insolvency proceedings, the parties may oppose the specific measures adopted by remedy of repeal to the same Court.

3. A debtor who has not petitioned for the order declaring the opening of insolvency proceedings and any person accrediting legitimate interest shall be legitimated to appeal, even though they may not have previously appeared.

Only the party petitioning for the opening of the insolvency proceedings shall be entitled to appeal the order of rejection.

[33] See Articles 289, 299, and following of the Civil Judicial Procedure Act and 142.4 of this Act.

4. The term to file the appeal to the same Court or to a Higher Court shall be counted in relation to the parties that may have appeared, from notification of the order, and with regard to the other parties legitimated, from publication of the statement of declaration of insolvency in the Official State Gazette.[34]

5. Rejection of the appeals shall give rise to the party appealing being condemned to pay costs.

SECTION 3. ON THE DECLARATION OF OPENING THE INSOLVENCY PROCEEDINGS

Article 21. Order declaring the opening of the insolvency proceedings.

1. The order declaring the opening of the insolvency proceedings shall contain the following pronouncements.

1. The compulsory or voluntary nature of the insolvency, stating, where appropriate, when the debtor has petitioned for winding up or has filed an early proposal of composition;[35]

2. The effects on the powers of management and disposal of the debtor with regard to his estate, as well as the appointment and powers of the insolvency administrators;

3. In the case of compulsory insolvency, the requirement for the debtor to submit the documents numbered in Article 6 within the term of ten days from notice being served of the order;

4. When appropriate, the preservation measures the Court considers necessary to assure the integrity, conservation or management of the debtor's estate, until the insolvency administrators accept office;[36]

5. Calling the creditors to lodge with the insolvency administrators their claims, within the term of one month from that following publication in the Official State Gazette of the order declaring insolvency, as set forth in Article 23;[37]

6. The publicity that is to be given to the declaration of opening the insolvency proceedings;

7. When appropriate, the decision on forming a separate procedure, pursuant to the provisions contained in Article 77.2 in relation to dissolution of the joint matrimonial property regime;

8. If appropriate, the decision on the appropriateness of applying the specially simplified procedure referred to in Chapter II of Title VIII of this Act.

2. The order shall immediately take effect, shall open the common procedural phase of the insolvency proceedings, which shall include the actions foreseen in the first four Titles of this Act, and shall be executive, even when not final.

3. Once the insolvency proceedings are declared open, formation of sections two, three and four shall be ordered. Each one of these sections shall be headed by the orders or, when appropriate, the ruling that may have ordered their formation.

4. The insolvency administrators shall issue an individual notification, without delay, to each one of the creditors, the identity and address of which are recorded in the procedural documentation, informing them of the declaration of insolvency and the duty to notify the claims in the manner established in the Act.[38]

The notification shall be issued by telematic, computerised or electronic means, when the electronic address of the creditor is recorded.

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[34] Act 38/2011, dated 10th October, on reform of Act 22/2003, dated 9th July, on Insolvency
[35] Act 38/2011, dated 10th October, on reform of Act 22/2003, dated 9th July, on Insolvency
[36] See Article 85 of this Act.
[37] Subparagraph drafted pursuant to Royal Decree–Law 3/2009, dated 27th March (Official State Gazette 78, dated 31st March).
[38] Act 38/2011, dated 10th October, on reform of Act 22/2003, dated 9th July, on Insolvency

The notification shall be addressed by electronic means to the State Agency of the Tax Administration and the Treasury General of the Social Security, by the means these may enable through their respective electronic sites, whether or not their status as creditors is recorded. They shall also notify the representatives of the workers, if any, notifying them of their right to appear in the proceedings as a party.

5. The Court Clerk shall serve notice of the order onto the parties that have appeared. If the debtor has not appeared, the publication foreseen in Article 23 shall have the effects of notice being served of the order with regard to him.

If the insolvent debtor is a lending institution or an investment service company participating in a payment and clearing system for securities or derivative financial instruments, the Court Clerk shall serve notice of the order on the same day as issued on the Bank of Spain, on the National Stock Exchange Commission, and on the manager of the systems to which the firm affected belongs, pursuant to the provisions established in the special legislation to which Additional Provision Two refers.

The Court Clerk shall also serve notice of the order on the National Stock Exchange Commission when the insolvent debtor is a company that has issued securities listed on an official market.

If the insolvent debtor is an insurance undertaking, the Court Clerk shall serve notice of the order on the Directorate General of Insurance and Pension Funds, with the same swiftness, and if an industrial accident and disease mutual company, he shall serve notice thereof on the Ministry of Labour and Social Affairs with the same swiftness.

Article 22. Voluntary and compulsory insolvency.

1. The insolvency proceedings shall be considered voluntary when the first of the petitions submitted was that by the debtor himself. In the other cases, the insolvency shall be considered compulsory.

For the purposes of this Article, the petition by the debtor performed pursuant to Article 5 bis shall be understood to have been submitted on the day when the communication foreseen in that Article was made.[39]

2. The provisions of the preceding Paragraph notwithstanding, insolvency proceedings shall be considered compulsory when, within the three months prior to the date of petition by the debtor, a petition has been submitted by any other legitimated party and has been admitted to consideration, even though that party might have withdrawn, not have appeared, or not ratified his petition.

Article 23. Publicity.

1. Publicity of the declaration of opening the insolvency proceedings, as well as the remaining notices, communications and formalities of the proceedings shall preferably be made by telematic, computer and electronic means, in the manner set out by the enacting regulations, guaranteeing the security and integrity of the communications.[40]

An extract of the statement of the opening of the insolvency proceedings shall be published with the greatest urgency and free of charge in the Official State Gazette, and shall contain only the indispensable data to identify the insolvent debtor, including his tax identity number, the competent Court, the number of the proceedings and General Identification Number of the proceedings, the date of the order of declaration of insolvency, the term established in the notification of the claims, the identity of the insolvency administrators, the postal address and electronic address provided by the creditors, at their choice, to perform notification of claims pursuant to Article 85, the regime of

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[39] Act 38/2011, dated 10th October, on reform of Act 22/2003, dated 9th July, on Insolvency

[40] See Royal Decree 685/2005, dated 10th June (Official State Gazette number 139, dated 11th June), on publicity of insolvency resolutions, amended by Royal Decree 158/2008, dated 8th February (Official State Gazette number 35, dated 9th February) and implemented by Order JUS/3473/2005, dated 8th November (Official State Gazette number 268, dated 9th November).
Bear in mind the Supreme Court Ruling dated 28th March 2007 (Official State Gazette number 139, dated 11th June), with regard to the Royal Decree aforesaid.
Also, see Articles 12.1, 21.1.5, 40.4 and 177.3 of this Act.

suspension or intervention of powers of the insolvent debtor and the electronic address of the Public Insolvency Register where the resolutions arising from the insolvency proceedings shall be published.[41]

2. The Court, on its own motion or at the request of the party concerned, may order any complementary publicity it may consider indispensable for the effective diffusion of the insolvency formalities in the actual declaration opening the insolvency proceedings, or in a subsequent resolution.

3. The serving of notices of the proceedings by edicts shall preferentially be performed by telematic means from the Court to the relevant media.

Exceptionally, and if what is provided in the preceding Paragraph is not possible, the proceedings with the edicts shall be delivered to the Barrister–at–Law of the petitioner for the insolvency, who must without delay send them to the relevant media for publicity.

If the petitioner for insolvency is a Public Administration that is acting under representation and defended by its legal services, notice of the proceedings shall be effected directly by the Court Clerk via the publicity media.

4. The other resolutions that must be published by means of edicts pursuant to this Act shall be published in the Public Insolvency Register and on the bulletin board of the Court.

5. The order declaring the opening of the insolvency proceedings, as well as the rest of the insolvency resolutions that must be publicised pursuant to the Act shall be placed on the Public Insolvency Register pursuant to the procedure the enacting regulations shall establish.[42]

Article 24. Register publicity.[43]

1. If the debtor is a natural person, the declaration opening the insolvency proceedings, indicating the date thereof, intervention or, if appropriate, suspension of his powers of management and disposal, as well as the appointment of insolvency administrators, shall be registered, preferably by telematic means, at the Civil Register.

2. If the debtor is subject to entry in the Business Register, inscription shall be performed on the sheet kept for the entity, preferably by telematic means, of the orders and judgements of declaration and reopening of voluntary or necessary insolvency, opening of the composition phase, approval of the composition, opening of the winding up phase, the approval of the winding up scheme, conclusion of the insolvency and the resolution of the appeal against the order of conclusion, establishment of the schedule of classification and the judgement to classify the insolvency as tortuous, as well as all orders handed down in matters of intervention or suspension of the powers of administration and disposal by the insolvent debtor of the assets and rights forming the aggregate insolvency assets, previously performing the inscription of the entity when not on record.

3. In the case of legal persons that cannot be registered at the Business Register and that are recorded on another public register, the Court Clerk shall order their inscription or annotation therein, preferably by telematic means, under those same circumstances stated in the preceding Section.

4. If the debtor has property or assets registered in public registers, the declaration of insolvency shall be registered on the relevant folio for each one of these, stating its date, intervention or, if appropriate, suspension of the powers of administration and disposal, as well as the appointment of the insolvency administrators.

Once the preventive annotation or registration has been performed, no subsequent seizures or attachments with respect to those goods may be recorded after the declaration opening the insolvency proceedings, other than those ordered by the Court in such proceedings, except as established in Article 55.1.

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41 Act 38/2011, dated 10th October, on reform of Act 22/2003, dated 9th July, on Insolvency

42 Article drafted pursuant to Royal Decree–Law 3/2009, dated 27th March (Official State Gazette number 78, on 31st March). Subparagraph 3 of paragraph 3 drafted pursuant to Act 13/2009, dated 3rd November (Official State Gazette nº 266, dated 4th November)

43 Act 38/2011, dated 10th October, on reform of Act 22/2003, dated 9th July, on Insolvency

5. The entries to which the preceding Sections refer shall be performed by virtue of the order issued by the Court Clerk. The order shall state whether the relevant resolution is final or not. In all cases, the preventive annotations that must be recorded at the public registers of persons or assets, due to the resolution not being final, shall expire four years from the date of the annotation and shall be cancelled at the motion of the registry itself or at the request of any party concerned. The Court Clerk may decree an extension thereof for a further four years.

6. The transfer of the necessary documentation to perform the entries shall preferably be performed by telematic means, from the Court to the relevant registries.

Exceptionally and if the provisions set forth in the preceding Section cannot be implemented, the orders with the edicts shall be delivered to the barrister–at–law representing the petitioner for insolvency, with the necessary instructions to immediately perform the registry entries foreseen in this Article.

If the insolvency petitioner is a Public Administration that is acting with the counsel and defence of its legal services, the notification shall be submitted directly by the Court to the relevant registries.

7. By regulation mechanisms may be established for co–ordination between the diverse public registers at which, pursuant to the provisions established in the preceding Paragraphs, the order of declaration and other circumstances of the insolvency proceedings shall be recorded.

CHAPTER III

On related insolvencies[44]

Article 25. Joint declaration of insolvency of several debtors.[45]

1. A petition may be submitted for joint judicial declaration of insolvency of debtors who are spouses or managers, shareholders, partners or parties personally liable for the debts of a same legal person, as well as when they form part of the same group of companies.

2. A creditor may petition for joint judicial declaration of insolvency of several of his debtors, when they are spouses, there is confusion of assets amongst them, or when they form part of the same group of companies.

3. The Court may declare the joint insolvency of two persons forming a registered common law marriage, at the request of the members of the couple or a creditor, when there is evidence of the existence of specific or tacit agreements or conclusive facts that arise from the unequivocal will of the parties cohabiting to form a common estate.

4. The competent Court for joint declaration of insolvency shall be that of the place where the debtor with the largest liabilities has his main centre of interest and, if a group of companies, which of the parent company or, in cases when the insolvency is not petitioned for with regard thereto, the company with the greatest liabilities.

Article 25 bis. Accumulation of insolvency proceedings.[46]

1. Any of the insolvent debtors, or any of the insolvency administrators, may petition to the Court, by reasoned writ, for the accumulation of the insolvency proceedings already declared as follows:

1. Those involving a group of companies;

2. Of parties with confused assets;

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[44] Act 38/2011, dated 10th October, on reform of Act 22/2003, dated 9th July, on Insolvency
A new Chapter is hereby added, III, to Title I, that amends Article 25 and adds new Articles 25 bis and 25 ter

[45] Act 38/2011, dated 10th October, on reform of Act 22/2003, dated 9th July, on Insolvency

[46] Act 38/2011, dated 10th October, on reform of Act 22/2003, dated 9th July, on Insolvency

3. Of managers, shareholders, partners or members personally liable for the debts of the legal person;

4. Of those who are members or parties to a company without legal personality and who are personally liable for the debts contracted in trading on its behalf;

5. Of the spouses;

6. Of the registered common law spouse, when any of the circumstances foreseen in Article 25.3 concurs.

2. If a petition has not been submitted by any of the insolvent debtors or by the insolvency administrators, accumulation may be petitioned by any of the creditors by reasoned writ.

3. Accumulation shall be appropriate although the insolvencies may have been declared by different Courts. In that case, the competence to formalise the accumulated insolvencies shall lie with the Court that is hearing the insolvency of the debtor with the greatest liability at the time of filing the petition for insolvency or, if appropriate, the insolvency of the parent company, or if the latter has not been declared an insolvent debtor, the first that has heard the insolvency proceedings of any of the companies in the group.

Article 25 ter. Co–ordinated processing of the insolvency proceedings[47]

1. Insolvencies declared jointly and accumulated shall be processed in co–ordination, without consolidation of the estate.

2. Exceptionally, inventories and creditor lists may be consolidated for the purposes of preparing the report by the insolvency administrators when there is confusion over assets and it is not possible to establish the precise correspondence of assets and liabilities without incurring unjustified expense or delay.

TITLE II

On administration or voluntary arrangements under Insolvency Law

Article 26. Formation of Section Two.

Once the insolvency proceedings are declared open as provided in the preceding Articles, the Court shall order formation of Section Two, that shall include everything related to the administration or voluntary arrangement under Insolvency Law in the insolvency proceedings, the appointment and the status of the insolvency administrators, the setting out of their powers and the exercise thereof, the rendering of accounts and, when appropriate, regarding the liability of the insolvency administrators.

CHAPTER ONE

On appointment of insolvency administrators

Article 27. Subjective conditions for appointment of insolvency administrators.[48]

1. The insolvency administrators shall be formed by a sole member, who must fulfil one of the following conditions:

1. A Solicitor with five years effective professional experience, who has evidenced specialised training in Insolvency Law;

[47] Act 38/2011, dated 10th October, on reform of Act 22/2003, dated 9th July, on Insolvency
[48] Act 38/2011, dated 10th October, on reform of Act 22/2003, dated 9th July, on Insolvency

2. An economist, mercantile graduate or accounts auditor with five years effective professional experience, with proven specialisation in the field of insolvency proceedings.

A legal person may also be appointed, formed by at least one practising lawyer and one economist, mercantile graduate or accounts auditor, and that guarantees the due independence and dedication to performance of the established duties of the insolvency administrator.

2. As an exception to what is set forth in Paragraph 1:

1. In the event of insolvency proceedings affecting a firm that issues securities or derivative securities that are traded on an official secondary market, or affecting a company in charge of managing the trading, clearing or settlement of those securities or derivative securities, or of an investment services company, an administrator shall be appointed from the technical staff of the National Stock Exchange Commission, or another person proposed by it with the qualifications stated in Number 2 of the preceding Section, to which end the National Stock Exchange Commission shall notify the Court of his identity.

2. In the case of insolvency proceedings affecting a credit institution or an insurance undertaking, the Court shall appoint the insolvency administrator from among those proposed by the Deposit Guarantee Fund and the Insurance Compensation Consortium, respectively.

3. In the event of especially transcendent ordinary insolvencies, in addition to the insolvency administrator foreseen in Section 1 of this Article, the Court shall appoint a creditor as insolvency administrator who holds ordinary credits, or with non–collateralised general preference, among those in the upper third of those of the greatest amount.

To these ends, when the set of debts of the workers due to the claims stated in the preceding Paragraph is included in the upper third of those of the greatest amount, the Court may appoint the legal representative of the workers, if any, as a insolvency administrator, who must appoint a professional who fulfils the condition of being an economist, mercantile graduate, accounts auditor or solicitor, who shall be subject to the regime of incapacities, incompatibilities, prohibitions, remuneration and liability as the other members of the insolvency administrators.

The first insolvency administrator appointed shall be the one that shall represent the insolvency administrators before third parties, pursuant to the provisions foreseen in this Act for cases of a sole insolvency composition.

When the creditor appointed is a Public Administration or a Public Law Entity linked to or dependent thereon, the appointment of the professional may befall on any civil servant with a university qualification, who is a graduate or master in fields related to legal or economic sciences, whose regime of responsibility shall be the specific one of the administrative legislation.

3. The Dean's Office of the competent Courts shall keep a list of the professionals and firms that have expressed their availability to perform such duties, their training in insolvency matters and, in all cases, their commitment to ongoing training in the field.

To that end, in December each year, the Official Register of Accounts Auditors and the relevant professional associations shall submit the respective lists of persons available, including legal persons, for use from the first day of the following year. Professionals who are not under obligation to be members of a professional association may request free inclusion in the same period, providing documentary evidence of the training received and availability to be appointed. Likewise, the legal persons recorded in the final point of Section 1 of this Article may request their inclusion, stating the professionals who form them and, except if already recorded in the lists, their training and availability.

The persons involved may request inclusion on the list according to their experience as insolvency administrators or delegate assistants in other insolvencies, as well as other special knowledge or training that may be relevant for the purposes of their duties.

4. Professional insolvency administrators shall be appointed by the Court, ensuring equitable distribution of appointments among those included on the existing lists.

Notwithstanding this, the Court:

1. May appoint specific insolvency administrators, subject to reasoned explanation, when the foreseeable course of the process requires experience or special knowledge or training, as well as those related to assuring the continuity of the corporate activity, or that may arise from the complexity of the insolvency proceedings.

2. For ordinary insolvencies, the Court shall appoint those who may prove they have participated as administrators or delegate assistants in other ordinary insolvencies, or at least three abbreviated insolvency proceedings, except if the Court considers, with due motives, that the training and experience of those it appoints is appropriate to attend to the specific characteristics of the insolvency.

5. In cases of related insolvencies, the Court that is competent to process these may order, to the extent where possible, a sole insolvency administration when delegate auxiliaries are appointed.

In the event of accumulation of insolvencies already declared, the appointment may befall one of the existing insolvency administrations.

6. Any party concerned may file complaints before the Dean's Office on the operation or requisites of the official list, or other matters or irregularities of the persons registered, prior to their appointment, pursuant to the provisions set forth in Article 168 of Organic Act 6/1985, dated 1st July, on the Judiciary.

Article 27 bis. Insolvencies of special relevance for the purposes of appointing insolvency administrators[49]

By reasoned decision by the Court that is competent to declare the insolvency, those in which the following circumstances concur shall be considered of special relevance:

1. When the annual turnover of the insolvent debtor was one hundred million euros or above in any of the three financial years prior to being declared insolvent debtor;

2. When the amount of the aggregate liabilities declared by the insolvent debtor exceeds one hundred million euros;

3. When the number of creditors declared by the insolvent debtor exceeds a thousand;

4. When the number of employees exceeds a hundred, or when this has been the case in any of the three financial years prior to insolvency being declared.

In all cases, the insolvency Court, of its own motion or on petition by a creditor of a public nature, or the insolvency administrators, in insolvencies when there is a cause of public interest to justify this, and even when the cases mentioned in this Article have not concurred, may appoint an insolvency administrator who is a creditor that is a Public Administration or a Public Law Entity related to or dependent thereon.

Article 28. Incapacities, incompatibilities, and prohibitions.

1. Those who may not be directors of a public or private limited company may not be appointed as insolvency administrators, nor those who have provided any kind of professional services to the debtor, nor may persons especially related to him within the last three years, including those who have had shared exercise of professional activities of the same or different nature during that term. Nor may those who, while fulfilling the subjective conditions foreseen in Paragraph 1 of Article 27, are, whatever their condition or profession, in any of the situations referred to in Article 51 of Act 44/2002, dated 22nd November, on Measures to Reform the Financial System, in relation to theactual debtor, his directors or insolvency administrators, or with a creditor representing more than 10 per cent of the aggregate liabilities in the insolvency proceedings.[50]

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[49] Act 38/2011, dated 10th October, on reform of Act 22/2003, dated 9th July, on Insolvency

[50] The aforesaid provision establishes:

"Article 51. *Introduction of new incompatibilities for accounts auditors and measures for their rotation.*

Paragraphs 1, 2, 3, 4 and 5 of Article 8 of Act 19/1988, dated 12th July, on Accounts Auditing, that shall henceforth be drafted as follows:

2. In the event of there being sufficient persons available on the relevant list, Solicitors, Auditors, Economists or Mercantile Graduates who have been appointed to that same office by the same Court in three insolvencies within the last two years may not be appointed as insolvency administrators. To these ends, the appointments made in insolvencies of companies belonging to a same corporate group shall be considered as a single one. This limitation shall not apply in the case of the legal persons recorded in the final point of Article 27.1.

"Article 8. 1. An accounts auditor must be independent and appear to be so, in the performance of his duties, from the companies or firms audited, and must abstain from acting when his objectiveness in relation to verification of the relevant accounting documents may be compromised.

2. The Accounting and Accounts Auditing Institute is the body in charge of safeguarding adequate fulfilment of the duty of independence, as well as for evaluating the possible lack of independence of an accounts auditor or auditing company with regard to each specific task.

In any case, it shall be considered that the auditor does not have sufficient independence in the performance of his duties with regard to a company or firm, in addition to in the cases of incompatibility foreseen by other laws, when any of the following circumstances arises:

a) When the accounts auditor holds office as a director or executive, employee or internal supervisor of the firm audited, or in a firm linked directly or indirectly to him, in a manner and under conditions set out in the enacting regulations.

In all cases, the preceding Paragraph shall include holding offices in a firm that directly or indirectly holds more than 20 per cent of the voting rights of the firm audited, or in which the firm audited directly or indirectly holds more than 20 per cent of the voting rights.

b) Having direct financial interest in the firm audited, or indirect if it is significant for any of the parties.

c) Being related by blood or marriage up to the second degree with the company owners, directors and those responsible for the economic or financial department of the companies or firms audited.

d) Material keeping or preparation of the accounting documents or financial statements of the firm audited.

e) Provision to an auditing client of design and implementation services of financial information technology systems, used to generate the data forming the financial statements of that client, except if the client accepts responsibility for the global internal control system or service provided following the specifications established by the client, who must also accept responsibility for the design, execution, evaluation and operation of the system.

f) Provision to the audit client of valuation services that lead to evaluation of significant quantities on the financial statements of that client, as long as the valuation work involves a significant degree of subjectivity.

g) Provision of internal auditing services to the client, except if the management body of the company or firm audited is responsible for the global internal control system, for determination of the scope, risk and frequency of the internal audit proceedings, of consideration and execution of the results and recommendations provided by the internal auditing.

h) Maintenance of corporate relations with the audit client, unless the relation is due to normal business activity and is not significant for the accounts auditor or person with capacity to influence the auditing result, nor for the firm audited.

i) Provision of legal services simultaneously for the same customer, or for those who make have done so in the preceding three years, except if those services are provided by different firms and with different Boards of Directors.

j) Participation in hiring top management or key staff for the audit client, when these are firms subject to public supervision or firms that issue securities listed on a secondary official market.

k) Provision of services other than auditing the firm audited by the partner signing the report.

l) Receipt of fees arising from provision of auditing services and those other than auditing to a sole client, as long as these constitute an unduly high percentage of the total annual income of the accounts auditor, considered as the average in the last five years.

3. a) For the purposes of what is set forth in paragraph 2 above, the period of calculation for incompatibilities shall be from the business year in which the work is performed until the third year prior to the business year to which the audited accounting statements refer.

Notwithstanding the preceding Paragraph, in the event of these being incompatibilities arising from Paragraph b) of paragraph 2 above, the situation of incompatibility must be resolved prior to accepting the appointment as auditor.

b) During the three years following cessation of their duties, the accounts auditors may not be members of the governing bodies or management of the company or firm audited, nor held working posts in these, nor may they hold direct financial interests in the firm audited, or indirect ones if significant for any of the parties.

4. The auditors shall be hired for a specific initial term that may not be less than three years, nor greater than nine from the date on which the first business year to be audited begins, and they may be hired on an annual basis once the initial period has ended.

In the case of entities subject to public supervision, of companies whose securities are traded on official secondary stock markets, or companies whose net turnover exceeds € 30,000,000, once seven years have elapsed from the initial contract, it shall be obligatory to rotate the accounts auditor responsible for the work and all the members of the auditing team, and in all cases, a term of three years must elapse in order for those persons to be able to audit the relevant firm again.

That term shall be understood to have expired in any case when, at its end, the firm audited is subject to public supervision, or its securities are traded on an official secondary stock market or whose net turnover exceeds € 30,000,000, regardless of whether, during the course of that term, the entity subject to accounts auditing, or its issued securities, have not fulfilled any of the circumstances mentioned in this Paragraph during any period of time whatsoever.

Notwithstanding the aforesaid, when the accounts auditing is not obligatory, the limitations established in the preceding Paragraphs shall not be applicable.

5. For the purposes of this Article:

a) The mentions to the company or entity, or to the auditing client, shall extend to others with which it is directly or indirectly linked;

b) The mentions to the accounts auditors shall be extended, when appropriate, to their spouses and to the accounts auditors or auditing companies with which they have any direct or indirect link, as well as with the persons with capacity to influence the final result of the accounts auditing, including the persons forming the management chain."

Nor may those who have been severed from that office within the preceding two years, nor those who are barred pursuant to Article 181, by final ruling of disapproval of the accounts in previous insolvency proceedings, be appointed as insolvency administrators, nor appointed by a legal person that has been appointed as an insolvency administrator.[51]

3. The rules set forth in this Article shall apply to the representatives of the National Stock Exchange Commission, of Deposit Guarantee Funds, of the Insurance Compensation Consortium, with the exception of the prohibitions due to office and those established in Article 93.2.2.[52]

4. Except for the legal persons recorded in the final point of Article 27.1, those who have personal or professional bonds between each other may not be appointed as insolvency administrators in the same insolvency proceedings. The rules established in Article 93 shall apply to ascertain personal bonds.[53]

Those with professional bonds shall be deemed to be all persons between whom there are, or have been *de jure* or *de facto* bonds of service provision, collaboration or dependence, whatever the legal title under which such bonds may be defined, in the two years preceding the petition for insolvency.

5. The rules set forth in this Article shall apply to the representatives of the National Stock Exchange Commission, of deposit guarantee funds, of the Insurance Compensation Consortium, and of any creditor Public Administrations, with the exception of the prohibitions due to office or public duty, of those set forth in Subparagraph Two of Paragraph 4 of this Article and those established in Paragraph 2.2 of Article 93.

6. Those who have acted as an independent expert to issue the report referred to in Number 2 of Article 71.6 of this Act in relation to a refinancing agreement the debtor may have reached before being declared insolvent debtor may not be appointed as an insolvency administrator.[54]

Article 29. Acceptance.[55]

1. Appointment of the insolvency administrator shall be notified by the swiftest means to the latter. Within the five days following receipt of the notification, the person appointed must appear before the Court to prove subscription of civil liability insurance or an equivalent guarantee in proportion to the nature and scope of the risk covered, under the provisions established in the implementing regulations, to respond for possible damages in the exercise of his duties and to declare whether or not he accepts the commission. When the insolvency administrator is a legal person, it shall be obliged to subscribe of the civil liability insurance or equivalent guarantee.

If the insolvency administrator incurs any cause of objection, he shall be bound to declare it. Once the office has been accepted, the Court Clerk shall issue and deliver to the party appointed a document to evidence his status as insolvency administrator.

That accreditation document must be returned to the Court at once severance of the insolvency administrator arises for any reason.

2. If the party appointed does not appear, has not subscribed a civil liability insurance or a sufficient equivalent guarantee, or does not accept office, the Court shall immediately proceed to a new appointment. Those who, without a just cause, do not appear, do not subscribe an insurance or do not accept office, may not be appointed as insolvency administrators in insolvency proceedings that may be conducted within the same judicial district for a term of three years.

3. Once office is accepted, the appointee may only resign for grave reasons.

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51 Act 38/2011, dated 10th October, on reform of Act 22/2003, dated 9th July, on Insolvency
52 Act 38/2011, dated 10th October, on reform of Act 22/2003, dated 9th July, on Insolvency
53 Act 38/2011, dated 10th October, on reform of Act 22/2003, dated 9th July, on Insolvency
54 Act 38/2011, dated 10th October, on reform of Act 22/2003, dated 9th July, on Insolvency
55 Act 38/2011, dated 10th October, on reform of Act 22/2003, dated 9th July, on Insolvency
Paragraphs 1 and 2 are hereby amended, adding new Paragraphs 4 and 6 to Article 29 and the present Paragraph 4 becomes 5, that is also hereby amended

4. On accepting office, the insolvency administrator shall provide the Court the postal and electronic addresses to which claims are to be notified, as well as any other notices served.

5. Acceptance shall not be necessary when, pursuant to Article 27, the appointment befalls technical staff of the National Stock Exchange Commission, of a Deposit Guarantee Fund or the Insurance Compensation Consortium. Notwithstanding this, within the term of five days following receipt of the appointment, the Court shall be provided the postal and electronic addresses to submit claims and any other notification.

6. The electronic address stated shall fulfil the technical conditions of secure electronic communications in relation to accreditation of transmission and reception, of the dates and the integral content of the communications.[56]

Article 30. Representation of insolvency administrators that are legal persons.

1. When the appointment of an administrator befalls a legal person, on accepting office, it must notify the identity of the natural person who is to represent it to perform the duties of its office.

When the insolvency administration befalls a legal person under the provisions foreseen in the final point of Article 27.1, it shall notify the identity of the natural person who fulfils any of the professional conditions of Numbers 1 and 2 of the Section cited, who shall represent it in the exercise of office.[57]

2. The legal persons appointed shall be subject to the same regime of incompatibilities and prohibitions foreseen in Article 28. Likewise, when a natural person is appointed as administrator, he must notify the court whether he is a member of any corporation of a professional nature in order to apply the same regime of incompatibilities to the remaining partners or collaborators.

3. The regime of incompatibilities, prohibitions, disqualification, liability and separation as established for insolvency administrators shall be applicable to the representative of the legal person appointed. Persons who have acted as an administrator or representative of an administrator at the same Court in three insolvency proceedings within the preceding two years may not be appointed as representative, with the exceptions stated in Article 28.

4. When the legal person has been appointed due to its professional qualification, the natural person it appoints as its representative must fulfil that requisite.

Article 31. Acceptance Specialities[58]

On accepting office, the insolvency administrator must state a bureau or an office at which he shall perform his duties of office, in an area within the territorial scope of competence of the Court".

Article 32. Delegate assistants[59]

1. When the complexity of the insolvency so requires, the administrator may petition the Court for authorisation to delegate certain duties, including those related to continuation of the activity of the debtor, upon the assistants he may propose, stating the criteria to establish their remuneration.

When there is a sole insolvency administrator, except in the cases of legal persons mentioned in the final point of Article 27.1, when the Court sees it fit according to the specific circumstances, after hearing of the insolvency administrator, it may appoint a delegate assistant, who shall have the professional status the former does not have, and upon whom he may delegate its duties pursuant to the preceding Paragraph.

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56 Act 38/2011, dated 10th October, on reform of Act 22/2003, dated 9th July, on Insolvency

57 Act 38/2011, dated 10th October, on reform of Act 22/2003, dated 9th July, on Insolvency
A second Paragraph is hereby added to Article 30.1

58 Act 38/2011, dated 10th October, on reform of Act 22/2003, dated 9th July, on Insolvency

59 Act 38/2011, dated 10th October, on reform of Act 22/2003, dated 9th July, on Insolvency
A second new Paragraph is added to Article 32.1

The appointment of at least one delegate assistant shall be compulsory:

1. For businesses with establishments dispersed nationwide;

2. For companies of a large size;

3. When an extension is being petitioned to issue the report;

4. In related insolvencies in which a sole insolvency administration has been ordered

2. If the Court were to grant the authorisation, it shall appoint the assistants, shall specify their delegate duties, and determine their remuneration, which shall be borne by the insolvency administrators and, except if specifically agreed otherwise, in proportion to that due to each one of them. No appeal whatsoever may be made against the decision by the Court, but the request may be repeated if the circumstances giving rise to refusal change.

3. The regime of incapacities, incompatibilities, prohibition, disqualification, and liability established for insolvency administrators and their representatives shall be applicable to the delegate assistants.

4. Appointment of the delegate assistants shall be performed without prejudice to collaboration with the insolvency administrators by the staff at their service or that dependent on the debtor.

Article 33. **Disqualification**.

1. The insolvency administrators may be rejected by any of the persons legitimated to petition for a declaration opening the insolvency proceedings.

2. The causes for disqualification are the circumstances constituting incapacity, incompatibility or prohibition referred to in Article 28, as well as those established in the civil procedural legislation for disqualification of experts.[60]

3. The disqualification must be promoted as soon as the party rejecting has knowledge of the cause on which it is based.

4. The disqualification shall not suspend the proceedings and shall be substantiated through the channels of an insolvency procedural plea. The party whose rejection is proposed shall continue to act as administrator, without the resolution handed down affecting the validity of the proceedings.

CHAPTER II

Legal status of the insolvency administrators

Article 34. **Remuneration.**[61]

1. Insolvency administrators shall be entitled to remuneration from the estate, except when they belong to the staff of the entities referred to in Paragraphs 1 and 2 of Paragraph 2 of Article 27.

2. Remuneration of the insolvency administrators shall be determined by means of a tariff that shall be approved in the implementing regulations and in relation to the amount of assets and liabilities, the ordinary or abbreviated nature of the proceedings, accumulation of insolvencies and the foreseeable complexity of the insolvency.

The tariff must necessarily abide by the following rules:

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[60] See Articles 124 to 128 of the Civil Judicial Procedure Act.

[61] Act 38/2011, dated 10th October, on reform of Act 22/2003, dated 9th July, on Insolvency
Letter b) of Article 34.2 is hereby repealed and Letters c) and d) of the same Section are renumbered as b) and c)

a) Exclusivity. The insolvency administrators may only receive the sums arising from application of the tariff for their intervention in the insolvency;

b) Limitation. The insolvency administration may not be remunerated above the maximum amount set by the implementing regulations for the aggregate insolvency.

c) Effectiveness. In insolvencies in which the assets are insufficient, payment of a minimum amount of remuneration established by the implementing regulations shall be guaranteed, by means of a tariff guarantee account in which the obligatory provisions for the insolvency administrators shall be deposited. Those deposits shall be subtracted from the remunerations effectively received by the insolvency administrators in the insolvencies in which they act according to the percentage determined in the implementing regulations.

3. Following a report by the insolvency administrators, the Court shall set the amount of the remuneration following a hearing and pursuant to the tariff, as well as the terms within which it must be paid.

4. At any stage of the proceedings, the Court may amend the remuneration set, on its own motion or at the request of the debtor or of any creditor, if any fair cause arises, applying the tariff referred to in Paragraph 2 of this Article.

5. The order that sets or amends the remuneration of the insolvency administrators may be appealed by any of these and by the persons legitimated to petition for a declaration opening the insolvency proceedings.

Article 35. Exercise of the office.[62]

1. The insolvency administrators and delegate assistants thereof shall perform their duties of office with the diligence of an orderly administrator and loyal representative.

2. When the insolvency administration is composed of two members, the functions of that insolvency body shall be exercised jointly. The decisions shall be passed by joint agreement, except to exercise the powers that the Court has assigned them individually. In the event of disagreement, the Court shall decide.[63]

3. Decisions and resolutions by the insolvency administration that are not of simple administration or ordinary management shall be set down in writing and signed, as appropriate, by all the members thereof.[64]

4. The insolvency administration shall be subject to supervision by the insolvency Court. At any time, the Court may require the members thereof to provide it specific information or a report on the status of the relevant insolvency section.[65]

5. Judicial resolutions handed down to resolve the matters referred to in this Article shall be issued as a court order, against which no appeal whatsoever may be lodged. Nor may an insolvency procedural plea be raised over the matter resolved.

Article 36. Liability.[66]

1. Insolvency administrators and delegate assistants thereof shall be held liable to the debtor and to the creditors for damages and losses caused to the estate by acts and omissions that are unlawful or performed without due diligence.

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62 Act 38/2011, dated 10th October, on reform of Act 22/2003, dated 9th July, on Insolvency Section 6 of Article 35 is hereby repealed

63 Act 38/2011, dated 10th October, on reform of Act 22/2003, dated 9th July, on Insolvency

64 Act 38/2011, dated 10th October, on reform of Act 22/2003, dated 9th July, on Insolvency

65 Act 38/2011, dated 10th October, on reform of Act 22/2003, dated 9th July, on Insolvency

66 Act 38/2011, dated 10th October, on reform of Act 22/2003, dated 9th July, on Insolvency Section 2 of Article 36 is hereby repealed, renumbering the following Paragraphs

2. The insolvency administrators shall be held jointly and severally liable with the delegate assistants for the detrimental acts and omissions of the latter, except if they prove they acted with all due diligence to prevent or avoid the detriment.

3. The liability action shall be substantiated by the relevant formalities of declaratory trial, before the Court hearing or which has heard the insolvency proceedings.

4. The liability action shall expire after four years, from the claimant having knowledge of the damage or loss the claim concerns and, in all cases, from when the insolvency administrators or delegate assistants have ceased to hold office.

5. If the ruling contains an order to compensate for losses and damages, the creditor who has exercised the action in the interest of the estate shall be entitled to reimbursement of the necessary expenses borne, against the sum received.

6. The foregoing is without prejudice to the relevant liability actions to which the debtor, creditors or third parties may be entitled for acts or omissions of the insolvency administrators and delegate assistants that are directly detrimental to their interests.[67]

Article 37. Severance.

1. When a just cause arises, the Court, on its own motion or at the request of any of the persons legitimated to petition for a declaration opening the insolvency proceedings, or any of the other insolvency administrators, may sever the insolvency administrators from office or revoke the appointment of the delegate assistants.

2. If the party severed is a representative of a corporate administrator, the Court shall require notice of the identity of the natural person who is to represent the latter in performing the duties of office, unless the Court determines that the severance must affect the actual legal person holding office as administrator, in which case it shall proceed to a new appointment.

3. The judicial resolution of severance shall be issued as a court order, in which the reasons on which the Court bases its decision shall be stated.

4. The public register foreseen in Article 198 shall be notified by the Court Clerk of the content of the order referred to in the preceding Paragraph.[68]

Article 38. New appointment.

1. In all cases of severance of an administrator, the Court shall without delay proceed to make a new appointment.

2. If the person severed was the representative of a corporate administrator, the Court shall require notice of the identification of the new natural person who is to represent it to perform the duties of office.

3. The severance and new appointment shall be given the same publicity as the appointment of the administrator substituted.

4. If an insolvency administrator is severed before the insolvency proceedings end, the Court shall order him to render accounts of his activity. Such rendering of accounts shall be submitted by the insolvency administrator within the term of one month, from when he is notified of the Court order, and shall be subject to the same formalities, resolutions and effects as foreseen in Article 181 for the rendering of accounts at the end of the insolvency proceedings.[69]

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67 See Articles 38.4, 74.3 and 152 of this Act.

68 Paragraph drafted pursuant to Act 13/2009, dated 3rd November (Official State Gazette nº 266, dated 4th November)

69 Act 38/2011, dated 10th October, on reform of Act 22/2003, dated 9th July, on Insolvency

Article 39. Final nature of the resolutions.[70]

An appeal to the same Court may be filed against orders on appointment, objection and severance of the insolvency administrators and delegate assistants thereof, and a remedy of appeal to the Higher Court against the Court order resolving the aforesaid, the latter not having suspension effects.

The debtor, the insolvency administration, the insolvency administrators affected and those who prove legitimate interest may appeal, even though they may not have previously appeared.

TITLE III

On the effects of declaring the insolvency proceedings open[71]

CHAPTER ONE

On the effects on the debtor

Article 40. Debtor's economic powers.

1. In the event of voluntary insolvency, the debtor shall conserve the powers of management and disposal of his estate, the exercise of which shall be subject to intervention by the insolvency administrators, via their authorisation or approval.

2. In the case of compulsory insolvency, exercise by the debtor of the powers of management and disposal of his assets shall be suspended, being substituted therein by the insolvency administrators.

3. Notwithstanding what is set forth in the preceding Paragraphs, the Court may resolve suspension in the event of voluntary insolvency or mere intervention in the case of compulsory insolvency. In both cases, the resolution must be justified, stating the risks it intends to avoid and the advantages sought.

4. On application by the insolvency administrators and having heard the insolvent debtor, the Court may resolve a change in the situations of intervention or suspension of powers of the debtor over his estate at any time.

The change in the situations of intervention or suspension and subsequent amendment of the powers of administration or voluntary arrangement under Insolvency Law shall be subject to the publicity regime of Articles 23 and 24.[72]

5. In the case of insolvency proceedings being open against an inheritance, the insolvency administrators shall exercise the economic powers of management and disposal of the hereditament, without a change in that situation being possible.

6. Intervention and suspension related to the powers of management and disposal of the assets, rights and obligations that are to be included in the insolvency proceedings and, when appropriate, those to which the debtor is entitled to in the matrimonial property regime, whatever the nature thereof.

The debtor shall retain the power to make a last will and testament, notwithstanding the effects of the insolvency on the inheritance.

7. The acts by the debtor that breach the limitations established in this Article may only be annulled at the request of the insolvency administrators and when these have not been endorsed or confirmed. Any creditor and those who were parties to the contractual relation affected by the infringement may require the insolvency administrators to

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70 Act 38/2011, dated 10th October, on reform of Act 22/2003, dated 9th July, on Insolvency

71 See Articles 145.1 and 147 of this Act.

72 Paragraph drafted pursuant to Royal Decree-Law 3/2009, dated 27th March (Official State Gazette number 78, dated 31st March).

decide on the exercise of the relevant action or the endorsement or confirmation of the act. The annulment action shall be dealt by the channels of insolvency procedural plea when appropriate, and shall expire, if the requirement has been formulated, when one month has elapsed from its date. Otherwise, it shall expire on fulfilment of the composition with the debtor or, in the case of winding–up, on its conclusion.

The aforesaid acts may not be registered at a public register until they are confirmed or endorsed, or until expiry of the annulment action or its final rejection is accredited.

Article 41. Effects on communications, residence and free movement of the debtor.

The effects of declaring the insolvency proceedings open on the fundamental rights and liberties of the debtor in matters of correspondence, residence and free movement shall be those established in the Organic Act on Insolvency Reform.[73]

Article 42. Collaboration and information by the debtor.

1. The debtor is bound to appear personally before the mercantile court and before the insolvency administrators as often as required to do so and to collaborate and provide information on all matters necessary or convenient for the interests of the insolvency proceedings. When the debtor is a legal person, these duties shall be the remit of its directors or liquidators and of those who have held these posts during the two years prior to the insolvency proceedings being declared open.

2. The duties referred to in the preceding Paragraph shall also affect the proxies of the debtor and those who were empowered as such within the period stated.

Article 43. Conservation and management of the estate.

1. When performing the duties of management and disposal of the estate, its conservation shall be attended to in the most convenient way for the interests of the insolvency proceedings. To that end, the insolvency administrators may petition the Court for the assistance they consider necessary.

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[73] Article 1 of Organic Act 8/2003, dated 9th July, establishes that:
"Article one. *Effects of insolvency proceedings on the insolvent debtor's fundamental rights.* 1. From admission to consideration of the application to declare the compulsory insolvency proceedings open, at the behest of the parties legitimated to instigate it, or from declaration opening the insolvency proceedings, the Court at its own motion or at the request of any party concerned, and both in cases of suspension and of those of intervention of the powers of management and disposal of the debtor over his assets, the Court may order the following measures at any state in the proceedings:
1. Tapping of the communications by the debtor, with guarantee of secrecy of the contents that are unrelated to the interests of the insolvency proceedings.
2. The duty of the debtor who is a natural person to reside in the town of his domicile. If the debtor were to breach that duty, or if there were to be well-grounded reasons to fear he might breach it, the Court may adopt the measures it may consider necessary, including house arrest.
3. Entry to the home of the debtor and the search thereof.
2. In the case of insolvency of a legal person, the measures foreseen in the preceding paragraph may also be resolved with regard to all or any of the directors or liquidators, both those in office at the time of petitioning to have insolvency proceedings declared open, as well as those who have been in office in the preceding two years.
3. Adoption of any of the measures described in paragraph 1 of this Article shall be resolved following hearing of the Public Prosecutor, and by motivated judicial decision, according to the following criteria:
The appropriateness of the measure in relation to the state of the insolvency proceedings;
The result or objective intended, that shall be set forth specifically;
The proportionality between the scope of each measure and the result or objective intended;
The duration of the measure, setting the maximum time it remains in force, that may not exceed that strictly necessary to assure the result or objective pursued, notwithstanding that, should the motives that justified the measure persist, the Court may resolve to extend it with the same requisites as when adopted. During the time the measure remains in force, the Court may resolve its attenuation or cessation at any time.
4. Tapping of telephone communications must be performed pursuant to the provisions established in the Criminal Procedure Act.
5. The judicial warrant to enter and search the home of the debtor or the persons referred to in paragraph 2 of this Article, when they refuse to grant their consent, must be based on rational signs of the existence of documents of interest for the insolvency proceedings, that have not been produced, or when that measure is necessary to adopt any other appropriate ones.
6. The judicial decisions may be appealed by the debtor within the term of five days, without suspending their effectiveness, before the Provincial High Court. Such an appeal shall have preferential processing."

2. Until judicial approval of the composition is obtained or the winding up is commenced, the properties, goods and rights forming the estate may not be disposed of or encumbered without the Court's approval.[74]

3. The following are exceptions to what is set forth in the preceding Paragraph:[75]

1. Acts of disposal that the insolvency administration considers indispensable to guarantee the feasibility of the business or cash flow needs required to continue with the insolvency proceedings. The Court shall immediately be notified of the acts performed, accompanied by justification of their need.

2. Acts of disposal of assets that are not necessary for continuity of the activity when offers concur that substantially match the value they have been assigned in the inventory. That match shall be considered substantial when, in the case of immoveable goods, the difference is lower than ten per cent, and in the case of moveable assets, twenty per cent, provided no higher offer has been recorded. The insolvency administrators shall immediately notify the insolvency Court the offer received and justification of the non- necessary status of the assets. The offer presented shall be approved if a higher one is not presented within a term of ten days.

3. Acts of disposal inherent to continuation of the professional or business activity of the debtor, pursuant to the provisions established in the following Article.

Article 44. Continuation of exercise of the professional or business activity.

1. A declaration opening the insolvency proceedings shall not interrupt continuation of the professional or business activity performed by the debtor.

2. In the event of intervention, and in order to facilitate continuation of the professional or business activity of the debtor, the insolvency administrators may determine the acts or operations inherent to the business or trade of that activity that, according to their nature or amount, are deemed authorised in general terms.

Notwithstanding what is set forth in the preceding Paragraph, and notwithstanding the preservation measures that may have been adopted by the Court on declaring the insolvency proceedings open, until acceptance of office by the insolvency administrators, the debtor may perform the acts inherent to the business or trade that are indispensable to continue his activity, as long as these are according to the normal market conditions.

3. In the event of suspension of the powers of management and disposal of the debtor, the insolvency administrators must adopt the necessary measures to continue the professional or business activities.

4. As an exception to the provisions contained in the preceding Paragraphs, the Court, at the request of the insolvency administrators and after hearing of the debtor and the representatives of the employees at the company, may issue an order to close all or part of the offices, establishments or operations held by the debtor, as well as, when he performs a business activity, the total or partial cessation or suspension thereof.

When the measures involve the extinction, suspension or collective amendment of employment contracts, including collective transfers, the Court shall act pursuant to the provisions established in Article 8.2. and shall simultaneously commence proceedings under Article 64. The insolvency administration shall fulfil the provisions set forth in Article 64.4 in its petition.[76]

Article 45. Debtor's books and documents.

1. The debtor shall provide the insolvency administrators the books it is mandatory to keep and any other books, documents and records on the economic aspects of his professional or business activity.

2. On request by the insolvency administrators, the Court shall resolve the measures it may deem necessary for the effectiveness of the provisions of the preceding Paragraph.

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74 Act 38/2011, dated 10th October, on reform of Act 22/2003, dated 9th July, on Insolvency
75 Act 38/2011, dated 10th October, on reform of Act 22/2003, dated 9th July, on Insolvency
76 Act 38/2011, dated 10th October, on reform of Act 22/2003, dated 9th July, on Insolvency

Article 46. Debtor's annual accounts.[77]

1. In the case of intervention, the legal obligation of the insolvency administrators to draw up and submit the annual accounts to audit, under supervision of the insolvency administrators, shall subsist.

The insolvency administration may authorise the insolvent debtor to delay fulfilment of the legal obligation of drawing up the annual accounts for the financial year prior to the judicial declaration of insolvency to the month following presentation of the inventory and list of creditors. Approval of the accounts must take place in the three months following expiry of such extension. This shall be reported to the insolvency Court and, if the legal person is obliged to deposit the annual accounts, to the Business Register at which it is registered. When such notification has been made, delaying deposit of the accounts shall not give rise to closure of the registry sheet, if the terms for deposit are fulfilled from expiry of the said extended term to approve the accounts. Each one of the documents forming the annual accounts shall mention the legitimate cause for delay.

2. On reasoned request by the insolvency administration, the insolvency Court may order revocation of the appointment of the accounts auditor of the debtor that is a legal person and appointment of another one to audit the annual accounts.

3. In the event of suspension, the legal obligation to draw up and submit the annual accounts to audit shall subsist, those powers lying with the insolvency administrators.

Article 47. Right to maintenance.[78]

1. The insolvent debtor who is a natural persons and who is in a state of need shall be entitled to draw a maintenance allowance from the estate during the insolvency proceedings, as long as it contain sufficient assets to attend to his needs and those of his spouse or registered common law spouse, when any of the circumstances foreseen under Article 25.3 concur, and descendents under their parental care.

The amount and frequency thereof, in the case of intervention, shall be those resolved by the insolvency administration and, in the case of suspension, those authorised by the Court, having heard the insolvent debtor and insolvency administration. In the latter case, the Court, having heard the insolvent debtor or insolvency administration, and on request by any of these, may amend the amount and frequency of the maintenance allowance.

2. The individuals with regard to whom the insolvent debtor has the legal duty to provide maintenance, with the exception of his spouse or registered common law spouse when any of the circumstances foreseen in Article 25.3 concur, and descendants under parental care, may only obtain such maintenance against the estate if they cannot receive them from other persons obliged to provide such maintenance, and as long as they have exercised the action to claim within the term of one year from the time when such maintenance should have been received, with prior authorisation by the insolvency Court that shall resolve on the appropriateness and amount thereof. The obligation to provide maintenance imposed on the insolvent debtor by a Court order handed down prior to the declaration of insolvency shall be settled against the assets of the estate up to the amount set by the insolvency Court, deeming the excess amount the rank of an ordinary insolvency credit.

Article 48. Effects of the declaration of insolvency on the bodies of the debtor that is a legal person.[79]

1. During the insolvency proceedings, the bodies of the debtor that is a legal person shall be maintained, without prejudice to the effects on their operation arising from the intervention or suspension of their powers of management or disposal.

2. The insolvency administration shall be entitled to attend and speak at the meetings of the collegiate bodies of the debtor that is a legal person. To these ends, it must be summoned in the same manner and with the same advance notice as the members of the body that is to meet.

Constitution of a general meeting, assembly or other collegiate body as a universal meeting shall not be valid without the insolvency administrators concurring. The resolutions by the meeting or assembly that may have an

77 Act 38/2011, dated 10th October, on reform of Act 22/2003, dated 9th July, on Insolvency
78 Act 38/2011, dated 10th October, on reform of Act 22/2003, dated 9th July, on Insolvency
79 Act 38/2011, dated 10th October, on reform of Act 22/2003, dated 9th July, on Insolvency

asset based content, or that may be directly relevant to the insolvency, shall require authorisation or confirmation by the insolvency administrators to be effective.

3. The managers or liquidators of the debtor that is a legal person shall continue to represent the entity during the insolvency proceedings. In the event of suspension, the powers of administration and disposal inherent to the governing body or liquidators shall be transferred to the insolvency administrators. In the event of intervention, those powers shall continue to be exercised by the managers or liquidators, with supervision by the insolvency administrators, who must authorise or confirm acts of administration and disposal.

Powers of attorney that may exist at the time of declaration of insolvency shall be affected by the suspension or intervention of the powers over assets.

4. If the office of manager of the legal person is remunerated, the insolvency Court may resolve for it to cease to be so, or reduce the amount of the remuneration, considering the content and complexity of the management duties and the assets of the insolvent debtor.

5. At the request of the insolvency administration, the Court may attribute to it the exercise of the political rights to which it is entitled in other entities, whenever the property interests of the insolvent debtor that is a legal person are affected.

Article 48 bis. Effects of the declaration of insolvency on actions against the partners.[80]

1. During the insolvency proceedings of a company, only the insolvency administration may take action against the partners or partners personally liable for the debts thereof prior to the declaration of insolvency.

2. During the insolvency proceedings of a company, only the insolvency administration may claim the sums deemed convenient, at the appropriate time, of the disbursement of contributions to the share capital that may have been deferred, whatever the term set in the public deed or in the Articles of Association, and the accessory contributions pending settlement.

Article 48 ter. Seizure of assets[81]

1. Following the declaration of insolvency of a legal person, the insolvency Court, of its own motion or on reasoned petition by the insolvency administration, may resolve, as an injunctive measure, the seizure of assets and rights of the *de facto* and *de jure* managers or liquidators, general proxies and those who have had that status during the two years prior to the date of that declaration, when the proceedings have evidenced the likelihood of a judgement that classifying the persons affected by the seizure condemns them to cover the deficit arising from the winding up under the provisions foreseen in this Act.

The seizure shall be ordered for the amount the Court deems appropriate and it may be substituted, on petition by the party concerned, by a bank guarantee provided by a lending institution.

2. Likewise, during the insolvency proceedings of the company, the Court, of its own motion or on reasoned petition by the insolvency administration, may order the seizure of the assets and rights of the partner or partners who are personally liable for the debts of the company prior to the declaration of insolvency, in the amount it may deem sufficient, when the proceedings have evidenced the likelihood that the aggregate assets shall not be sufficient to cover all the debts, and, at the request of the party concerned, it may order substitution of the seizure by a bank guarantee by a lending institution.

3. A remedy of appeal to the Higher Court may be filed against the order resolving upon the injunctive measures.

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[80] Act 38/2011, dated 10th October, on reform of Act 22/2003, dated 9th July, on Insolvency
A new Article 48 bis is hereby added

[81] Act 38/2011, dated 10th October, on reform of Act 22/2003, dated 9th July, on Insolvency
A new 48 ter is hereby added

Article 48 quater. Effects of the declaration of insolvency on actions against the managers of the debtor company.[82]

Once insolvency has been declared, it shall be the exclusive remit of the insolvency administration the exercise of the liability actions of the insolvent debtor that is a legal person against its managers, auditors or liquidators.

CHAPTER II

On the effects on creditors[83]

SECTION 1. ON INTEGRATION OF CREDITORS IN THE AGGREGATE LIABILITIES

Article 49. Integration of the aggregate liabilities.[84]

1. Once the insolvency proceedings are declared open, all the debtor's creditors, whether ordinary or not, whatever their nationality and domicile, shall be legally integrated in the aggregate liabilities of the insolvency proceedings, with no exceptions other than those established by the laws.

2. In the event of insolvency of a person married under the joint marital property regime, or any other common property arrangement, the aggregate liabilities shall include the claims against the spouse of the insolvent debtor, which are also claims of liability of the marital joint assets or holdings.

SECTION 2. ON THE EFFECTS ON INDIVIDUAL ACTIONS

Article 50. New declaratory trials.[85]

1. The Courts of Law of the civil jurisdictional order and those of the labour order before which applications are lodged that must be heard by the insolvency Court pursuant to the provisions established in this Act shall abstain from hearing them, warning the parties to avail themselves of their right before the insolvency Court. If the applications were admitted to consideration the setting aside of all proceedings shall be ordered and the proceedings carried out until shall be null and void.[86]

2. The Mercantile Courts shall not admit suits to consideration that are filed from the time insolvency is declared until conclusion thereof, in which actions are brought to claim corporate obligations against the managers of insolvent debtor capital companies who have failed to fulfil their duties imposed in the event of cause of dissolution arising. If admitted, the provisions set forth in the last point of the preceding Section shall apply.

3. The Courts of First Instance shall not admit suits to consideration that are filed from the declaration of insolvency until its conclusion, in which action is brought to recognise those who contributed their work and materials to a work appraised as a lump sum against the owner of works under the provisions foreseen in Article 1,597 of the Civil Code. If admitted, the provisions set forth in the last point of the preceding Section shall apply.

4. The Courts of Law of the contentious-administrative, labour or criminal jurisdictions before which actions are taken after declaration of the insolvency that may have a transcendence on the assets of the debtor, shall summon the insolvency administrators and admit them as a party to defend the estate, if they appear.

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82 Act 38/2011, dated 10th October, on reform of Act 22/2003, dated 9th July, on Insolvency
A new Article 48 quater is hereby added

83 See Article 146 of this Act.

84 Act 38/2011, dated 10th October, on reform of Act 22/2003, dated 9th July, on Insolvency

85 Act 38/2011, dated 10th October, on reform of Act 22/2003, dated 9th July, on Insolvency
Two new Sections are hereby added, 2 and 3, to Article 50, and the present Paragraph 2 becomes 4

86 Article 192.1 of this Act.

Article 51. Continuation and accumulation of declaratory trials pending.

1. The declaratory proceedings to which the debtor is a party that are in process at the time of the insolvency proceedings being declared open shall continue being processed at the same Court that was processing them until the ruling is final.

As an exception, such proceedings may be accumulated to the insolvency of the Court's own motion, as long as these are at first instance and the trial or hearing has not concluded, in all proceedings claiming damages and losses to the insolvent debtor that is a legal person against its *de facto* or *de jure* managers or liquidators, and against the auditors.

The accumulated proceedings shall continue their processing before the insolvency Court, through the procedural formalities by which the claim was being substantiated, including the appropriate appeals against the ruling.[87]

2. In the case of suspension of the debtor's powers of management and disposal, the insolvency administrators, within the scope of their powers, shall substitute him in ongoing judicial proceedings, to which end the Court Clerk shall grant them, once they have appeared, a term of five days to peruse the proceedings, although they shall need the authorisation of the insolvency Court to desist, withdraw, either fully or partially, from the lawsuit or to reach a compromise therein. The Court Clerk shall serve notice on the debtor of the request by the insolvency administrators in all cases, and the parties who have appeared in the insolvency proceedings in cases in which the Court deems they should be heard with regard to the object thereof. The costs imposed due to authorised withdrawal or desisting shall be considered a claim against the estate; in the case of a compromise, the terms agreed shall apply to costs.

However, substitution shall not prevent the debtor maintaining his separate representation and defence by means of his own Barrister–at–Law and Solicitor, as long as it is sufficiently guaranteed to the insolvency Court that the expenses of their procedural action and, if appropriate, the effectiveness of the condemnation to pay costs, shall not befall the aggregate assets of the insolvency, without being able to carry out the procedural actions, in any case, that pursuant to the preceding Paragraph, are the remit of the insolvency administrators with the authorisation of the Court.

3. In the event of intervention, the debtor shall conserve the capacity to act in trial, although he shall require authorisation by the insolvency administrators to fully or partially desist or withdraw from a lawsuit or reach a compromise thereon when the matter of litigation may affect his estate. With regard to costs, the provisions contained in the first Subparagraph of the preceding Paragraph shall apply.

Article 51 bis. Suspension of declaratory proceedings pending.[88]

1. Once insolvency proceedings are declared open and until their conclusion, proceedings initiated prior to the declaration of insolvency in which actions have been brought to claim corporate obligations against the managers of the insolvent debtor capital companies who have breached their duties imposed in the event of a cause of dissolution arising, shall be suspended.

2. Once the insolvency is declared and until its conclusion, proceedings previously initiated, in which action has been brought for recognition of those who contributed work and materials to works evaluated as a lump sum, against the owner of the works under the provisions foreseen in Article 1,597 of the Civil Code, shall be suspended.

Article 52. Arbitration proceedings.

1. The declaration of insolvency, in itself, does not affect the mediation clauses or the arbitral clauses signed by the insolvent debtor. When the jurisdictional body considers that those provisions or clauses may cause damage to the insolvency proceedings, it may order suspension of their effects, all without prejudice to the provisions set forth in the international treaties.[89]

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87 Act 38/2011, dated 10th October, on reform of Act 22/2003, dated 9th July, on Insolvency

88 Act 38/2011, dated 10th October, on reform of Act 22/2003, dated 9th July, on Insolvency
A new Article 51 bis is hereby introduced

89 Amended by Final Provision 3.1 of Act 11/2011, dated 20th May

2. Arbitration proceedings in course at the moment of declaring the insolvency proceedings open shall continue until the award is final, the rules set forth in Paragraphs 2 and 3 above being applicable.

Article 53. Final court rulings and arbitration awards.

1. The final rulings and awards handed down before or after the declaration declaring open the insolvency proceedings shall be binding on the Court of the latter, which shall give the resolutions handed down the relevant insolvency treatment.

2. What is set forth in this Article is understood to be notwithstanding the entitlement of the insolvency administrators contest arbitration bonds and proceedings in the event of fraud.

Article 54. Exercise of actions by the insolvent debtor.

1. In the event of suspension of the debtor's powers of management and disposal, the insolvency administrators shall be entitled to take actions of a non-personal nature. The debtor himself shall appear in court to exercise the other actions, but shall require the approval of the insolvency administrators to file applications or appeals, to withdraw, compromise or desist when the matters in litigation may affect his estate.

2. In the case of intervention, the debtor shall retain the capacity to act in court, but shall require the approval of the insolvency administrators to file lawsuits or appeals that may affect his estate. If the insolvency administrators deem it convenient to the interests of the insolvency proceedings to file a lawsuit and the debtor refuses to file it, the insolvency Court may authorise them to do so.

3. The debtor may appear and defend himself separately in lawsuits lodged by the insolvency administrators. The costs imposed on the debtor acting separately shall not be considered debts of the estate.

4. Creditors who have applied in writing to the insolvency administrators to take action by the insolvency in relation to assets, stating the specific claims this consists of and their legal grounds, shall be legitimated to exercise it if neither the insolvent debtor, if appropriate, nor the insolvency administrators, do so within two months of being called on to do so.

In exercising this subsidiary action, creditors shall litigate at their cost in the interest of the estate. Should the lawsuit be fully or partially accepted, they shall be entitled to reimbursement of the expenses and costs they have incurred from the estate, up to the limit of what is obtained as a consequence of the ruling, once this is final.

Actions taken pursuant to the preceding Paragraph shall be notified to the insolvency administrators.[90]

Article 55. Enforcement and coercive collection.[91]

1. Once the insolvency proceedings are declared open, singular, judicial or extrajudicial enforcements may not be initiated, nor may administrative or tax demands for payment to be collected coercively against the assets of the debtor be continued.

Until approval of the winding up plan, administrative enforcement proceedings in which seizure diligences had been handed down, and labour enforcements in which the assets of the insolvent debtor had been seized, all prior to the date of the insolvency beginning declared, may continue, as long as the assets subject to seizure are not necessary for continuity of the professional or business activity of the debtor.

2. Actions in process shall be suspended from the date of the declaration opening the insolvency proceedings; notwithstanding the dealing of the respective claims within the insolvency proceedings.

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[90] See Articles 48.5 and 72.1 of this Act.

[91] Act 38/2011, dated 10th October, on reform of Act 22/2003, dated 9th July, on Insolvency Paragraphs 1 and 3 of Article 55 are hereby amended

3. Once the enforcement actions have been suspended pursuant to the provisions set forth in the preceding Sections, the Court, at the request of the insolvency administration and after hearing of the creditors affected, may resolve to raise and revocation the seizures ordered when their maintenance would severely hinder the continuity of the professional or business activity of the insolvent debtor. Raising and revocation may not be ordered in relation to administrative seizures.

4. Creditors with a security *in rem* are excepted from to the rules contained in the preceding Paragraphs pursuant to the provisions established in this Act.

Article 56. Stoppage of enforcement of guarantees in rem and assimilated recovery actions.[92]

1. Creditors with in rem guarantees on the assets of the insolvent debtor assigned to his professional or business activity, or on a productive unit he owns, may not commence enforcement or forcible realisation of the guarantee until a composition is approved, the content of which shall not affect exercise of that right, or when a year has elapsed from the declaration of insolvency, without the winding up having commenced.

Nor may the following be performed during that time:

a) Actions aimed at recovering assets sold by instalments or financed with reservation of ownership by contracts registered at the Register of Moveable Goods;

b) Actions to cancel sales of immoveable goods due to failure to pay the instalment price, even though arising from explicit conditions recorded at the Property Register;

c) Actions aimed at recovering assets assigned under financial lease by agreements registered at the Property Register or the Register of Moveable Goods, or formalised in a document involving enforcement.

2. Actions already commenced to exercise the actions referred to in the preceding Section shall be suspended as from the declaration of insolvency, whether final or not, being recorded in the relevant proceedings, even though the announcements of auction of the asset or right may have already been published. The suspension of enforcement shall only be raised and the order to continue given when the proceedings include a testimonial of the resolution by the insolvency Court declaring that the assets or rights are not assigned to, or are not necessary for continuity of the professional or business activity of the debtor.

3. During stoppage of the actions or suspension of the proceedings and whatever the stage of the insolvency proceedings, the insolvency administrators may exercise the option foreseen in Paragraph 2 of Article 155.

4. Declaring the insolvency proceedings open shall not affect enforcement of the security when the insolvency debtor has the status of third party possessor of the asset concerned.

5. To the ends set forth in this Article and the preceding one, the insolvency Court shall determine whether an asset of the insolvent debtor is or is not linked to his professional or business activity, or to a productive unit he owns, and whether an asset or right is necessary for continuity of the professional or business activity of the debtor.

Article 57. Commencement or resumption of enforcement of security in rem.

1. Exercise of actions commenced or resumed pursuant to the provisions established in the preceding Article during the insolvency proceedings shall be subject to the jurisdiction of the Court thereof, which, at the party's request, shall decide on whether they are appropriate and, in that case, shall order them to be dealt in a separate procedure, adapting dealing therewith with the actual judicial or extra-judicial provisions relevant to the case.

2. Once the proceedings are initiated or resumed, they may not be suspended due to the vicissitudes of the insolvency proceedings themselves.

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[92] Act 38/2011, dated 10th October, on reform of Act 22/2003, dated 9th July, on Insolvency
The heading and Paragraphs 1 and 2 of Article 56 are hereby amended and a new Paragraph 5 is hereby added to this provision

3. Once the winding–up phase has commenced, the creditors who have not exercised these actions prior to the insolvency being declared shall lose the right to do so in separate proceedings. The actions that have been suspended as a consequence of declaration of the insolvency proceedings shall be resumed, accumulating the collective execution proceedings as a separate procedure.

SECTION 3. ON THE EFFECTS ON SPECIFIC CLAIMS[93]

Article 58. Prohibition of set–off. [94]

Without prejudice to the provisions established in Article 205, once insolvency proceedings are declared open, it shall not be possible to set–off the claims and debts of the insolvent debtor, but a set–off whose requisites were fulfilled prior to the declaration shall take effect, although the judicial provision or administrative act declaring such may have been handed down subsequently.

In the event of controversy over this particular, it shall be resolved through the channels of insolvency procedural plea.

Article 59. Suspension of accrual of interest.

1. From the declaration opening the insolvency proceedings, accrual of legal or contractually–agreed interest shall be suspended, except those on claims with a security *in rem*, that may be demanded up to the extent of their respective security. The salary claims that are recognised shall accrue interest pursuant to the legal interest on money set in the relevant Budget Act.[95] Claims arising from interest shall be considered as subordinate ones for the purposes foreseen in Article 92.3 of this Act.

2. The aforesaid notwithstanding, when the insolvency reaches a solution of composition that does not involve discharge of debts, the total or partial collection of the interest whose accrual has been suspended, calculated at the legal rate or contractual one if lower, may be agreed. In the event of winding–up, if a remainder is left after payment of all the insolvency claims, the interest aforesaid shall be paid calculated at the agreed rate.

Article 59 bis. Suspension of withholding right.[96]

1. Once the insolvency has been declared, exercise of the right to withhold assets and rights integrated in the estate shall be suspended.

2. If, at the time of concluding the insolvency, those assets or rights have not been disposed of, they must immediately be restored to the holder of the withholding right whose credit has not been fully settled.

3. That suspension shall not affect withholdings imposed by the administrative, tax, labour and social security laws.

Article 60. Interruption of prescription.[97]

1. From the declaration opening the insolvency proceedings until he conclusion thereof, expiry of the actions against the debtor for claims prior to the declaration shall be interrupted.

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93 Article 146 of this Act.

94 Act 38/2011, dated 10th October, on reform of Act 22/2003, dated 9th July, on Insolvency

95 Of 4 per cent until 31st December 2009 (Act 2/2008, dated 23rd December).

96 Act 38/2011, dated 10th October, on reform of Act 22/2003, dated 9th July, on Insolvency
A new Article 59 bis is hereby added

97 Act 38/2011, dated 10th October, on reform of Act 22/2003, dated 9th July, on Insolvency
In Article 60, Paragraphs 2 and 3 are hereby renumbered as 3 and 4, and a new Paragraph 2 is hereby added

2. Interruption of the expiry shall not harm the several debtors, nor the guarantors and issuers of bank guarantees.

3. From the declaration opening the insolvency proceedings until conclusion thereof, expiry of actions against shareholders or partners and against managers, liquidators and auditors of the debtor legal person shall be interrupted.

Prescription of actions whose action is suspended by virtue of the provisions set forth in this Act shall also be interrupted.

4. In the event foreseen in the preceding Paragraphs, calculation of the term for expiry shall commence again, if appropriate, at the time of conclusion of the insolvency proceedings

CHAPTER III

On the effects on contracts

Article 61. Permanence of contracts with reciprocal obligations.

1. In contracts entered into by the debtor, when at the moment of declaring the insolvency proceedings open, one of the parties had entirely fulfilled his obligations while full or partial fulfilment of the reciprocal ones by the other side is pending, the debtor's credit or debt, shall be included, as appropriate, in the aggregate assets or liabilities of the insolvency proceedings.

2. The declaration opening the insolvency proceedings, alone, shall not affect the validity of contracts with reciprocal obligations pending fulfilment, both by the insolvent debtor or the other party. The services the insolvent debtor is due to provide shall be charged to the estate.

Notwithstanding what is set forth in the preceding Paragraph, the insolvency administration, in the case of suspension, or the insolvent debtor in the case of intervention, may request rescission of the contract if they deem it convenient to the interests of the insolvency proceedings. The Court Clerk shall summon the insolvent debtor, the insolvency administration and the other party to the contract to a hearing before the Court and, if an agreement is reached with regard to rescission and its effects, shall hand down an order declaring the contract rescinded pursuant to the provisions agreed. Otherwise, the dispute shall be substantiated as an insolvency procedural plea and the Court shall decide on the termination, ordering, when appropriate, the appropriate restitutions and set-off that must be paid from the estate. In the case of termination of financial lease agreements, and should an agreement not be reached by the parties, an independent expert appraisal of the assets assigned shall accompany the procedural plea claim, that the Court may take into account to set the compensation.[98]

3. Clauses that establish the power to rescind or terminate the contract due to the sole cause of a declaration opening insolvency proceedings of either of the parties shall be deemed non–existent.

Article 62. Termination due to infringement.

1. The declaration opening the insolvency proceedings shall not affect the power to terminate contracts referred to in Paragraph 2 of the preceding Article due to subsequent breach by any of the parties. If these are successive tract contracts, the power to terminate may also be exercised when the infringement has been prior to insolvency being declared open.

2. The termination action shall be exercised before the insolvency Court and be substantiated as an insolvency procedural plea.

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[98] Act 38/2011, dated 10th October, on reform of Act 22/2003, dated 9th July, on Insolvency

3. Although there may be a cause for termination, the Court, considering the interests of the insolvency proceedings, may resolve fulfilment of the contract, the services due or that should be performed by the insolvent debtor being drawn from the estate.

4. Once termination of the contract is resolved, all the obligations pending maturity shall be extinguished. With regard to those that have already matured, the insolvency proceedings shall include the credit due to the creditor that has fulfilled his contractual obligations, if the breach by the insolvent debtor was prior to the insolvency proceedings being declared open. If subsequent, the credit of the party that has fulfilled shall be settled from the estate. In all cases, the credit shall include the appropriate indemnity for damages and losses.

Article 63. Special cases.

1. What is established in the preceding Articles shall not affect exercise of the unilateral power to denounce the contract that is appropriate pursuant to the law.

2. Nor shall it affect application of the laws that provide or specifically allow extinction of the contract to be agreed in cases of insolvency situations or of administrative winding–up of any of the parties.

Article 64. Work contracts.

1. Proceedings for substantial amendment of the collective working conditions and suspension or extinction of the employment relations, once the insolvency proceedings are declared open, shall be dealt by the insolvency Court pursuant to the rules established in this Article

If redundancy proceedings are underway on the date of declaring the insolvency, the labour authorities shall submit the proceedings up to that date to the insolvency Court. Within three days following receipt of the proceedings, the Court Clerk shall summon the parties legitimated foreseen in the following Section to appear in order to state and justify, if appropriate, the appropriateness of continuing with the collective redundancy proceedings, pursuant to the provisions foreseen in this Article. The actions performed in the preceding proceedings up to the date of the declaration of insolvency shall remain valid in the proceedings processed before the Court.

If, on the date of declaration of insolvency, a resolution has already been handed down to authorise or admit the petition, it shall be the remit of the insolvency administration to enforce the resolution. In any event, the labour authorities shall be notified of the declaration of insolvency to the appropriate ends.[99]

2. The insolvency administrators, the debtor, or the employees of the insolvent business through their legal representatives, may petition the insolvency Court the substantial amendment of the working conditions and collective extinction or suspension of employment contracts when the insolvent debtor is an employer. In the event of there being no legal representatives of the workers, they may confer their representation in the procedural formalities to a committee appointed as set forth in Article 41.4 of the Workers' Statute. When the term of five days foreseen to exercise this right has elapsed without the workers having appointed representatives, the Court may order intervention by a committee with a maximum of three members, formed by the most representative Trade Unions and those representing the sector to which the business belongs.[100]

3. A request for adoption of the measures foreseen in the preceding Paragraph may only be brought before the insolvency Court once the insolvency administrators have issued the report referred to in Chapter I of Title IV of this Act, except if it is considered that the delay in applying the intended collective measures may severely compromise the future feasibility of the business or maintenance of employment, or cause severe detriment to the employees, in which case, providing evidence of those circumstances, an application may be made to the Court at any moment of the proceedings following the declaration opening the insolvency proceedings.[101]

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99 Act 38/2011, dated 10th October, on reform of Act 22/2003, dated 9th July, on Insolvency

100 Act 38/2011, dated 10th October, on reform of Act 22/2003, dated 9th July, on Insolvency

101 Paragraph drafted pursuant to Royal Decree–Law 3/2009, dated 27th March.

4. The request must explain and justify, if appropriate, the causes giving rise to the intended collective measures, and the objectives proposed to achieve these to assure the future feasibility of the business and maintenance of employment, when appropriate, attaching the necessary documents for their accreditation.

The insolvency administration may request collaboration by the insolvent debtor, or assistance by the Court, that they may deem necessary to check the above.[102]

5. Once the petition is received, the Court shall summon the representatives of the employees and the insolvency administration for a consultation period, the duration of which shall not exceed thirty calendar days, or fifteen, also calendar days, in the case of businesses that have less than fifty employees

In the event of intervention of the powers of administration and disposal of the debtor, the Court may authorise participation by the insolvent debtor in the consultation round.

The representatives of the workers or the insolvency administrators may petition to the Court for participation in the consultation round by other natural or legal persons who *prima facie* may constitute a corporate unit with the insolvent debtor. To these ends, they may petition for assistance from the Court as deemed necessary to check such. Likewise, in the case of a corporate unit, and in order to evaluate the economic reality of the business aggregate, the consolidated economic documentation or that concerning other businesses may be demanded.

If the measure affects businesses with more than fifty employees, the petition shall include a plan considering the effect of the labour measures proposed on the future feasibility of the business and of maintenance of employment.

In cases in which the petition has been formulated by the businessperson or by the insolvency administration, the notice to the legal representatives of the employees of commencement of the consultation period shall include a copy of the petition foreseen in Section 4 of this Article and the attached documents, in the event.

The Court, at the instance of the insolvency administrators or the representatives of the workers, may resolve to substitute the consultation period by the mediation or arbitration procedure applicable in the scope of the business, which shall be carried out within the maximum term set for that period.[103]

6. During the consultation period, the representatives of the workers and the insolvency administration shall negotiate in good faith to reach an agreement.

The agreement shall require the approval of the majority of the members of the company committee or committees, of the staff delegates, of the workers' commission, when appropriate, or the Trade Union representatives, if any, as long as they represent the majority thereof.

The agreement signed by the insolvency administrators and the representatives of the workers may be accompanied by the petition, in which case it shall not be necessary to commence a consultation period.

The agreement shall identify the workers affected and set the compensations, which must comply with the provisions established in the labour legislation, except if, weighing the interests affected by the insolvency, higher ones are specifically agreed.

On concluding the term stated, or at the time an agreement is reached, the insolvency administrators and the representatives of the employees shall inform the insolvency Court of the result of the consultation period.

On receipt of that notice, the insolvency Court shall obtain a report from the Labour Authorities on the measures proposed or the agreement reached, which must be issued within the term of fifteen days, and these may hear the insolvency administration and the representatives of the employees before issuing it.

When the insolvency Court has received the report, or the term for it to be issued has elapsed, the proceedings shall continue their course. Notwithstanding the report being issued outside the term, it may be taken into account by the insolvency Court in handing down the relevant order.

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102 Act 38/2011, dated 10th October, on reform of Act 22/2003, dated 9th July, on Insolvency

103 Act 38/2011, dated 10th October, on reform of Act 22/2003, dated 9th July, on Insolvency

Once the report is received by the insolvency Court, or if the term for its issue has elapsed, the course of the proceedings shall continue. Nevertheless, if the report is issued after the term it may be taken into account by the insolvency Court when issuing the relevant ruling.[104]

7. Once the measures ordered in the preceding Section have been complied with, the Court shall issue its finding within a maximum term of five days, by order, on the measures proposed, accepting the agreement reached, if one exists, except if in its ruling, the Court appreciates the existence of fraud, misrepresentation, coercion or abuse of law. In that case, as well as in the event of an agreement not being reached, the Court shall decide whatever may be appropriate pursuant to Labour Law.

If no agreement has been reached, the insolvency Court shall grant a hearing to those who have intervened during the consultation period, to which end the Court Clerk shall summon them to a hearing at which they may formulate allegations and produce documentary evidence. The Court may substitute that appearance for a written procedure of allegations lasting three days.

If suspension or collective extinction of the employment contracts is resolved, the order shall take the same effect as the administrative resolution by the Labour Authorities handed down in redundancy proceedings, for the purposes of worker access to the legal situation of unemployment.[105]

8. The insolvency administration, the insolvent debtor, the workers through their representatives, and the Salary Guarantee Fund (hereinafter FOGASA), may file a supplication appeal against the order referred to in the preceding Section, as well as the rest of the appeals foreseen under Royal Legislative Decree 2/1995, dated 7th April, that approves the consolidated text of the Labour Procedure Act, which shall be processed and resolved before the jurisdictional bodies of the social order, without any of them having suspension effects on the insolvency proceedings, nor on the insolvency procedural pleas.

Actions the employees or the FOGASA may file against the order in matters related strictly to the individual legal relation, shall be substantiated by the insolvency procedural plea procedure for labour matters. The term to file the insolvency procedural plea suit is one month from when the worker was aware, or may have become aware of the order by the insolvency Court. The judgement handed down is subject to a supplication appeal.[106]

9. In the event of a substantial collective amendment of those foreseen under Article 41 of the Statute of Workers being resolved, the right to terminate the contract with compensation that is recognised for such a case under that legal regulation shall be suspended during the insolvency proceedings and with a maximum limit of one year from the Court order authorising that amendment being handed down.

The suspension foreseen in the preceding Paragraph shall also be applicable when a collective transfer is resolved that involves geographic mobility, as long as the new work centre is in the same province as the original work centre and less than 60 kilometres from it, except if it is accredited that the minimum time for return travel exceeds twenty five per cent of the duration of the daily working day.

Both in this case as well as in the other cases of substantial amendment of the working conditions, the unavailability the action of rescission arising from collective modification of the working conditions may not be prolonged for a period exceeding twelve months, from the date on which the Court order authorising that modification is handed down.

10. The individual termination actions filed under the scope of Article 50 of the Workers' Statute arising from the financial situation or insolvency of the insolvent debtor party shall be considered collective extinctions, from the time of resolving to commence the proceedings foreseen under this Article to terminate the contracts. When commencement of the proceedings foreseen in this Article has been ordered, all the individual proceedings conducted before the insolvent debtor following the petition for insolvency pending final resolution shall be suspended until the order putting an end to the collective extinction proceedings has become final. The resolution resolving the suspension shall be notified to the insolvency administration for the purposes of recognition as a

104 Act 38/2011, dated 10th October, on reform of Act 22/2003, dated 9th July, on Insolvency
105 Act 38/2011, dated 10th October, on reform of Act 22/2003, dated 9th July, on Insolvency
106 Act 38/2011, dated 10th October, on reform of Act 22/2003, dated 9th July, on Insolvency

contingency the credit that may arise from the ruling duly handed down, once the suspension has been raised. Notification shall also be served on the Courts before which the individual proceedings are being processed. The order resolving the collective extinction shall acquire *res iudicata* effects concerning the individual proceedings suspended.[107]

11. In everything not foreseen in this Article, the Labour Laws shall apply and, in particular, the representatives of the employees shall preserve all the capacity attributed thereby.[108]

Article 65. Top management staff contracts.

1. During the insolvency proceedings, the insolvency administration, of their own initiative, or at the request of the debtor, may extinguish or suspend its contracts with the top management staff. The decision by the insolvency administration may be contested before the insolvency Court by means of an insolvency procedural plea on labour matters. The judgement handed down shall be subject to supplication appeal.[109]

2. In the event of suspension of the contract, the contract may be extinguished if the executive so wishes, with one month advance notice, conserving the right to compensation under the provisions of the following Paragraph.

3. In the case of extinction of the employment contract, the insolvency Court may moderate the compensation to which the executive is entitled, in which case the terms agreed in the contract shall be without effect, with the limit of the compensation established in the Labour Laws for collective dismissal.[110]

4. The insolvency administrators may petition the Court for payment of this claim to be postponed until the classification ruling is final.[111]

Article 66. Collective bargaining agreements.

Amendment of the conditions established in the agreements regulated under Title III of the Statute of Workers[112] may only affect matters in which this is admissible pursuant to the Labour Laws and, in all cases, shall require the approval of the legal representatives of the employees.

Article 67. Contracts with the Public Administrations.

1. The effects of declaration opening the insolvency proceedings on administrative contracts entered into by the debtor with the Public Administrations shall be governed by the provisions established in their special legislation.

2. The effects of the declaration opening the insolvency proceedings on private contracts between the debtor and Public Administrations shall be governed with regard to their effects and extinction by the provisions established in this Act.

Article 68. Rehabilitation of claims.

1. The insolvency administrators, at their own initiative or at the request of the insolvent debtor, may reinstate the loan contracts and others of credit in his favour whose early maturity due to failure to honour the repayments or pay

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107 Act 38/2011, dated 10th October, on reform of Act 22/2003, dated 9th July, on Insolvency

108 See Articles 44.4, 148.4, 149.1.2. and 197.1 of this Act.

109 Act 38/2011, dated 10th October, on reform of Act 22/2003, dated 9th July, on Insolvency
Paragraph 1 of Article 65 is hereby amended

110 See Article 51.8 of the Statute of Workers.

111 By Royal Decree 1382/1985, dated 1st August (Official State Gazette number 192, dated 12th August; correction of errata in the Official State Gazette, number 211, dated 3rd September), regulation of the employment relation of a special nature of top management personnel, Article 15.1 of which has been repealed by Act 11/1994, dated 19th May (Official State Gazette number 122, dated 23rd May).

112 Articles 82 to 92 of the Statute of Workers.

interest accrued has taken place within the three months preceding the declaration opening the insolvency proceedings, as long as, prior to conclusion of the term to present lodging of claims, the creditor is served notice of that rehabilitation, paying or depositing all the sums owed at the moment of the rehabilitation and undertaking future payments by the estate.

2. Rehabilitation shall not be appropriate when the creditor opposes it and, prior to the insolvency proceedings commencing, has commenced exercise of actions to claim payment against the debtor himself, against any joint and several co–debtor or against any guarantor.

Article 69. Rehabilitation of contracts to acquire assets by instalment.

1. The insolvency administrators, at their own initiative or at the request of the insolvent debtor, may rehabilitate the contracts to acquire moveable or immoveable goods for a consideration or via payment in instalments whose rescission has occurred in the three months preceding the declaration opening the insolvency proceedings, as long as, prior to conclusion of the term to lodge claims, they inform the conveyor of the rehabilitation, pay or deposit all the sums owed at the moment of the rehabilitation and undertake future payments by the estate. The breach of a contract that has been reinstated shall grant the creditor the right to termination thereof without the possibility of subsequent rehabilitation.

2. The conveyor may oppose rehabilitation when, prior to insolvency proceedings being declared open, either he has commenced exercise of the actions to terminate the contract, or to recover the asset conveyed or when he has recovered material possession of the asset by legitimate means, provided he has refunded or deposited the appropriate part of the consideration received, or if he has performed acts of disposal thereof favour of a third party, being obliged to provide sufficient evidence of this if this is not already recorded in the insolvency proceedings.

Article 70. Stoppage of evictions in urban leases.

The insolvency administrators may stop eviction actions exercised against the debtor prior to insolvency proceedings being declared open, as well as rehabilitating the life of the contract up to the very moment of effectively evicting the debtor. In those cases, all the rents and items pending must be paid by the estate, as well as the possible procedural costs arising up to that moment.

The limitation established in the last Paragraph of Article 22 of the Civil Judicial Procedure Act shall not be applicable in these cases.

CHAPTER IV

On the effects on detrimental acts to the aggregate assets

Article 71. Reintegration actions.[113]

1. Once the insolvency proceedings are declared open, acts that are detrimental to the aggregate assets performed by the debtor within the two years prior to the date of declaration may be revoked, even though a fraudulent intention was not present.

2. The detriment to assets is presumed, without evidence to the contrary being admissible, when these are acts of disposal without a consideration, except for usual liberalities, and payments or other acts of extinction of obligations whose maturity was later than the declaration of opening the insolvency proceedings, except if these obligations had an *in rem* guarantee, in which case the provisions foreseen in the following Section shall be applied.

[113] Act 38/2011, dated 10th October, on reform of Act 22/2003, dated 9th July, on Insolvency

3. In the absence of evidence to the contrary, detriment to assets is presumed in the case of the following acts:

1. Those of transfer for a valuable consideration performed in favour of any person especially related to the insolvent debtor;

2. Constitution of an *in rem* guarantee in favour of pre–existing obligations, or new ones contracted to substitute the latter;

3. Payments or other acts of extinction of obligations that have an *in rem* guarantee, the maturity of which is subsequent to the declaration of insolvency.

4. In the case of acts not included in the three cases foreseen in the preceding Section, the detriment to assets must be proven by those exercising the action of revocation.

5. Under no circumstance may the following be subject to revocation:

1. The ordinary acts of the professional or business activity of the debtor performed under normal conditions;

2. The acts included within the scope of the special laws that regulate the payment and clearing and settlement systems for securities and derivative instruments;

3. Guarantees constituted in favour of claims under Public Law and in favour of the FOGASA under the recovery agreements or compositions foreseen in its specific regulations.

6. Refinancing agreements secured by the debtor may not be subject to revocation, nor may the transactions, acts and payments, whatever the means in which they may have been performed, and the guarantees set up to implement such agreements, when by virtue thereof, at least, a significant extension of the available credit or amendment of his obligations was attained, either by extending their term of maturity, or by establishing other obligations in substitution of the former ones, as long as the new obligations respond to a feasibility plan allowing continuity of the professional or business activity in the short and medium term and that, prior to the declaration of insolvency:

1. The resolution has been signed by creditors whose credits represent at least three fifths of the liabilities of the debtor on the date of adoption of the refinancing agreement. In the case of group agreements, the percentage stated shall be calculated on an individual basis, in relation to each and every one of the companies affected, as well as on a consolidated basis, in relation to the claims of each group or subgroup affected, and in both cases this shall exclude calculation of the liabilities of loans and claims granted by companies in the group.

2. A favourable report on the agreement has been issued by an independent expert appointed by Business Registrar of the domicile of the debtor and at his discretion and pursuant to the provisions contained in the Business Register Regulations. If the refinancing agreement affects several companies in the same group, a sole report may be prepared by a single expert appointed by the registrar of the domicile of the parent company, if it is affected by the agreement or, failing that, the one of the domicile of any of the companies in the group. The report by the expert shall contain a technical opinion on the sufficiency of the information provided by the debtor, concerning the reasonable and realisable nature of the plan, under the conditions defined in Paragraph One and regarding the proportional nature of the guarantees under normal market conditions at the time of signing the agreement. When the report contains reservations or limitations of any kind, their importance must be specifically evaluated by the parties signing the agreement.

3. The agreement has been formalised in a public deed to which all the documents justifying the content thereof and fulfilment of the preceding requisites have been attached.

7. Exercise of the actions of revocation shall not prevent other actions to contest acts by the debtor that are appropriate pursuant to the Law, which may be exercised before the insolvency Court, pursuant to the rules of legitimacy and procedure contained in the following Article.

Article 72. Legitimacy and procedure[114]

1. Active legitimacy to exercise the revocatory actions and others of contestation shall be the remit of the insolvency administrators. Creditors who have applied in writing to exercise any action, stating the specific action they aim to contest or revoke, and the grounds to do so, shall be entitled to exercise this if the insolvency administrators do not do so within the two months following their demand for them to do so. In that case, with regard to the expenses and costs of the subsidiary legitimated parties, the rule provided in Paragraph 4 of Article 54 shall be applied.

2. Only the insolvency administration shall have legitimacy to exercise the action of revocation and others to contest that may be raised against refinancing agreements under Article 71.6. In order to exercise these actions, the subsidiary legitimation foreseen in the preceding Section shall not be applicable.

3. Actions at law for revocation must be directed against the debtor and against those who are a party to the act contested. If the asset it is intended to reinstate has been conveyed to a third party, the action must also be directed against that party when the claimant aims to detract from the presumption of good faith of the party acquiring or to attack the guaranteed enjoyment or protection arising from the register publicity.

4. Revocatory actions and others to contest shall be dealt as an insolvency procedural plea.[115] The insolvency administrators shall be notified of applications lodged by the legitimated subsidiary parties.

Article 73. Effects of the revocation.

1. The ruling admitting the appropriateness of the action shall declare the ineffectiveness of the act contested and shall condemn the parties to return the service or goods which were the object thereof, together with their fruits and interests.

2. If the assets and rights removed from the debtor's estate cannot be returned to the aggregate assets because they belong to a third party who was not sued or who, according to the ruling, has proceeded in good faith, or who enjoys unclaimability or register protection, the party that has been party to the act revoked shall be ordered to deliver the value it had when it left the insolvent debtor's estate, plus the legal interest. If the ruling appreciates bad faith among those who entered into the contract with the insolvent debtor, those parties shall be condemned to compensate the whole amount of the damages and losses caused to the aggregate assets.

3. The right to the good or service arising in favour of any of the defendants as a consequence of the revocation shall be considered a claim against the estate, that must be paid simultaneous to integration of the assets and rights subject to the act revoked, except if the ruling were to note bad faith by the creditor, in which case it shall be considered a subordinated insolvency claim.

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[114] Act 38/2011, dated 10th October, on reform of Act 22/2003, dated 9th July, on Insolvency
A new Paragraph 2 is hereby added to Article 72 and the present Paragraphs 2 and 3 are renumbered as Paragraphs 3 and 4

[115] Articles 192 to 196 of this Act.

TITLE IV

On the report by the insolvency administrators and determination of the insolvent debtor's assets and liabilities

CHAPTER ONE

On submission of the insolvency administrators' report[116]

Article 74. Term for submission.[117]

1. The term to submit the insolvency administrators' report shall be two months, from the date on which acceptance of two of these takes place.

2. The term for submission may be extended by the Court:

1. In the event of exceptional circumstances concurring, at the request of the insolvency administration, submitted prior to expiry of the legal deadline, for a period not exceeding a further two months. Notwithstanding this, the insolvency administrator who has been appointed in at least three ongoing insolvency proceedings may not petition for an extension to issue his report, except if he justifies causes beyond the control of his professional practice.

2. If the term to notify claims has not concluded once two months have elapsed, up to five days following conclusion of the term may be granted at the request of the insolvency administrators.

3. When the number of creditors does not exceed two thousand, the insolvency administrators may request an extension for a time not exceeding a further four months.

4. In addition to the liability and the cause of separation they may have incurred pursuant to Articles 36 and 37, insolvency administrators who do not submit the report within the term shall lose the right to the remuneration set by the insolvency Court and must return the sums received to the estate. A remedy of appeal may be lodged against the judicial resolution to impose that penalty.

Article 75. Structure of the report.[118]

1. The insolvency administrators' report shall contain:

1. Analysis of the data and circumstances of the debtor stated in the memorandum referred to in Subparagraph 2 of Paragraph 2 of Article 6.

2. Statement of the debtor's accounts and, when appropriate, judgement of the accounts, financial statements, reports and memorandum referred to in Paragraph 3 of Article 6.

   If the debtor has not submitted the relevant annual accounts for the business year prior to declaration opening the insolvency proceedings, these shall be drawn up by the insolvency administrators, with the data they may obtain from the books and documents of the debtor, from the information he provides and from any other they may obtain within a term not exceeding fifteen days.

3. Memorandum of the main decisions and actions by the insolvency administrators.

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116 See Article 64.3 of this Act.

117 Act 38/2011, dated 10th October, on reform of Act 22/2003, dated 9th July, on Insolvency
Paragraph 2 is hereby amended, a new Paragraph 3 is hereby added to Article 74 and Paragraph 3 is hereby renumbered as 4

118 Act 38/2011, dated 10th October, on reform of Act 22/2003, dated 9th July, on Insolvency
Section 2 of Article 75 is hereby amended

2. The following documents shall be attached to the report:

1. Inventory of the aggregate assets;

2. List of creditors;

3. When appropriate, the document evaluating of the proposals of composition;

4. When appropriate, the winding up plan."

3. The report shall conclude with the reasoned explanation by the insolvency administrators of the financial situation of the debtor and all data and circumstances that may be relevant for the subsequent processing of the insolvency proceedings.

CHAPTER II

On determination of the aggregate assets

SECTION 1. ON COMPOSITION OF THE AGGREGATE ASSETS AND FORMING SECTION THREE

Article 76. Principle of universality.

1. The aggregate assets of the insolvency proceedings are the properties, goods and rights forming part of the debtor's estate on the date of declaring the insolvency proceedings open and those reintegrated to thereto or acquired until conclusion of the proceedings.

2. What is set forth in the preceding Paragraph does not include the properties, goods and rights that, even if of an economic nature, may not be legally seized.[119]

3. The holders of claims with privileges over ships and aircraft may separate those assets from the aggregate insolvency assets by exercising the actions to which they are entitled in their specific legislation, through the relevant procedure. If a remainder from the enforcement were to be left in favour of the insolvent debtor, it shall be integrated into the aggregate assets.

If separate enforcement has not been commenced within the term of one year from the date of the insolvency being declared, it may no longer be performed and the classification and grading of the claims shall be governed pursuant to the provisions contained in this Act.[120]

Article 77. Marital property.

1. In the case of married persons, the aggregate assets shall include the properties, goods and rights which pertain only and exclusively to the insolvent debtor.

2. If the matrimonial property regime is that of community of acquisitions or any other kind of joint matrimonial property regime, the aggregate assets shall also include the joint or common assets when these are liable to the obligations of the insolvent debtor. In this case, the spouse of the insolvent debtor may petition for dissolution of the marital partnership or property regime and the Court shall resolve the liquidation thereof or division of the assets, which shall be carried out in co–ordination with what arises from the insolvency composition or liquidation.[121]

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[119] See Articles 605 and following of the Civil Judicial Procedure Act.

[120] Act 38/2011, dated 10th October, on reform of Act 22/2003, dated 9th July, on Insolvency
A new Paragraph is hereby added to Article 76.3

[121] See Articles 1,344 to 1,410 of the Civil Code and 21.1.7 of this Act.

Article 78. Presumption of donations and pact on marital cohabitation. Habitual marital abode.

1. Once the insolvency proceedings of a person married under separate matrimonial property regime are declared open, it shall be assumed for the benefit of the aggregate assets, except if proven otherwise, that the debtor donated to the spouse the consideration paid to acquire assets for a valuable consideration when that consideration originated from the insolvent debtor's estate. Should it not be possible to prove the origin of the consideration, it shall be assumed, in the absence of evidence to the contrary, that half thereof was donated by the insolvent debtor to the spouse, as long as acquisition of the assets was performed in the year prior to the declaration opening the insolvency proceedings.[122]

2. The presumptions referred to in this Article shall not be applicable when the spouses are separated judicially or *de facto*.

3. The assets acquired by both spouses with a survival pact shall be considered divisible assets if insolvency proceedings are opened against either of them, with the half belonging to the insolvent debtor becoming part of the aggregate assets.

The spouse of the insolvent debtor shall be entitled to acquire the entirety of each of the assets by paying half their value to the aggregate assets. If it were the usual place of abode of the married couple, the value shall be the acquisition price updated according to the specific index of consumer prices, without the price exceeding its market value. In the other cases, it shall be that determined by common agreement between the spouse of the insolvent debtor and the insolvency administrators or, failing that, that of their market value determined by the Court, having heard the parties and after a valuer's report if deemed appropriate.

4. When the usual home of the married couple has been acquired under community of acquisitions, or belongs to them as joint matrimonial property, and the dissolution of the community of acquisitions or division of joint matrimonial property ensues, the spouse of the insolvent debtor shall be entitled to it being included preferentially in his part, up to the value of such part, or by paying the difference.[123]

Article 79. Joint accounts.

1. The credit balances of accounts in which the insolvent debtor is recorded as a joint holder shall be integrated in the aggregate assets, in the absence of evidence to the contrary, considered sufficient by the insolvency administrators.

2. An insolvency procedural plea may be raised against the decision adopted.[124]

Article 80. Separation.

1. The assets belonging to others that are in the possession of the insolvent debtor and in respect of which he has does have rights of use, security or retention, shall be delivered by the insolvency administrators to their legitimate owners, at their request.

2. An insolvency procedural plea may be lodged against refusal by the insolvency administrators to do so.

Article 81. Impossibility of separation.

1. If the assets and rights liable to separation have been disposed of to a third party by the debtor prior to the insolvency being declared open and these cannot be reclaimed, the rightholder damaged may opt between demanding vesting of the right to receive consideration if the acquirer has not yet settled, or to inform the insolvency administrators, for its recognition in the insolvency proceedings of the relevant claim for the value the properties, goods and rights had at the moment of disposal, or at any later one, as chosen by the petitioner, plus the legal interest.

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122 See Articles 1,435 to 1,444 of the Civil Code.
123 See Articles 1,392 and following of the Civil Code.
124 Articles 192 to 196 of this Act.

2. The claim arising in favour of the rightholder damaged shall be considered an ordinary insolvency claim. The effects of failure to duly lodge the claim shall arise when one month has elapsed from acceptance by the insolvency administrators, or from the Court order, recognising the rights of the damaged rightholder, becoming final.

SECTION 2. ON THE INVENTORY OF THE AGGREGATE ASSETS

Article 82. Drawing up the inventory.

1. The insolvency administrators shall draw up an inventory as soon as possible, that shall contain the list and valuation of the properties, goods and rights of the debtor included in the aggregate assets on the closing date, which shall be the day prior to that of issue of their report. In the case of insolvency of a married person with community of acquisitions regime, or any other joint property regime, the inventory shall include the list and valuation of the private assets and rights of the insolvent debtor, as well as those of the marital or common properties, goods and rights, specifying their nature.

2. The nature, characteristics, location and, when appropriate, register identifying data, of each of the properties, goods and rights listed in the inventory shall be stated. The liens, encumbrances and charges affecting those properties, goods and rights shall also be listed, stating their nature and the identifying data.

3. The valuation of each one of the properties, goods and rights shall be performed according to their market value, taking into account the rights, encumbrances or charges of a perpetual, temporary or redeemable nature that directly affect them and that influence their value, as well as the *in rem* securities and encumbrances or seizures that guarantee or assure debts not included in the aggregate liabilities.

4. A list of all applications whose result may affect the inventory shall be added, and another including all actions in law that must be taken, in the opinion of the insolvency administrators, to reintegrate the aggregate assets. Both lists shall report on the feasibility, risks, costs and possibilities of financing the relevant judicial actions.[125]

5. The assets owned by others in the power of the insolvent debtor, and over which he has a right of use, shall not be included in the inventory, nor shall it be necessary to evaluate them, and only the right to use them by the insolvent debtor who is also the financial lessee shall be recorded.[126]

Article 83. Advice by independent experts.

1. If the insolvency administrators consider advice by independent experts necessary to estimate the value of goods and assets or the feasibility of the actions to which the preceding Article refers, they shall propose their appointment and the terms of the commission to the Court. No appeal whatsoever may be made against the decision by the Court.

2. The regime of incapacities, incompatibilities, prohibitions, rejection and liability established for insolvency administrators and their representatives shall apply.

3. The reports issued by the experts and the detail of the fees accrued, which shall be drawn from the remuneration of the insolvency administrators, shall be attached to the inventory.[127]

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125 See Articles 637 and following of the Civil Judicial Procedure Act.

126 Act 38/2011, dated 10th October, on reform of Act 22/2003, dated 9th July, on Insolvency
A Paragraph 5 is hereby added to Article 82

127 Paragraphs 2 and 3 drafted pursuant to Royal Decree–Law 3/2009, dated 27th March (Official State Gazette number 78, dated 31st March).

CHAPTER. III

On determination of the aggregate liabilities

SECTION 1. ON COMPOSITION OF THE AGGREGATE LIABILITIES[128]

Article 84. Insolvency claims and claims against the estate[129]

1. The aggregate liabilities are formed by claims against the common debtor that are not considered claims against the estate pursuant to this Act.

2. The following shall be considered claims against the estate:

1. Claims of salaries for the last thirty days of work prior to insolvency proceedings being declared open and in an amount that does not exceed double the minimum interprofessional salary;

2. The judicial costs and expenses caused by the petition and declaration opening the insolvency proceedings, the adoption preservation measures, the publication of the judicial resolutions foreseen in this Act and the attendance and representation of the insolvent debtor and of the insolvency administrators during all the insolvency proceedings and its procedural pleas, including the implementation of the composition or, if this were not so, until conclusion of the insolvency proceedings, with the exception of those caused by the appeals lodged against resolutions by the Court when these are fully or partially rejected with specific order to pay court costs."

3. Those court costs and expenses arising from assisting and representing the debtor, the insolvency administrators or creditors legitimated in lawsuits in the interest of the estate that are continued or commenced pursuant to the provisions contained in this Act, except as foreseen for cases of renunciation, withdrawal, transaction and separate defence of the debtor and, when appropriate, up to the quantity limits established therein;

4. Those of maintenance for the debtor and of persons with regard to whom he is legally required to provide this, pursuant to the provisions contained in this Act on their appropriateness and amount, as well as to the full extent set in the relevant judicial resolution prior to declaring the insolvency proceedings open, those of maintenance allowances due by the insolvent debtor ordered by a Court of First Instance in any of the proceedings referred to in Title I of Book IV of the Civil Judicial Procedure Act."

   Such claims accrued after the declaration of insolvency shall also have that status when their origin lies in a judicial provision handed down thereafter.

5. Those generated by the exercise of the professional or business activity of the debtor after the insolvency proceedings are declared open, including labour claims, which shall include compensations due in the event of dismissal or extinction of employment contracts, as well as the surcharges on the contributions payable for breach of obligations in labour health matters, until the Court resolves cessation of the professional or business activity, approves a composition or, if this were not so, declares the insolvency proceedings concluded.

   Claims for compensations arising from collective extinction of employment contracts ordered by the insolvency Court shall be understood to be notified and recognised by the actual resolution that approves them, whatever the time.

6. Those that, pursuant to this Act, arise from services provided by the insolvent debtor under reciprocal contracts and obligations pending fulfilment that remain in force after insolvency proceedings are declared open, and that

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128 Act 38/2011, dated 10th October, on reform of Act 22/2003, dated 9th July, on Insolvency
The heading of Paragraph 1 of chapter III of title IV is hereby amended

129 Act 38/2011, dated 10th October, on reform of Act 22/2003, dated 9th July, on Insolvency
Section 1 of Article 84, as well as the first Paragraph and Numbers 1, 2, 4, 5, 10 and 11 of Section 2 are hereby amended. Present Number 11 of Section 2 becomes Number 12 of the same Section 2 and three new Sections 3, 4 and 5 are also hereby added

derive from obligations to return and indemnify in cases of voluntary termination or due to breach by the insolvent debtor;

7. Those that derive from payment of claims with special preference, without realisation of goods or assets affected, or of rehabilitation of contracts or of stoppage of eviction, and in the other cases foreseen by this Act, for the sums due and those to accrue in the future borne by the insolvent debtor;

8. Those that correspond, in cases of insolvency revocations of acts performed by the debtor, due to refund of considerations received by him, except if the ruling were to appreciate bad faith by the claimholder;

9. Those arising from obligations validly contracted by the insolvency administrators during the proceedings, or with their authorisation or approval, by the insolvent debtor subject to intervention;

10. Those arising from obligations created by law, or from tortuous liability of the insolvent debtor after the declaration of insolvency and until its conclusion.

11. Fifty per cent of the claims that provide new cash flow revenue and that have been granted under the framework of a refinancing agreement, under the conditions foreseen in Article 71.6.

    In the case of winding up, the claims granted to the insolvent debtor under the framework of a composition pursuant to the provisions set forth in Article 100.5.

    This classification does not apply to the cash flow revenue obtained by the debtor himself, or by especially related persons through a stock capital increase operation, loans or acts with a similar purpose.

12.. Any other claims that this Act specifically grants such status.

3. Claims under Number 1 of the preceding Paragraph shall be paid forthwith. The remaining claims against the estate, whatever their nature and the state of the insolvency proceedings, shall be paid at their respective maturity dates. The insolvency administration may change this rule when it is considered convenient to the interests of the insolvency proceedings and as long as it is presumed that the estate is sufficient to settle all the claims against the estate. Such postponement shall not affect the claims of the workers, the maintenance allowance credits, nor tax and Social Security credits.

4. Actions related to classification or payment of claims against the estate shall be exercised before the insolvency Court through the formalities of an insolvency procedural plea, but judicial or administrative enforcement may not be initiated to bring them into effect until the composition is approved, the winding up commences or one year elapsed from the declaration of insolvency, without any of these acts having taken place. That stoppage shall not prevent accrual of the interest, surcharges and other obligations linked to failure to pay the credit at maturity.

5. When the dues are settled pursuant to their specific regulations, the FOGASA shall subrogate the workers in their claims with their same classification and pursuant to the provisions contained in Article 33 of the Workers' Statute.

SECTION 2. ON LODGING AND RECOGNITION OF CLAIMS

Article 85. Lodging of claims[130]

1. Within the term stated in Subparagraph 5 of Paragraph 1 of Article 21, the creditors to the insolvent debtor shall lodge with the insolvency administrators their claims.

2. The notice shall be made in writing, signed by the creditor, by any other party with an interest in the credit, or by whoever proves sufficient representation thereof, and this shall be addressed to the insolvency administration. The notice may be served at the domicile established for such purpose, which must be in the town where the Court has

[130] Act 38/2011, dated 10th October, on reform of Act 22/2003, dated 9th July, on Insolvency Paragraphs 2, 3 and 4 of Article 85 are hereby amended

its seat, or be sent to that domicile. The notice may also be served by electronic means. A sole postal and electronic address shall be provided for the purposes of notices and these must be made known to the Court by the insolvency administrator at the time of accepting office or, when appropriate, on accepting the second of the insolvency administrators appointed.

3. The notice shall state the name, address and other identifying particulars of the creditor, as well as those related to the credit, its concept, amount, dates of acquisition and maturity, characteristics and classification intended. If a special preference were to be invoked, the assets or rights affected and, when appropriate, the registry data shall also be stated. A postal or electronic address shall also be provided so the insolvency administration may serve all necessary or convenient notices, with those sent to the postal or electronic address provided taking full effect.

4. A copy shall be attached, in electronic format, in the event of having opted for that means of communication, of the title or documents concerning the credit. Except if the titles or documents are registered at a public registry, the insolvency administration may request the originals or authorised copies of the titles or documents produced, as well as any other justification that may be considered necessary to recognise the credit

5. In the case of simultaneous insolvency of several insolvent debtors, the creditor or party concerned may lodge the existence of the claims with the insolvency administrators of each one of the insolvency proceedings. The writ submitted in each insolvency proceedings shall state whether the lodging in the others has been made or shall be made, attaching, when appropriate, a copy of the writ or writs presented and of those that have been received.[131]

Article 86. Recognition of claims.[132]

1. The insolvency administrators shall determine whether to include in or exclude from the list of creditors the claims evidenced during the course of the proceedings. Such a decision shall be made with regard to each one of the claims, both those that have been specifically notified, as well as those discovered in the books and documents of the debtor or that are evidenced in the insolvency proceedings for any other reason.

All matters arising with regard to recognition of claims shall be dealt and resolved as an insolvency procedural plea.

2. The creditor list shall include the claims that have been recognised by arbitral award or judicial ruling, even though not final, those recorded in documents with executive force, those recognised in an administrative certification, those secured with an *in rem* guarantee entered at a public register and claims of employees whose existence and amount are recorded in the books and documents of the debtor, or that are evidenced in the insolvency proceedings for any other reason. The aforesaid notwithstanding, the insolvency administration may contest arbitration agreements or procedures in the event of fraud, by ordinary trial and within the term to issue their report, pursuant to the provisions established in Article 53.2, and the existence and validity of the claims contained in executive titles or secured *in rem*, as well as administrative acts through the channels allowed for that purpose in their specific legislation.

3. When no declaration or auto–liquidation has been filed that is required to determine a Public Law claim, or one held by the workers, this shall be performed by the insolvent debtor in the event of intervention or, when appropriate, by the insolvency administration when not performed by the insolvent debtor, or in the event of suspension of the powers of administration and disposal. In the event that, due to absence of data, it is not possible to determine their amount, this must be recognised as a contingent claim.

4. When the insolvent debtor is a person married under the community of acquisitions regime or any other kind of joint property regime, the insolvency administrators shall state, with regard to each one of the claims included on the list, whether they may only be cashed against the private property, or also against the common property.

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131 See Article 217.1 of this Act.

132 Act 38/2011, dated 10th October, on reform of Act 22/2003, dated 9th July, on Insolvency
Paragraph 2 is hereby amended and a new Paragraph 3 is hereby added to Article 86, the present Paragraph 3 of which becomes Paragraph 4

Article 87. Special cases of recognition.

1. Credits with a clause of denunciation shall be recognised as conditional and shall enjoy the relevant procedural rights with regard to their quantity and classification, while the clause is not fulfilled. Once it has been fulfilled, the actions and decisions for which the action, the adhesion, or vote of the conditional creditor may have been decisive may be cancelled. All other actions shall be maintained, notwithstanding the duty to return the sums collected by the conditional creditor to the estate, and the liability that that creditor may have incurred vis–à–vis the estate or the creditors.

2. Public Law claims of the Public Administrations and their public bodies appealed by administrative or jurisdictional means, even when their executive nature is injunctively suspended, shall have the provisions contained in the preceding Paragraph applied.

On the contrary, Public Law claims of the Public Administrations and their public bodies that arise from verification or inspection proceedings shall be recognised as contingent until the quantification thereof, as of when they shall have their relevant status according to their nature, without their subordination due to late lodging being possible. Likewise, if there is no administrative winding–up, sums defrauded from the Public Revenue and from the General Treasury of the Social Security until admission to consideration of the accusation or complaint shall be classified as contingent until recognition thereof by a court ruling.[133]

3. Claims subject to a suspensory condition and litigious ones shall be recognised in the insolvency proceedings as contingent claims, without an inherent amount and with the relevant rank, their holders being admitted as legitimated creditors in the trial without further limitations than suspension of the rights of adhesion, vote, and collection. In any case, confirmation of the contingent claim or its recognition in a final ruling, or one liable to provisional enforcement, shall grant holder thereof all the relevant insolvency rights with regard to the amount and rank thereof.

4. When the insolvency Court considers fulfilment of the termination condition or confirmation of the contingent claim probable, the Court may, at the request of the party, adopt the preservation measures of constitution of provisions against the estate, of provision of guarantees by the parties, and any other it may deem appropriate in each case.

5. Claims that may not be made effective against the insolvent debtor without prior excussion of the assets of the main debtor shall be recognised as contingent claims while the creditor does not fully justify to the administrator that the excussion has been completed, in which case recognition of the claim in the insolvency proceedings for the subsistent balance shall be confirmed.

6. Claims for which the creditor has a third party guarantee shall be recognised at their amount without any limitation whatsoever and notwithstanding substitution of the creditor in the event of payment by the guarantor. Whenever subrogation by payment takes place, the least burdensome option for the insolvency proceedings shall be chosen from those to which the creditor or guarantor is entitled.[134]

7. On petition by the creditor who has collected part of his credit from a guarantor, backer or joint and several debtor of the insolvent debtor, both the rest of his unpaid claim as well as the total amount that, by virtue of the reimbursement or part *in solidum*, is due to the party that has made the partial payment may be included in favour thereof in the creditor list, even though the latter may not have lodged his claim or has pardoned the debt.

8. If the contingency, condition or special case recorded under this Article has been fulfilled prior to presenting the definitive texts, the insolvency administration shall proceed, of its own motion, or at the request of the party concerned, to include the appropriate amendments pursuant to the preceding Paragraphs.[135]

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133 Paragraph drafted pursuant to Royal Decree–Law 3/2009, dated 27th March (Official State Gazette number 78, dated 31st March), bear in mind its Transitional Provision 5.

134 Paragraph drafted pursuant to Royal Decree–Law 3/2009, dated 27th March (Official State Gazette number 78, dated 31st March), bear in mind its Transitional Provision 5.

135 Act 38/2011, dated 10th October, on reform of Act 22/2003, dated 9th July, on Insolvency
A new Paragraph 8 is hereby added to Article 87

Article 88. Monetary calculation of the claims.

1. For the sole purpose of quantification of the liabilities, all claims shall be calculated in monetary terms and stated in the currency of legal tender, without this amounting to their conversion or modification.

2. Claims denominated in other currencies shall be calculated in that of the currency of legal tender at the official exchange rate on the date of the insolvency being declared open.

3. Claims whose object are non monetary considerations or monetary considerations determined by reference to an asset other than money shall be calculated at the value of the considerations or the asset on the date of the insolvency being declared open.

4. Claims with future monetary considerations as their object shall be calculated at their value on the date of insolvency being declared open, this being updated pursuant to the legal interest rate in force act that moment.

SECTION 3. ON RANKING OF CLAIMS

Article 89. Classes of claims.

1. The claims included on the list of creditors shall be classified, for the purposes of the insolvency proceedings, as preferential, ordinary, and subordinated.

2. Preferential claims, in turn, shall be classified as claims with special preference, if they are secured on certain properties, goods or rights, and general preference claims, if they affect all the assets of the debtor. No privilege or preference shall be allowed in the insolvency proceedings that is not recognised under this Act.

3. Claims that are not classified under this Act as preferential or subordinated shall be understood to be classified as ordinary claims.

Article 90. Claims with special preference.

1. Claims with special preference include:[136]

1. Claims secured with a voluntary or legal mortgage, either on moveable or immoveable assets, or lien on mortgaged or pledged assets.

2. Claims secured with an antichresis, on the yield of the immoveable assets encumbered;

3. Claims for manufacturing purposes on the goods manufactures, including those of employees on objects prepared by them while they are the property of or are in the possession of the insolvent debtor.;

4. Claims for financial leasing quotas or price instalments of moveable or immoveable assets, in favour of the lessors or sellers and, when appropriate, the financers thereof, on assets leased or sold with reservation of ownership, with prohibition on disposal or with a termination condition in the event of failure to pay.

5. Claims guaranteed by securities represented by annotations in account, on the encumbered securities;

6. Claims guaranteed by a pledge constituted in a public deed or on the pledged goods or rights that are in the possession of the creditor or a third party. In the case of pledged claims, it shall suffice for these to be recorded in a document with an authentic date to enjoy security over pledged claims. The pledge to guarantee future claims shall only attribute a special guarantee to claims arising prior to the declaration of insolvency, as well as

[136] Act 38/2011, dated 10th October, on reform of Act 22/2003, dated 9th July, on Insolvency Numbers 1, 4 and 6 of Article 90.1 are hereby amended

credits arising thereafter when, by virtue of Article 68, their reinstatement is appropriate, or when the pledge is registered at a public registry prior to the declaration of insolvency.

2. In order for the claims mentioned in Subparagraphs 1) to 5) of the preceding Paragraph to be classified as having special preference, the respective guarantee must be constituted with the requisites and formalities foreseen in their specific legislation for third party opposition, except in the case of tacit legal mortgage or those referring to the goods manufactured by employees.

Article 91. Claims with general preference.[137]

The following claims enjoy general preference:

1. Claims for salaries that are not recognised special preference, up to the amount obtained by multiplying by three the minimum interprofessional salary by the number of days of salary pending payment; compensations arising from extinction of the contracts, up to the amount corresponding to the minimum legal compensation calculated on a basis that does not exceed three times the minimum interprofessional salary; compensations arising from an industrial accident or occupational disease, and the surcharges on contributions for breach of obligations in matters of occupational safety accrued prior to the insolvency being declared open.

2. The relevant amounts for tax and Social Security withholdings owed by the insolvent debtor in fulfilment of a legal obligation;

3. Claims for free–lance work and those due to the author himself for the vesting of exploitation rights of works protected by copyright, accrued during the six months prior to insolvency being declared open.

4. Tax claims and others of Public Law, as well as Social Security claims that do not enjoy special preference pursuant to Paragraph 1 of Article 90, nor the general preference of Subparagraph 2) of this Article; such preference may be exercised for all the Public Revenue claims and for all the Social Security claims, respectively, for up to fifty per cent of their amount;

5. Tortuous liability claims. Notwithstanding this, uninsured personal injury shall be dealt with in the insolvency proceedings with the claims recorded in Number 4) of this Article.

Civil liability claims arising from offences against the Public Treasury and Social Security

6. Claims arising from new cash flow granted under the framework of the refinancing agreement that fulfils the conditions foreseen under Article 71.6, the amount of which is not recognised as claim against the estate.

7. Claims held by the creditor at the instance of whom the insolvency was declared and that are not subordinate, up to fifty per cent of their amount.

Article 92. Subordinated claims.[138]

The following are subordinated claims:

1. Claims that, having been lodged late, are included in the list of creditors by the insolvency administration, as well as those that, not having been notified, or having been notified late, are included in that list due to a subsequent communication, or by the Court on resolving upon such claims being challenged. Claims under Article 86.3, claims whose existence arises from documentation by the debtor, those recorded in a document with enforceable status, claims assured by *in rem* guarantees registered at a public registry, those otherwise recorded in the insolvency

[137] Act 38/2011, dated 10th October, on reform of Act 22/2003, dated 9th July, on Insolvency Numbers 1, 3, 5 and 6 of Article 91 are hereby amended and a new 7 is hereby added to this provision

[138] Act 38/2011, dated 10th October, on reform of Act 22/2003, dated 9th July, on Insolvency Numbers 1, 3 and 5 of Article 92 are hereby amended

proceedings or in other judicial proceedings, and those for determination of which verification by the Public Administration is necessary, shall not be subordinated due to such reason.

2. Claims that, under a contractual arrangement, are subordinated in nature with regard to all the other claims against the debtor;

3. Claims due to surcharges and interest of any kind, including delay interest, except those of claims with an *in rem* guarantee, up to the extent of the respective guarantee.

4. Claims for fines and other monetary penalties;

5. Claims held by any of the persons especially related to the debtor to which the following Article refers, except those included under Article 91.1, when the debtor is a natural person, and claims other than loans or acts with a similar purpose that are owned by the partners referred to in Article 93.2.1 and 3 that fulfil the stake holdings conditions stated therein.

6. Claims in favour of whom the ruling has declared a party in bad faith in the act contested as a consequence of the insolvency revocation;

7. Claims arising from the contracts with reciprocal obligations referred to in Articles 61,62, 68 and 69, when the Court of Law finds, following the report by the insolvency administrators, that the creditor has repeatedly hindered fulfilment of the contract to the detriment of the insolvency interests.[139]

Article 93. Persons specially related to the insolvent debtor.[140]

1. The following are considered persons specially related to the insolvent debtor if he is a natural person:

1. The spouse of the insolvent debtor, or a person who has been such during the two years prior to a declaration opening the insolvency proceedings, or individuals who co–habit with a similar relation of affection, or who have usually cohabitated with that individual during the two years prior to the declaration opening the insolvency proceedings.

2. The ascendants, descendents, and siblings of the insolvent debtor, or any of the persons referred to in the preceding Subparagraph;

3. The spouses of the ascendants, of the descendants and of the siblings of the insolvent debtor.

2. The following are considered persons specially related to the insolvent debtor if the latter is a legal person:

1. The partners who, pursuant to the law, are personal and unlimitedly liable for the company debts and others who, at the moment of the claim right arising, are holders of at least 5% of the share capital, if the company declared insolvent has shares traded on an official secondary market, or 10% if it does not;[141]

2. The directors, *de jure* or *de facto*, the liquidators of the insolvent debtor that is a legal person, and the proxies with general powers of the company, as well as those who have acted as such during the two years preceding the declaration opening the insolvency proceedings;[142]

3. Companies forming part of a same group as the company declared insolvent debtor and their common shareholders, as long as they fulfil the same conditions as in Number 1 of this Section.

3. In the absence of evidence to the contrary, assignees or awardees of claims belonging to any of the persons mentioned in the preceding Paragraphs are presumed to be persons specially related to the insolvent debtor, as long as the acquisition has taken place within the two years prior to insolvency proceedings being declared open.[143]

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139 Subparagraph added by Royal Decree–Law 3/2009, dated 27th March. See Articles 59.1 and 158.2 of this Act.

140 Act 38/2011, dated 10th October, on reform of Act 22/2003, dated 9th July, on Insolvency Number 1 of Article 93.1 and Number 3 of Article 93.2 are hereby amended

141 Subparagraph drafted pursuant to Royal Decree–Law 3/2009, dated 27th March.

142 See Article 28.5 of this Act.

143 See Articles 28.4 and 105.1.5.b) of this Act.

SECTION 4. ON THE LIST OF CREDITORS

Article 94. Structure and content.

1. The list of creditors shall be attached to the report by the insolvency administrators, referring to the date of petition for the insolvency proceedings to be opened, and shall encompass a list of those included and another of those excluded, both in alphabetical order.

2. The list of creditors included shall state the identity of each one of them, the cause, the amount of the principal and the interest, dates of origin and maturity of the claims recognised that are held, guarantees *in rem* or *in personam* and their legal classification, indicating, when appropriate, their status as litigious, conditional or pending prior excussion from the assets of the main debtor. Differences between the lodging and the recognition, if any, shall be specifically recorded, as shall the consequences of failing to lodge in due time.

When the insolvent debtor is a married person with a community of acquisitions regime or any other kind of joint property regime, the claims that may only be realised against private assets and those that may also be realised against common property shall be listed separately.

3. The exclusion list shall state the identity of each one of them and the reasons for the exclusion.

4. A separate list shall detail and quantify the claims against the estate accrued and pending payment, stating the maturity dates.[144]

CHAPTER IV

On publicity and challenge of the report

Article 95. Publicity of the report and complementary documentation.

1. At least ten days prior to submitting the report to the Court, the insolvency administration shall address an electronic mail to the creditors that have provided their electronic address, informing them of the proposed inventory and list of creditors. The creditors may request the insolvency administration to correct any error or to complement the data notified, also by electronic means, up to three days prior to the report being presented to the Court.[145]

2. Submission of the insolvency administrators report and complementary documentation to the Court shall be notified to those who have appeared in the insolvency proceedings and at the domicile provided for the purposes of serving notices and shall be published at the Public Insolvency Register and on the bulletin board of the Court.

3. The Court may resolve, on its own motion or at the request of the party concerned, any complementary publicity it may consider indispensable, in the official or private media.[146]

Article 96. Challenging the inventory and list of creditors.[147]

1. The parties who have appeared may contest the inventory and list of creditors, within the term of ten days from the notice referred to in Paragraph 2 of the preceding Article, to which end they may obtain a copy at their expense.

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144 Act 38/2011, dated 10th October, on reform of Act 22/2003, dated 9th July, on Insolvency

145 Act 38/2011, dated 10th October, on reform of Act 22/2003, dated 9th July, on Insolvency
A new Section 1 is hereby included in Article 95

146 Paragraphs 2 and 3 drafted pursuant to Royal Decree–Law 3/2009, dated 27th March (Official State Gazette number 78, dated 31st March), bear in mind its Transitional Provision 8.

147 Act 38/2011, dated 10th October, on reform of Act 22/2003, dated 9th July, on Insolvency
A new Section 4 is hereby added to Article 96 and the present one is hereby amended and renumbered as Section 5

For the other parties concerned, the term of ten days shall be calculated from the last publication of those foreseen in the preceding Article.[148]

2. A challenge of the inventory may consist of petition for inclusion or exclusion of properties, goods or rights, on in an increase or decrease in the valuation of those included.

3.A challenge of the list of creditors may refer to inclusion or exclusion of claims, as well as the amount or ranking of those recognised.

4. When challenges affect less than twenty per cent of the insolvency assets or liabilities, the Court may order conclusion of the common section and opening the composition or winding up phase, without prejudice to the effect the challenges may have on the definitive texts and the injunctive measures that the Court may adopt to ensure their effectiveness.

5. Challenges shall be dealt with as the insolvency procedural plea and the Court may, on its own motion¸ accumulate them for joint resolution. Within the five days following notice being served of the last ruling resolving the challenges, the insolvency administration shall include the appropriate amendments in the inventory, in the list of creditors, and in the justified explanation of its report, and shall deliver the Court the relevant definitive texts, as well as an updated list of the claims against the estate accrued and pending payment, all of which shall be made available at the Court Clerk office.

Article 96 bis. Subsequent notifications of claims.[149]

1. Once the term to challenge has elapsed and until the definitive texts are made available, notification of new claims may be submitted. These claims shall be recognised pursuant to the general rules and their classification shall be as set forth in Article 92.1, except if the creditor evidences not having had prior notice of their existence, in which case they shall be classified according to their nature.

2. The insolvency administrations shall resolve on these claims in the definitive list of creditors to be presented.

3. If, within the term of ten days following the definitive texts being made available, an objection were raised to the decision by the insolvency administration on the subsequent communications presented, an insolvency procedural plea shall be processed. Such a challenge shall not prevent continuation of the composition or winding up phase, to which the provisions of Article 97 ter shall apply.

Article 97. Consequences of failure to contest and subsequent amendments.[150]

1. Without prejudice to the cases foreseen in Sections 3 and 4 of this Article, those who do not contest the inventory or list of creditors in a timely manner may not file demands for amendment of the contents thereof, although they may challenge the amendments made by the Court on resolving other challenges.

2. If the creditor classified as specially related to the debtor on the creditor list does not challenge against that ranking in a timely and correct manner, the insolvency Court, on expiry of the term to challenge and with no further formalities, shall hand down an order declaring the guarantees of any kind constituted in favour of the claims that party might hold to be extinguished, ordering, when appropriate, the reinstatement of possession and cancellation of the entries at the relevant registers. Claims listed under Subparagraph 1 of Article 91 when the insolvent debtor is a natural person are excluded.

3. The definitive text of the list of creditors, in addition to the other cases foreseen in this act, may be amended in the following cases:

1. When resolving on the challenge of the amendments foreseen under Article 96 bis;

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148 Paragraph drafted pursuant to Royal Decree–Law 3/2009, dated 27th March.

149 Act 38/2011, dated 10th October, on reform of Act 22/2003, dated 9th July, on Insolvency
A new Article 96 bis is hereby added

150 Act 38/2011, dated 10th October, on reform of Act 22/2003, dated 9th July, on Insolvency
The heading and Section 1 of Article 97 are hereby amended, to which two new Sections, 3 and 4, are also hereby added

2. When, after having presented the initial report referred to in Article 74, or the definitive text of the list of creditors, administrative verification or inspection proceedings are initiated that may give rise to Public Law claims of the Public Administrations and their public agencies;

3. When, after the initial report referred to in Article 74 is presented, or the definitive text of the list of creditors, criminal or labour proceedings commence that might give rise to recognition of an insolvency claim;

4. When, after having presented the definitive texts, the condition or contingency foreseen has been fulfilled, or the claims that have been recognised or confirmed by administrative act, by award or by final procedural resolution, or by one liable to provisional enforcement in view of the nature and amount thereof.

   If recognised, they shall be classified as appropriate according to their nature, without their subordination pursuant to Article 92.1 being possible.

4. When it is appropriate to amend or substitute an initial creditor on the list of creditors, the following rules shall be taken into account to classify the claim:

1. With regard to salary claims, or compensation arising from termination of the employment contract, only the subrogation foreseen in Article 33 of the Workers' Statute shall be taken into account;

2. With regard to the claims foreseen in Article 91.2. and 4, these shall only maintain their preferential status when the subsequent creditor is a public body;

3. In the case of payment by a guarantor, a bond provider or a joint and several debtor, the provisions of Article 87.6 shall apply.

4. In the event of a subsequent creditor being a person especially related to the insolvent debtor under the provisions of Article 93, the least onerous classification of the credit for the insolvency proceedings shall be chosen between those to which the initial and subsequent creditor are entitled.

5. Outside the preceding cases, the relevant classification of the initial creditor shall be maintained.

Article 97 bis. Procedure to amend the list of creditors.[151]

1. Amendment of the definitive text of the list of creditors may only be requested before the resolution is handed down approving the proposal for composition or the reports foreseen in Sections Two of Articles 152 and 176 bis are submitted to the Court.

To this end, the creditors shall address a petition to the insolvency administrators, providing evidence, of the amendment intended, as well as the concurrence of the circumstances foreseen in this Article. Within the term of five days, the insolvency administrations shall provide the Court with a written report on the request.

2. Once the report has been submitted, if it is contrary to recognition thereof, the petition shall be rejected, except if the petitioner were to file an insolvency procedural plea within the term of ten days, in which case the decision taken therein shall apply. If the report is favourable to the amendment intended, the parties appearing shall be notified within the term of ten days. If no allegations are made, or these are not contrary to the claim made, the Court shall resolve by means of an order against which a remedy of appeal to the Higher Court may be filed.

Article 97 ter. Effects of the amendment.[152]

1. Processing the petition shall not prevent continuation of the composition or winding up phase. At the request of the petitioner, when the insolvency Court deems recognition thereof probable, it may order the injunctive measures it deems appropriate in each case to assure the effectiveness thereof.

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[151] Act 38/2011, dated 10th October, on reform of Act 22/2003, dated 9th July, on Insolvency
A new Article 97 bis is hereby added

[152] Act 38/2011, dated 10th October, on reform of Act 22/2003, dated 9th July, on Insolvency
A new Article 97 ter is hereby added

2. The amendment decided shall not affect the validity of the composition that might have been reached, or the liquidation or payment operations carried out prior to filing the petition, or thereafter until recognised by a final resolution. Notwithstanding this, at the request of the party, the Court may order provisional enforcement of the resolution so:

1. Provisional admittance of the intended amendment, either fully or partially, in order to calculate the vote pursuant to Article 124;

2. The operations to pay the winding up or composition to include the amendments intended. Notwithstanding this, these sums shall remain deposited with the estate until the final resolution is handed down on the amendment intended, except if their return is guaranteed by a sufficient bank guarantee or deposit.

TITLE V

On the phases of composition or winding–up

CHAPTER ONE

On the composition phase

SECTION 1. ON CONCLUSION OF THE COMMON PHASE OF THE INSOLVENCY PROCEEDINGS

Article 98. Judicial resolution.

Once the term to challenge the inventory and creditor list has elapsed, without challenges having been made or, if made, once the definitive texts of those documents are made available at the Court Office, the Court shall hand down the appropriate resolution pursuant to the provisions contained in this Title.

That resolution may be appealed and shall be deemed the nearest appeal for the sole purposes of reproducing the matters raised in the remedies of appeal to the same Court or insolvency procedural pleas during the common phase referred to in Article 197.4.[153]

SECTION 2. ON THE COMPOSITION PROPOSAL AND ADHESIONS THERETO

Article 99. Formal requisites of the proposed composition.

1. All composition proposals, which may contain different alternatives, shall be formulated in writing and be signed by the debtor or, when appropriate, by all the creditors proposing, or by their respective representatives with sufficient power of attorney. The parties in the proceedings shall be notified of the proposals submitted by the Court Clerk[154].

When the proposal contains payment commitments borne by third parties to provide guarantees or financing, to make payments or undertake any other obligation, it must also be signed by those making the commitment or their representatives with sufficient power of attorney.

2. The signatures on the proposal and, if appropriate, the justification of their representative nature, must be attested.

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153 Article drafted pursuant to Act 4/2010, dated 10th March (Official State Gazette nº 61, dated 11th March), on the execution in the European Union of judicial confiscation orders

154 Subparagraph drafted pursuant to Act 13/2009, dated 3rd November (Official State Gazette nº 266, dated 4th November)

Article 100. Content of the composition proposal.

1. The proposed composition must contain propositions for discharge of debts or stay of payment or both. With regard to ordinary claims, the proposals for discharge of debts may not exceed half the amount of each one of them, nor those of stay of payment five years from the judicial resolution approving the composition becoming final.

Exceptionally, in the case of the insolvency proceedings affecting businesses whose activity may have a special transcendence for the economy, as long as a feasibility plan submitted so provides, the insolvency Court may, at a party's request, authorise, giving the reasons, those limits being exceeded.[155]

2. The proposed composition may also contain alternative proposals for all creditors, or for those of one or several classes, including offers for conversion of claims into shares, stakes or corporate quotas, or into participation loans.

The proposed composition may also include disposal proposals, either of the set of assets and rights of the insolvent debtor assigned to his business or professional activity, or of certain productive units, to a specific natural or legal person.

The proposals must include undertaking by the acquirer to continue the business or professional activity inherent to the productive units affected and to pay the claims to the creditors, under the provisions set forth in the composition proposed. In these cases, the legal representatives of the workers shall be heard.[156]

3. Under no circumstances whatsoever may the proposal consist of assignment of assets and rights of the creditors in payment or for payment of their credits, with the exception of the case foreseen in Article 155.4, nor any other means of general winding up of the insolvent debtor's estate to settle his debts, nor alteration of the classification of claims established by the law, nor the amount of these set in the proceedings, without prejudice to the acquittals that may be agreed and the possibility of merger, split or general assignment of assets and liabilities of the insolvent debtor that is a legal person.[157]

4. The proposals must be submitted accompanied by a payments plan with detail of the resources foreseen for their fulfilment, including, when appropriate, those obtained by disposal of specific properties, goods or rights of the insolvent debtor.

5. When, to honour the composition, it is foreseen to have the resources generated by total or partial continuation of exercise of the professional or business activities, the proposal must be accompanied, in addition to a feasibility plan specifying the necessary resources, the means and conditions for obtaining them and, when appropriate, the commitments for their provision by third parties.

The claims that are granted to the insolvent debtor to finance the feasibility plan shall be settled under the terms set in the composition.[158]

Article 101. Conditioned proposals.

1. Proposals submitting the effectiveness of the composition to any kind of condition shall be taken as not submitted.

2. As an exception to the provisions set forth in the preceding Section, in the case of related insolvencies, the proposal filed by one of the insolvent debtors may be on condition that a specific content be approved in the composition with one party or others.[159]

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155 Paragraph drafted pursuant to Royal Decree–Law 3/2009, dated 27th March (Official State Gazette number 78, dated 31st March), bear in mind its Transitional Provision 6.

156 Act 38/2011, dated 10th October, on reform of Act 22/2003, dated 9th July, on Insolvency

157 Act 38/2011, dated 10th October, on reform of Act 22/2003, dated 9th July, on Insolvency

158 See Article 104.2 of this Act.

159 Act 38/2011, dated 10th October, on reform of Act 22/2003, dated 9th July, on Insolvency

Article 102. Proposals with alternate contents.[160]

1. If the proposed composition offers all the creditors or those of any class the right to choose between diverse alternatives, it must determine what is applicable in the event of failure to exercise the right to choose.

2. The term to exercise the power of choice may not exceed one month from the date of the judicial resolution approving the composition becoming final.

Article 103. Adhesions to the composition proposal.

1. Creditors may adhere to any proposed composition within the terms and to the effects established hereunder.

2. The adhesion shall be pure and simple, without introducing any amendment or condition whatsoever. Otherwise, the creditor shall be deemed not to have adhered thereto.

3. The adhesion shall state the amount of the claim or the claims held by the creditor, as well as their class, and must be made by appearance before the Court Clerk or in a public deed.[161]

4. Adhesion to these compositions by the Administrations and public bodies shall be done in compliance with the special laws and regulations that regulate them.

SECTION 3. ON EARLY PROPOSAL OF THE COMPOSITION

Article 104. Term of submission.

1. As from the petition for voluntary insolvency, or as from declaration of compulsory insolvency and, in both cases, until expiry of the term to lodge claims, the debtor who has not requested winding–up and is not affected by any of the prohibitions established in the following Article, may submit an early proposal of composition to the Court.

2. In the case of early submission of a composition proposal, if the circumstance foreseen in Subparagraph 5 of Article 100 concur, as long as the feasibility plan specifically considers a discharge of debts or stay of payment period exceeding the limits foreseen in Paragraph 1 of that Article, the Court may, on petition by the debtor, duly authorise exceeding the limits for the composition established in this Act.

Article 105. Prohibitions.

1. Those included in any of the following cases may not submit an early proposal of composition:

1. Those who have been found guilty in a final ruling of a criminal offence against property or against the social and economic order or documentary forgery or against the Public Treasury or the Social Security or the rights of the employees. In the case of a debtor that is a legal person this cause of prohibition shall arise if, any of its directors or liquidators or those who have acted as such in the three years prior to submission of the proposed composition has been found guilty of any of these offences.

2. Having breached the obligation to present annual accounts in any of the last three business years.[162]

2. If, once the early composition proposal has been admitted to proceedings, the insolvent debtor were to incur a cause of prohibition or he were to later be found that he had incurred any of these, the Court, on its own motion or

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160 Act 38/2011, dated 10th October, on reform of Act 22/2003, dated 9th July, on Insolvency

161 Paragraph drafted pursuant to Act 13/2009, dated 3rd November (Official State Gazette nº 266, dated 4th November)

162 Paragraph 1 drafted pursuant to Royal Decree–Law 3/2009, dated 27th March (Official State Gazette number 78, dated 31st March

at the request of the insolvency administrators or party concerned and, in all cases, having heard the debtor, shall declare the proposal without effects and put an end to its processing.

Article 106. Admission to consideration.

1. In order for a proposal to be admitted to consideration it must be accompanied by adhesions by creditors of any kind, provided in the manner established in this Act and whose claims exceed one fifth of the liabilities presented by the debtor. When the proposal is submitted with the actual petition for voluntary insolvency, it shall suffice for the adhesions to amount to one tenth of the same liabilities.[163]

2. When the early proposal of composition is submitted with the petition for voluntary insolvency, or prior to its judicial declaration, the Court shall resolve on its admission in the actual order declaring the insolvency proceedings open.

In the other cases, the Court, within the three days following that of submission of the early proposal of composition, shall resolve by reasoned order on its admission to proceedings.

Within the same term, if any defect were noted, the Court shall order the serving of notice on the insolvent debtor so that he may correct such defect within three days following the notice being served.

3. The Court shall reject admission to consideration when the adhesions submitted in the manner established in this Act do not attain the proportion of liabilities required, when it appreciates a legal violation with regard to the content of the proposed composition or when the debtor is subject to any prohibition whatsoever.

4. No appeal whatsoever may be lodged against the judicial decision resolving admission to consideration.

Article 107. Report by the insolvency administrators.

1. Once the early composition proposal has been admitted to consideration, the Court Clerk shall serve notice thereof on the insolvency administrators so that, within a term not exceeding ten days, they may proceed to the evaluation thereof[164].

2. The insolvency administrators shall evaluate the content of the composition proposal according to the payment scheme and, when appropriate, the feasibility plan accompanying it. If the evaluation is favourable, it shall be attached to the insolvency administrators' report. If unfavourable, or contains reservations, it shall be submitted to the Court in the shortest possible time which may make admission of the early proposal ineffective or continue to process it along with the writ of evaluation of that report. No appeal whatsoever may be lodged against the order resolving these matters.

Article 108. Adhesions by creditors.

1. From admission to consideration of the early proposal of composition and until expiry of the term to challenge the inventory and list of creditors, any creditor may declare his adhesion to the proposal with the requisites and in the manner established in this Act.

2. When the class or quantity of claim expressed in the adhesion are amended in the definitive drafting of the list of creditors, the creditor may revoke his adhesion within the five days following such list being made available at the Court Office. Otherwise, he shall be deemed as having adhered thereto under the terms resulting from the definitive drafting of the list[165].

Article 109. Judicial approval of the composition.

1. Within five days following that on which the term to challenge the inventory and list of creditors has expired, if challenges have not been made or, if they have been made, within the five days following that on which the term to

163 Paragraph drafted pursuant to Royal Decree–Law 3/2009, dated 27th March (Official State Gazette number 78, dated 31st March).
164 Paragraph drafted pursuant to Act 13/2009, dated 3rd November (Official State Gazette nº 266, dated 4th November)
165 Subparagraph drafted pursuant to Act 13/2009, dated 3rd November.

revoke the adhesions ended, the Court Clerk shall verify whether the adhesions presented reach the legally required majority. The Court Clerk, by order, shall proclaim the result. Otherwise, he shall inform the Court that shall hand down an order opening the composition or winding–up phase, as appropriate.[166]

2. If the majority were obtained, the Court, in the five days following expiry of the term for opposition to the judicial approval of the composition foreseen in Paragraph 1 of Article 128, shall hand down a ruling of approval, except if opposition to the composition has been formulated or the composition is rejected on its own motion by the Court, pursuant to the provisions established in Articles 128 to 131. The ruling shall put an end to the common phase of the insolvency and, without opening the composition phase, shall approve the composition to the effects established in Articles 133 to 136 hereof.

Notice of the ruling shall be served on the insolvent debtor, on the administrator and on all the parties to the proceedings, and it shall be published pursuant to the provisions established in Articles 23 and 24 of this Act.

Article 110. Maintenance of unapproved proposals.

1. If approval of the composition is not appropriate, the Court shall without delay require the debtor to declare, within a term of three days, whether he maintains the early composition proposal for submission thereof to the creditors' meeting, or whether he wishes to petition for winding–up.[167]

2. The creditors who have adhered to the early proposal shall be considered present at the meeting for quorum purposes and their adhesions shall count as votes in favour of the calculation of the result of the vote, unless they attend the creditors' meeting or if, following the holding thereof, revocation of their adhesion is recorded in the written record of the proceedings.[168]

SECTION 4. ON OPENING THE COMPOSITION PHASE AND OPENING SECTION FIVE

Article 111. Order opening composition phase and calling the Creditors' Meeting.

1. When the insolvent debtor has not applied for winding–up and an early composition proposal has not been approved or maintained pursuant to the provisions of the preceding Section, the Court, within fifteen days following expiry of the term to challenge the inventory and the list of creditors, if no challenges have been made, or of they have been made, on the date when the definitive texts of those documents are made available at the Court Office, shall hand down an order putting an end to the common phase of the insolvency proceedings and opening the composition phase, ordering formation of Section Five.

2. The order shall command the creditors' meeting to be summoned pursuant to the provisions established in Article 23. The Court Clerk shall set the place, day and time for the meeting pursuant to the provisions contained in Article 182 of the Civil Judicial Procedure Act. The notice of the summoning shall inform the creditors that they may adhere to the composition proposal under the provisions of Article 115.3.

The aforesaid notwithstanding, when the number of creditors exceeds 300, the order may resolve written composition proceedings, setting the deadline to submit adhesions or votes against in the manner established in Article 103 and 115 bis.[169]

In the case foreseen in the preceding Article and in Paragraph 1 of Article 113, the meeting shall be summoned to be held within the second month as from the date of the order. In the other cases, the meeting shall be called to be held within the third month as from the same date.

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166 Subparagraph drafted pursuant to Act 13/2009, dated 3rd November (Official State Gazette nº 266, dated 4th November)

167 See Article 142.1.3 of this Act.

168 See Article 115.3 of this Act.

169 Paragraph drafted pursuant to Royal Decree–Law 3/2009, dated 27th March (Official State Gazette number 78, dated 31st March), bear in mind its Transitional Provision 6.

When the debtor has maintained the proposed early composition, the Court, without the need for a further order on that proposal nor a report by the insolvency administrators, shall hand down an order calling the creditors' meeting.[170]

3. The insolvent debtor, insolvency administrators and all parties appearing in the proceedings, shall be served notice of the order.[171]

Article 112. Effects of the opening order.

Once the opening of the composition phase has been declared and during the proceedings thereof, the rules established for the common phase of the insolvency proceedings in Title III of this Act shall continue to apply.

Article 113. Submission of the proposed composition.

1. Once the term for the lodging of claims has expired and until conclusion of the term to challenge the inventory and list of creditors, if challenges have not been made, or if these have been made until the date on which the definitive texts of those documents are made available at the Court Office, the insolvent debtor who has not lodged an early proposal, nor has applied for winding–up, may submit a proposal of composition to the Court dealing with the insolvency proceedings. This may also be done by creditors whose claims are recorded in the insolvency proceedings and that exceed, jointly or individually, one fifth of the total liabilities recorded on the definitive list of creditors, except if the insolvent debtor has applied for winding–up.[172]

2. When no proposal for composition has been submitted pursuant to the provisions established in the preceding Paragraph, nor the winding–up been applied for by the insolvent debtor, the latter and the creditors whose claims jointlyor individually exceed one fifth of the total liabilities arising from the definitive list, may submit proposals of composition from the summoning of the meeting until forty days prior to the date set for the holding thereof.[173]

Article 114. Admission to consideration of the proposal.

1. Within the five days following submission thereof, the Court shall admit to consideration the proposals for composition if they fulfil the conditions of time, form, and content established in this Act. If any defect is noted, the Court shall order the serving of notice thereof on the insolvent debtor within that same term, or on the creditors if appropriate, so that they may correct such an error within three days following notice being served. If winding-up is applied for by the insolvent debtor, the Court Clerk shall refuse admission to consideration of any proposal.[174]

2. Once they are admitted to consideration, proposals for composition may not be revoked or amended.

3. If no proposal for composition has been submitted within the legal term set in the preceding Article, or if none of the proposals has been admitted to consideration, the Court, on its own motion, shall resolve opening the winding-up phase, under the provisions established in Article 143.

Article 115. Dealing with the proposal.

1. The same order admitting to consideration shall resolve to serve notice of the proposal of composition to the insolvency administrators so that, within the non–extendable term of ten days, they may issue in writing an evaluation of the contents thereof, in relation to the payments plan and, when appropriate, the feasibility plan attached thereto.

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170 See Article 129.2 of this Act.

171 Paragraphs 1 and 3 and the first subparagraph of paragraph 2 drafted pursuant to Act 13/2009, dated 3rd November (Official State Gazette nº 266, dated 4th November)

172 Paragraph drafted pursuant to Act 13/2009, dated 3rd November (Official State Gazette nº 266, dated 4th November)

173 See Article 143.1.1. of this Act.

174 Paragraph drafted pursuant to Act 13/2009, dated 3rd November (Official State Gazette nº 266, dated 4th November), on reform of procedural laws in order to establish the new Court Office.

2. The evaluation documents issued before the insolvency administrators' report is submitted shall be attached to it, pursuant to Paragraph 2 of Article 75, and those issued thereafter shall be made available at the Court Office from the day of submission thereof.

3. From when, pursuant to the provisions established in the preceding Paragraph, the relevant valuation documents are made available at the Court Office and up to the moment of closing the list of attendees at the meeting, adhesions by creditors to the proposal of composition shall be admitted, with the requisites and in the manner established in this Act. Except in the case foreseen in Paragraph 2 of Article 110, adhesions shall be irrevocable, but shall not be binding in terms of the vote to be cast at the meeting by those who have formulated them and attend such a meeting.[175]

Article 115 bis. Written processing of the composition[176]

1. The order resolving the written processing of the composition shall set the deadline to submit adhesions or votes against the different proposals in the composition, which shall be two months from the date of the court order.

2. Once the written procedure has been resolved, composition proposals may only submitted pursuant to Article 113.2, up to one month prior to expiry of the term foreseen in the preceding Section. Adhesions or votes against the new proposal of composition by creditors shall be admitted as from when the valuation document is made available at the Court Clerk's office, until conclusion of the term foreseen in the preceding Section.

3. The adhesions, revocation of these, or votes against the proposals of composition must be made in the manner foreseen in Article 103. For valid revocation of the adhesions or votes against made, such revocation must be recorded in the proceedings within the term foreseen in rule one.

4. In determining the voting rights in the written proceedings, the provisions contained in Articles 122 to 125 hereof shall be applied. The order foreseen in Paragraph Two of Article 121 shall be applied to verify the adhesions. Once the legally required majority set for the proposal is reached, verification of the rest shall not be necessary.

5. Within the ten days following that on which the term to present adhesions has concluded, the Court shall verify whether the proposed composition submitted reaches the legally established majority and shall proclaim the result by decree.

6. If the majority were to be obtained, the Court, within the five days following expiry of the term for opposition for the judicial approval of the composition foreseen in Paragraph 1 of Article 128, shall hand down a ruling of approval, except if opposition to the composition has been formulated or it is rejected on its own motion by the Court, pursuant to the provisions established in Articles 128 to 132.[177]

SECTION 5. ON THE CREDITORS' MEETING

Article 116. Constitution of the Meeting.

1. The meeting shall be held at the place, on the day and at the time set in the summoning notice.

The Chairman may agree to extend the sessions over one or more working days;

2. The meeting shall be chaired by the Judge or, exceptionally, by the member of the insolvency administrators appointed by him;

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175 Paragraphs 2 and 3 drafted pursuant to Act 13/2009, dated 3rd November (Official State Gazette nº 266, dated 4th November)

176 Act 38/2011, dated 10th October, on reform of Act 22/2003, dated 9th July, on Insolvency
Sections 1, 2 and 5 of Article 115 bis are hereby amended, the first Paragraph whereof is hereby repealed

177 Article added by Royal Decree–Law 3/2009, dated 27th March (Official State Gazette number 78, dated 31st March).

3. The acting secretary shall be the Court's Clerk. He shall be assisted in his functions by the insolvency administrators;[178]

4. The meeting shall be understood to be constituted with attendance by creditors holding claims aggregating at least half the ordinary liabilities of the insolvency proceedings.

Article 117. Duty to attend.

1. The insolvency administrators shall be bound to attend the meeting. Their failure to do so shall give rise to loss of the set remuneration, returning the sums received to the estate. A remedy of appeal may be lodged against the judicial resolution of that penalty.

2. The insolvent debtor must attend the creditors' meeting personally, or be represented by a proxy with a power of attorney sufficient to negotiate and accept compositions. The insolvent debtor or his representative may attend accompanied by their Solicitor to talk on his behalf during the discussions.

3. In any case, failure to appear of the insolvency administrators shall not lead to suspension of the meeting, except if the Court were to decide otherwise, in which case the Court Clerk shall set the date for resumption thereof.[179]

Article 118. Right to attend.

1. Creditors on the list of those included in the definitive text of the list shall be entitled to attend the meeting.

2. Creditors with the right to attend may be represented at the meeting by means of a proxy, whether or not a creditor. Representation of several creditors by the same person shall be admitted. Neither the insolvent debtor nor persons specially related to him may be proxies, even though they may be creditors.

A Barrister–at–Law who may have appeared in the insolvency proceedings for a creditor may only represent him if specifically empowered to attend creditors' meetings in insolvency proceedings.

The power of attorney must be conferred by appearance before the Court Clerk, or by public deed and it shall be understood that the powers of representation to attend the meeting shall include those to intervene therein and to vote on any kind of composition whatsoever.

3. Creditors signing any of the proposals or those who have adhered thereto in due time and manner, who do not attend the meeting, shall be taken as present for the purposes of the forming the necessary quorum to be duly held.[180]

4. The Public Administrations, their public agencies, the Constitutional Bodies and, when appropriate, public companies that are creditors, shall be considered to be represented by those who, pursuant to the legislation applicable to them, may represent and defend them in judicial proceedings.

Article 119. Attendance list.

1. The attendance list of the meeting shall be drawn up on the basis of the definitive text of the list of creditors, specifying those who have attended personally and those who shall do so through a representative in each case, identifying the deed conferring representation, as well as those who are deemed present pursuant to Paragraph 3 of Article 118.

2. The attendance list shall be inserted as an addendum to the minutes, either on a physical or computer medium, endorsed by the secretary in either case.

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178 Paragraph drafted pursuant to Act 13/2009, dated 3rd November.
179 Paragraph drafted pursuant to Act 13/2009, dated 3rd November (Official State Gazette nº 266, dated 4th November)
180 See Article 119.1 of this Act.

Article 120. Right to information.

The creditors attending the meeting or their representatives may request clarifications on the report by the insolvency administrators and on their activities, as well as on the proposed compositions and the evaluation reports issued.

Article 121. Discussion and voting.

1. The Chairperson shall commence the session, direct the discussions, and decide on the validity of the empowerments, accreditation of those appearing and other particulars that may be contested. The session shall commence by the secretary explaining the proposal or proposals admitted to consideration that are submitted for discussion, stating their origin and, when appropriate, the amount and ranking of the claims held by those who have submitted them.

2. Discussion and voting shall first take place on the proposal submitted by the insolvent debtor. If it is not accepted, the meeting shall proceed likewise with those submitted by the creditors, successively and in order from greater to lesser, in terms of the total claims held by those signing them.[181]

3. Once the verbal requests to speak for and against the proposal submitted for debate have been recorded, the chairperson shall grant the floor to the petitioners and may consider the proposal to have been sufficiently debated once three interventions in each sense have taken place alternatively.

4. Once the debate has concluded, the chairperson shall submit the proposal to nominal voting and by calling on the creditors attending with the right to vote. The creditors attending may cast their vote in the sense they consider appropriate, although they may have signed the proposal or have adhered thereto.

If not present at the meeting, the votes of those of creditors who have signed such a proposal or have adhered thereto shall be counted as votes in favour of the relevant proposal of composition, if such creditors are deemed as present thereat.

5. Once a proposal has been accepted, discussion of the remaining ones shall not proceed.

Article 122. Creditors without the right to vote.

1. The following shall not be entitled to vote at the meeting:

1. Holders of subordinated claims;

2. Those who have acquired their claim by *inter vivos* acts after the insolvency proceedings were declared open, except if the acquisition took place by universal title or as a consequence of a forcible realisation or by an entity subjected to financial supervision.[182]

2. Creditors included in the preceding Paragraph may exercise the voting rights to which they are entitled for other claims they may hold.

Article 123. Preferential creditors.

1. Attendance at the meeting by preferential creditors and their intervention in the discussions shall not affect the calculation of the necessary quorum to hold the meeting nor shall they be subject to the effects of the composition approved.

2. Voting by preferential creditors in favour of a proposal shall give rise, in the event of acceptance thereof by the meeting and if the Court approves the relevant composition, the effects arising from the content thereof concerning their claims and preferences.

3. The vote of a creditor who, simultaneously, holds preferential and ordinary claims, shall be presumed to be issued in relation to the latter and his vote shall only affect the preferential claims if this has been specifically declared when voting.

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181 See Article 129.2 of this Act.

182 Act 38/2011, dated 10th October, on reform of Act 22/2003, dated 9th July, on Insolvency

Article 124. Compulsory majorities for acceptance of proposed compositions.

In order for the meeting to accept a proposal of composition, the favourable votes of at least half the ordinary liabilities in the insolvency proceedings shall be required.

Notwithstanding the provisions contained in the preceding Paragraph, when the proposal consists of full payment of the ordinary claims within a term not exceeding three years, or in immediate payment of matured ordinary claims with a discharge of debts under twenty per cent, it shall be sufficient for a vote in favour of a portion of the liabilities exceeding that voting against. To these ends, in cases of written proceedings, the creditors who oppose these proposals must, when appropriate, declare their vote against with the same requisites as foreseen for adhesions in Article 103 and within the deadlines set by Articles 108 and 115 bis of this Act.[183]

For the purposes of calculation of the majorities at each vote, ordinary insolvency liabilities shall be considered to include preferential creditors who vote in favour of the proposal.[184]

Article 125. Special rules.

1. In order for a composition proposal that attributes singular treatment to certain creditors or groups of creditors determined by their characteristics to be deemed to have been accepted, it shall be necessary, in addition to obtaining the relevant majority pursuant to the preceding Article, to obtain the favourable vote, in the same proportion of the liabilities not affected by the singular treatment. To these ends, it shall not be considered that there is a singular treatment when the proposal of composition maintains the advantages inherent to their preference for the preferential creditors voting in its favour, as long as these creditors are subject to discharge of debts, stay of payment or both, to the same extent as the ordinary ones.

2. Proposed compositions involving new obligations to be borne by one or several creditors may not be submitted for discussion without their prior approval, even in the event of the proposal containing alternative contents or attributing singular treatment to those accepting the new obligations.

Article 126. Minutes of the meeting.

1. The secretary shall draw up the minutes of the meeting, providing a brief account of the discussion of each proposal and stating the result of the votes, indicating the sense of the vote by the creditors who so request. The creditors may also request a written text of their interventions to be attached to the minutes when these are not already recorded in the written record of the proceedings.

Regardless of the number of sessions held, the minutes of the meeting shall be drawn up in one document.

2. Once the minutes are read and signed by the secretary, the chairperson shall adjourn the meeting.

3. The event shall be recorded on audiovisual media, pursuant to the provisions for recording hearings under the Civil Judicial Procedure Act.

4. The insolvent debtor, the insolvency administrators and any creditor shall be entitled to obtain a copy of the minutes, at the applicant's expense, either literal or summarised, total or partial, that shall be issued by the Court Clerk within three days following submission of the petition. They may also obtain a copy of the recording made.

5. The documentation of these proceedings shall be effected pursuant to the provisions provided in Articles 146 and 147 of the Civil Judicial Procedure Act. In any case, the presence of the Court Clerk shall be indispensable at the meeting as a member thereof.[185]

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183 Act 38/2011, dated 10th October, on reform of Act 22/2003, dated 9th July, on Insolvency

184 Article drafted pursuant to Royal Decree–Law 3/2009, dated 27th March.

185 Paragraphs 4 and 5 drafted pursuant to Act 13/2009, dated 3rd November (Official State Gazette nº 266, dated 4th November)

SECTION 6. ON JUDICIAL APPROVAL OF THE COMPOSITION

Article 127. Subjection to judicial approval.

On the same day of conclusion of the meeting or the following working day, the secretary shall submit the minutes to the Court and, when appropriate, shall submit the composition accepted for approval thereof.

Article 128. Opposition to approval of the composition.

1. Opposition to judicial approval of the composition may be lodged within the term of ten days from the day following the date on which the Court Clerk verified that the adhesions presented reached the legal majority for acceptance of the composition, in the case of the early proposal or written proceedings, or from the date of conclusion of the meeting, should a proposal of composition be accepted thereat.

The insolvency administrators, creditors who have not attended the meeting, those who have been illegitimately deprived of their vote thereat and those who have voted against the proposal of composition accepted by the majority, as well as, in the case of an early proposal of composition, or written proceedings, those who have not adhered thereto, shall be actively legitimated to formulate that opposition.

The opposition may only be based on breach of the provisions this Act establishes on the content of the composition, the form and content of the adhesions, the rules on written proceedings, constitution of the meeting or the holding thereof.

The reasons of legal infringement referred to in the preceding Paragraph shall be considered to include cases in which the decisive adhesion or adhesions for approval of an early proposal of composition or written processing or, when appropriate, decisive voting or votes for the meeting to accept the composition have been issued by parties who are not legitimate claimholders, or have been obtained by manoeuvres that affect the parity of treatment between ordinary creditors.

2. The insolvency administrators and creditors mentioned in the preceding Paragraph who, individually or in aggregate, are the holders of at least five per cent of the ordinary credits, may also oppose judicial approval of the composition when fulfilment thereof is objectively unfeasible.

3. Within that same term, the insolvent debtor who has not formulated the proposal of composition accepted by the meeting, nor has given his approval, may oppose the approval of the composition for any of the causes foreseen in Section 1, or petition for opening of the winding up phase. Otherwise, he shall be subject to the composition eventually approved.[186]

4. Except in the case foreseen in the last Paragraph of Paragraph 1, opposition based on legal infringement may not be formulated in the constitution or holding of the meeting by those who, having attended it, have not denounced it at the moment of the commission thereof or, if prior to constitution of the meeting, when it was declared constituted.[187]

Article 129. Opposition proceedings.

1. The opposition shall be raised through the channels of an insolvency procedural plea and resolved by a ruling that shall approve or reject the composition accepted, without being able to amend it in any case, although it may set out the correct interpretation thereof when necessary to resolve on the opposition formulated. In any case, the Court may correct obvious and mathematical errors.

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186 Act 38/2011, dated 10th October, on reform of Act 22/2003, dated 9th July, on Insolvency

187 Article drafted pursuant to Royal Decree-Law 3/2009, dated 27th March (Official State Gazette number 78, of 31st March), except the first subparagraph of paragraph 1, drafted pursuant to Act 13/2009, dated 3rd November (Official State Gazette nº 266, dated 4th November).

2. If the ruling accepts opposition due to legal breach in the constitution or in the holding the meeting, the Court shall command the Court Clerk to summon a new meeting with the same requisites of publicity and advance notice established in Paragraph 2 of Article 111, which must be held within the month following the date of the ruling.

The proposed composition that may have obtained majority at the previous meeting shall be submitted first for discussion and voting at this meeting and, if rejected, all the other proposals admitted to proceedings shall be submitted, in the order established in Paragraph 2 of Article 121.

If the judgement accepts the challenge due to breach in the written formalities, the Court may order the Court Clerk to call a meeting under the above provisions, or to proceed to another written procedure within a term not exceeding thirty days following the date of the judgement.[188]

3. The ruling accepting opposition due to legal infringement of the content of the composition or objective infeasibility of fulfilment thereof shall declare the composition to be rejected. An appeal may be lodged against such a ruling.

4. When the Court admits the opposition to consideration and summons the other parties to reply, it may take as many preservation measures as appropriate to avoid the delay arising from processing the opposition preventing, in itself, the future fulfilment of the composition accepted, in the event of the opposition being rejected. Among those preservation measures, it may resolve commencing the implementation of the composition accepted under the provisional conditions it shall determine.[189]

Article 130. Judicial resolution should no opposition be raised.

Once the term of opposition has elapsed without any opposition being raised, the Court shall hand down a ruling approving the composition accepted by the meeting, except as established in the following Article.

Article 131. Rejection by the Court on its own motion of the composition accepted.

1. Whether or not opposition has been raised, on its own motion, the Court shall reject the composition even if sufficient adhesions by creditors have been obtained, if the Court were to consider that any of the rules this Act establishes on the content of the composition has been breached, concerning the form and content of the adhesions, on the written procedure or on constituting the meeting or the holding thereof.[190]

2. If the breach appreciated were to affect the form and content of any of the adhesions, the Court, by order, shall grant a term of one month for these to be formulated, with the requisites and in the manner established in the Act, after which it shall issue the appropriate resolution.

3. If the breach considered were to affect constitution or holding of the meeting, the Court shall hand down an order resolving for the Court Clerk to call a new meeting to be held as established in Article 129.2.[191]

4. Should the breach considered affect the rules on written procedure of the composition, the Court shall resolve for the Court Clerk to call a meeting pursuant to the provisions contained in the preceding Section, or proceed to a further written procedure during a term not exceeding thirty days from the date of the Court order.[192]

Article 132. Publicity of the approval ruling.

The ruling approving the composition shall be given the publicity foreseen in Articles 23 and 24 of this Act.

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188 Act 38/2011, dated 10th October, on reform of Act 22/2003, dated 9th July, on Insolvency

189 This Article is drafted pursuant to Royal Decree–Law 3/2009, dated 27th March, except the first subparagraph of paragraph 2, drafted pursuant to Act 13/2009, dated 3rd November.

190 Act 38/2011, dated 10th October, on reform of Act 22/2003, dated 9th July, on Insolvency

191 Act 38/2011, dated 10th October, on reform of Act 22/2003, dated 9th July, on Insolvency

192 Act 38/2011, dated 10th October, on reform of Act 22/2003, dated 9th July, on Insolvency

SECTION 7. ON THE EFFECTIVENESS OF THE COMPOSITION

Article 133. Commencement and scope of effectiveness of the composition.[193]

1. The composition shall take effect from the date of the judgement approving it, except if the Court resolves, due to the content of the composition, of its own motion or at the request of a party, to delay the effectiveness thereof until the date on which the approval becomes final.

On pronouncing upon the delay in effectiveness of the composition, the Court may resolve thereon under partial terms.

2. Once the composition becomes effective, all the effects of the declaration opening the insolvency proceedings shall cease, except for the duties of collaboration and information established in Article 42, which shall subsist until conclusion of the proceedings.

The insolvency administrators shall render accounts of their action to the insolvency Court, within the term the latter shall set.

3. Notwithstanding their severance, the insolvency administrators shall conserve full authority to continue the ongoing procedural pleas, being able to petition for enforcement of judgements and orders handed down therein, until they are final, as well as acting in Section Six until the final judgement is issued.

4. With prior consent by the parties concerned, the composition may entrust the exercise of a function to all or several of the insolvency administrators, setting the remuneration considered appropriate.

Article 134. Subjective extension.

1. The content of the composition shall bind the debtor and ordinary and subordinated creditors, with regard to claims that are prior to the insolvency proceedings being declared open, although that may not have been recognised for any reason whatsoever.

Subordinated creditors shall be affected by the same discharges of debts and stay of payment periods established in the composition for the ordinary ones, but the stay of payment terms shall be calculated as of the complete fulfilment of the composition with regard to the latter. This is notwithstanding their power to accept, as foreseen in Article 102, alternative proposals for conversion of their claims into shares, stakes or business quotas, or participation loans.

2. Preferential creditors shall only be bound by the content of the composition if they have voted in favour of the proposal or if their signing or adhesion thereto has been calculated as a favourable vote. Moreover, they may commit themselves to the composition already accepted by the creditors or approved by the Court, by adhesion provided in the due manner prior to the judicial declaration of its fulfilment, in which case they shall be affected by the composition.

Article 135. Subjective limits.

1. Creditors who have not voted in favour of the composition shall not be bound thereby with regard to the full subsistence of their rights in relation to those jointly and severally liable with the insolvent debtor and against their backers or guarantors, who may not invoke either approval or the effects of the composition to the detriment of such creditors.

2. Parties bound by several and joint liability who are backers or guarantors of the insolvent debtor before the creditors who have voted in favour of the composition shall be governed by the rules applicable to the obligation they may have contracted or by the arrangements that may have been established on that particular.

[193] Act 38/2011, dated 10th October, on reform of Act 22/2003, dated 9th July, on Insolvency

Article 136. Effect of novation.

Claims held by preferential creditors who have voted in favour of the composition, those of ordinary creditors and those of subordinated ones shall be extinguished by the part covered by the discharge of debts and postponed by the stay of payment and, in general, shall be affected by the content of the composition.[194]

SECTION 8. ON FULFILMENT OF THE COMPOSITION

Article 137. Economic capacity over assets of the insolvent debtor following the composition.

1. The composition may establish measures to prohibit or limit exercise of the powers of management and disposal of the debtor. Their infringement shall amount to breach of the composition, declaration of which may be applied for to the Court by any creditor.

2. The prohibition or limitation measures may be registered at the relevant public registers and, in particular, those recording the goods or rights affected thereby. The entry shall not prevent access to the public registers of acts contrary thereto, but any register holder shall be affected by the appropriate action for reintegration to the estate that may be taken.

Article 138. Information.

On a six monthly basis, from the date of the ruling approving the composition, the debtor shall report to the insolvency Court on the fulfilment thereof.

Article 139. Fulfilment.

1. The debtor shall deliver the insolvency Court, once he deems the composition to be completely fulfilled, the relevant report with the adequate evidence and shall petition for judicial declaration of fulfilment. The Court Clerk shall resolve to make the report and petition available at the Court Office.[195]

2. Once fifteen days have elapsed from their availability, if the Court deems the composition to have been fulfilled, it shall declare so by order, which shall be given the same publicity as the approval thereof.

Article 140. Infringement.

1. Any creditor who deems the composition to be breached with regard to matters affecting him may petition the Court to have that infringement declared. The action may be taken from when the infringement takes place and shall expire two months from publication of the order of fulfilment referred to in the preceding Article.[196]

2. The petition shall be processed as an insolvency procedural plea.[197]

3. A remedy of appeal may be lodged against the ruling resolving the procedural plea.

4. The declaration of breach of the composition shall give rise to the termination thereof and disappearance of the effects on claims referred to in Article 136.

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194 See Article 140.4 of this Act.

195 Paragraph drafted pursuant to Act 13/2009, dated 3rd November (Official State Gazette nº 266, dated 4th November)

196 Paragraph drafted pursuant to Royal Decree–Law 3/2009, dated 27th March.

197 Paragraph drafted pursuant to Act 13/2009, dated 3rd November, on reform of procedural laws in order to establish the new Court Office.

Article 141. Conclusion of the insolvency proceedings due to fulfilment of the composition.

Once the order declaring fulfilment is final and the term for actions to declare infringement has expired, or, when appropriate, those lodged are rejected by final judicial resolution, the Court shall hand down an order of conclusion of the insolvency proceedings that shall be given the publicity foreseen in Articles 23 and 24 of this Act.

CHAPTER II

On the winding–up phase

SECTION 1. ON OPENING THE WINDING–UP PHASE

Article 142. Opening the winding up at the request of the debtor, creditor or the insolvency administration.[198]

1. The debtor may petition for winding up at any time.

Within the ten days following the petition, the Court shall hand down an order commencing the winding up phase.

2. The debtor must petition for winding up when, during the term of the composition, he knows it is impossible to honour the payments committed and the obligations contracted prior to its approval. Once the petition is lodged, the Court shall issue an order opening the winding up phase.

Should the debtor not request winding up during the term of the composition, it may be petitioned for by any creditor who proves the existence of any of the facts on which a declaration of insolvency may be based as set forth in Article 2.4. The petition shall be processed as foreseen under Articles 15 and 19 and the Court shall resolve by means of an order whether it is appropriate to commence winding up or not.

3. In the event of cessation of the professional or business activity, the insolvency administration may petition for commencement of the winding up phase. The debtor shall be notified of the petition within the term of three days. The Court shall resolve on the petition by Court order within the five days thereafter."

Article 142 bis. Early winding–up.

1. The debtor may submit an early proposal of winding–up to realise the aggregate assets within fifteen days following submission of the report foreseen in Article 75.

The Court Clerk shall serve notice of the winding–up proposal on the insolvency administrators so that they may proceed to the evaluation thereof or to formulate proposals for amendment. The document of evaluation or amendment issued before the report by the insolvency administrators is issued shall be attached thereto, pursuant to Paragraph 2 of Article 75.

If the early proposal of winding–up is submitted after the report is issued, the Court Clerk shall notify the insolvency administrators thereof so that, within a term not exceeding ten days, they may proceed to the evaluation thereof or propose amendments thereto. This document and the early proposal of winding–up shall be notified in the manner foreseen in Paragraph Two of Article 95.

The parties appearing and other parties concerned may submit remarks on the early proposal for winding–up within the term and under the conditions established in Paragraph One of Article 96.

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198 Act 38/2011, dated 10th October, on reform of Act 22/2003, dated 9th July, on Insolvency

2. The Court, considering the remarks or proposals made, taking the provisions contained in Article 149 and the interests of the insolvency proceedings into account, shall resolve by order to reject or approve the early winding-up, either under the terms proposed, or by introducing amendments therein. The order approving the winding-up plan shall open the winding-up phase, which shall be given the publicity foreseen in Article 144, the effects inherent thereto shall ensue and the proposals of composition that had been admitted shall be rendered ineffective. A remedy of appeal may be lodged against that order with the effects foreseen in Article 98.

Payment to the creditors shall be performed under the provisions established in Paragraph 4 of Chapter II of Title V of this Act. The Court may authorise payment of the claims without awaiting conclusion of the appeals lodged, adopting the preservation measures the Court may consider appropriate in each case to assure their effectiveness and that of the claims against the estate that may predictably be generated.[199]

Article 143. Opening of winding–up proceedings by the Court's own motion.

1. Opening of the winding–up phase by the Court's own motion shall be appropriate in the following cases:

1. Non–submission of any of the proposals for composition referred to in Article 113 within the legal term referred to in Article 113, or non–admission to consideration off those that have been submitted;

2. Non–acceptance of any proposal of composition by the creditors meeting or in the written composition proceedings;[200]

3. If the composition accepted by the creditors' meeting is rejected by a final Court resolution, without it being appropriate to proceed to call another meeting or to conduct a written procedure.[201]

4. Declaration of nullity of the composition approved by the Court by a final judicial resolution;

5. Declaration of breach of the composition by final judicial resolution.

2. In cases 1 and 2 of the preceding Paragraph, opening the winding–up phase shall be ordered by the Court with no further formalities, at the appropriate moment, by an order that shall be notified to the insolvent debtor, to the insolvency administrators and all the parties appearing in the proceedings.

In any of the other cases, opening the winding–up phase shall be resolved in the actual judicial resolution giving rise thereto.[202]

Article 144. Publicity of opening the winding–up.[203]

The judicial resolution declaring opening of the winding–up phase shall be publicised as foreseen in Articles 23 and 24.

SECTION 2. ON THE EFFECTS OF WINDING–UP

Article 145. Effects on the insolvent debtor.[204]

1. The status of the insolvent debtor during the winding–up phase shall be that of suspension of exercise of the powers of management and disposal of his estate, with all the effects established for this status under Title III of this Act.

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199 Article added by Royal Decree–Law 3/2009, dated 27th March (Official State Gazette number 78, dated 31st March). Paragraph 1 drafted pursuant to Act 13/2009, dated 3rd November (Official State Gazette nº 266, dated 4th November)

200 Subparagraph drafted pursuant to Royal Decree–Law 3/2009, dated 27th March.

201 Act 38/2011, dated 10th October, on reform of Act 22/2003, dated 9th July, on Insolvency

202 See Article 114.3 of this Act.

203 Act 38/2011, dated 10th October, on reform of Act 22/2003, dated 9th July, on Insolvency

204 Act 38/2011, dated 10th October, on reform of Act 22/2003, dated 9th July, on Insolvency
Sections 2 and 3 of Article 145 are hereby amended

When, by virtue of the effectiveness of the composition, and pursuant to the provisions established in Paragraph 2 of Article 133, the insolvency administrators have been severed, once opening the winding–up has been resolved, the Court shall reinstate them to office or shall appoint others.

2. If the insolvent debtor is a natural person, commencement of winding up shall cause extinction of the right to maintenance against the estate, except when it is essential to attend to the minimum needs of the insolvent debtor and spouse, registered common law spouse when any of the circumstances foreseen in Article 25.3 concurs, and descendents under parental care.

3. If the insolvent debtor is a legal person, the Court order commencing the winding up phase shall contain the declaration of dissolution if not previously decreed and, in any case, that of severance of the managers or liquidators, who shall be replaced by the insolvency administration, without prejudice to the former continuing to represent the insolvent debtor in the proceedings and in the procedural pleas to which it is party.

Article 146. Effects on the insolvency claims.

In addition to the effects established in this Act, opening the winding–up shall give rise to early maturity of the insolvency credit postponed and conversion to money of those consisting of other services.

Article 147. General effects. Remission.

During the winding–up phase, the rules set forth in Title III of this Act shall continue to apply in all aspects not contrary to the specific provisions of this Chapter.

SECTION 3. ON THE WINDING–UP OPERATIONS

Article 148. Winding–up plan.[205]

1. In the report referred to in Article 75, or in a writ that shall be drawn up within the fifteen days following that of notification of the resolution to commence the winding up phase, the insolvency administration shall provide the Court a plan to realise the assets and rights forming the estate that, whenever feasible, shall consider disposal as a set of the establishments, operations and any other productive units of assets and services of the insolvent debtor, or any of these. If the complexity of the insolvency proceedings so requires, the Court, at the request of the insolvency administration, may order that term to be extended for a further period of the same duration.

The Court Clerk shall order the plan to be made available at the Court Office and in the places provided for such purpose, and for announcement thereof in the manner deemed convenient.

2. During the fifteen days following the date on which the winding up plan is made available at the Court offices, the debtor and insolvency creditors may make remarks or proposals for amendment. Once that term has elapsed, the Court, as it may deem convenient for the interests of the insolvency, shall resolve by order to approve the plan pursuant to the terms under which it was submitted, to make amendments therein or resolve winding up pursuant to the supplementary legal rules. A remedy of appeal to the Higher Court may be lodged against such order.

3. Likewise, the winding-up plan shall be submitted for report by the representatives of the employees, so that they may make remarks or proposals of amendment, applying the provisions contained in the preceding Paragraph, if such remarks or proposals are formulated.[206]

4. In the case of the operations foreseen in the winding up plan involve a substantial amendment of the collective working conditions, including collective relocations or the collective suspension or extinction of work relations, prior to approval of the plan, the provisions contained in Article 64 hereof shall be applied.

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[205] Act 38/2011, dated 10th October, on reform of Act 22/2003, dated 9th July, on Insolvency Paragraph One of Section 1 and Sections 2 and 4 of Article 148 are hereby amended

[206] See Article 149.1.1. of this Act.

Article 149. Supplementary legal rules.[207]

1. If a winding–up plan is not approved and, if appropriate, in matters in which that approved is not foreseen, the winding–up operations shall comply with the following rules:

1. The set of the establishments, operations and any other units producing goods or services belonging to the debtor shall be disposed of as a whole, except if, following a report by the insolvency administrators, the Court deems it more convenient to the interests of the insolvency proceedings to divide them up first, or to realise all the component elements or only some of them individually. Disposal of the whole or, when appropriate, of each production unit, shall be performed by auction and if unsuccessful, the Court may order proceeding to direct disposal.

   The resolutions passed by the Court in these cases must be handed down following hearing the representatives of the employees, for the term of fifteen days, and fulfilling, when appropriate, the provisions contained in Paragraph 3 of Article 148. These resolutions shall be handed down as court orders and no appeal whatsoever may be made against them.

2. Should the winding up operations involve a substantial amendment of the collective working conditions, including collective relocations, or collective suspension or extinction of the employment contracts, the provisions set forth in Article 64 shall apply.

3. The assets referred to in rule 1), as well as the other properties, goods and rights of the insolvent debtor shall be disposed of, according their nature, pursuant to the provisions established in the Civil Judicial Procedure Act for collection proceedings.[208] For properties, goods and rights vested in favour of claims with special preference, the provisions contained in Paragraph 4 of Article 155 shall apply.

   In the event of disposal of the overall business or certain production units thereof, a term shall be set to submit offers to buy the business, giving preferential consideration to those that guarantee continuity of the business, or in the case of production units, and of the jobs, as well as the best satisfaction of the creditors' claims. In all cases, the Court shall hear the representatives of the employees.

2. When, as a consequence of the disposal referred to in rule 1 of the preceding Paragraph, an economic entity maintains its identity, this being understood as the set of means organised in order to carry out an essential or accessory business, it shall be deemed, for labour purposes, that there is corporate succession. In such case, the Court may order the acquirer not to subrogate himself in the part of the amount of the salaries or compensations pending payment prior to the disposal that are covered by the Salary Guarantee Fund pursuant to Article 33 of the Statute of Workers. Likewise, to ensure the future feasibility of the activity and maintenance of employment, the assignee and the representatives of the employees may subscribe agreements to amend the collective work conditions.

Article 150. Properties, goods and rights under litigation.

Properties, goods and rights whose ownership or disposability is under litigation may be disposed of under those terms, the acquirer being subject to the result of the litigation. The insolvency administrators shall inform the court of law hearing the litigation of the disposal. That notice shall effect *ipso iure* the procedural succession, without the other party being able to oppose it and although the acquirer does not appear in such proceedings.

Article 151. Prohibition to acquire properties, goods and rights of the aggregate assets.

1. The insolvency administrators may not acquire, either acting in their own name or through a third party, not even at auction, the properties, goods and rights forming the insolvent debtor's aggregate assets.

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207 Act 38/2011, dated 10th October, on reform of Act 22/2003, dated 9th July, on Insolvency Rule 2 of Article 149.1 is hereby amended, to which a new Paragraph 3 is hereby added

208 Articles 634 to 680 of the Civil Judicial Procedure Act.

2. Those who breach the prohibition to acquire shall be barred from holding office, shall return the properties, goods or rights they have acquired to the estate without any consideration whatsoever and the administrator who holds claims against the estate shall lose them.

3. The public register foreseen in Article 198 shall be notified of the content of the order resolving barring referred to in the preceding Paragraph.

Article 152. Winding up reports.[209]

1. Every three months following opening of the winding up phase, the insolvency administrator shall present a report to the Court on the status of the operations, which shall detail and quantify the claims against the estate accrued and pending payment, stating their maturity dates. This report shall be made available at the Court offices.

Breach of this obligation may give rise to application of the penalties foreseen in Articles 36 and 37.

2. On conclusion of liquidation of the assets and rights of the insolvent debtor and processing of the Classification Section, the insolvency administration shall submit final report to the Court to justify the operations carried out and shall inexcusably explain that there are no remaining feasible actions to recover assets, nor liability of third parties pending exercise, or other assets or rights of the insolvent debtor. The conclusion shall not prevent the debtor preserving ownership of assets that may not be legally seized, or that lack market value, the realisation cost of which would be manifestly disproportionate with regard to their foreseeable fair market value.

The conclusion shall also include a complete rendering of accounts, as provided under the provisions of this Act.

3. If an objection to the conclusion of the insolvency were to be raised during the term for hearing the parties are granted, an insolvency plead shall commence. Otherwise, the Court shall hand down an order declaring conclusion of the insolvency due to the end of the winding up phase.

Article 153. Severance of the insolvency administrators due to undue prolongation of the winding–up.

1. When one year has elapsed from opening the winding–up phase without conclusion thereof, any party concerned may petition the insolvency Court for severance of the insolvency administrators and appointment of new ones.

2. The Court, having heard the insolvency administrators, shall resolve severance if there is no cause to justify the delay and shall proceed to appoint those who are to replace them.

3. Insolvency administrators severed due to undue prolongation of the winding–up shall lose their entitlement to receive the remunerations accrued, and they must return the sums they may have received for that purpose since the opening the winding–up phase to the aggregate assets.

4. The public register mentioned in Article 198 shall be notified of the content of the order resolving the severance to which the preceding Paragraphs refer.

SECTION 4. ON PAYMENT OF THE CREDITORS

Article 154. Payment of claims against the estate.[210]

Before proceeding to pay the insolvency claims, the insolvency administration shall deduct the properties, goods and rights required from the estate to pay claims against the latter

The deductions to attend to payment of the claims against the estate shall be performed against the assets and rights not assigned to payment of claims with special preference."

209 Act 38/2011, dated 10th October, on reform of Act 22/2003, dated 9th July, on Insolvency

210 Act 38/2011, dated 10th October, on reform of Act 22/2003, dated 9th July, on Insolvency

Article 155. Payment of claims with special preference.

1. Payment of claims with special preference shall be performed against the properties, goods and rights vested, either subject to separate or collective foreclosure.

2. Notwithstanding the provisions contained in the preceding Paragraph, while the terms stated in Paragraph 1 of Article 56 or auction have not elapsed, or if the suspension on foreclosure commenced before insolvency was declared subsists, pursuant to Paragraph 2 of the same Article, the insolvency administrators may serve notice on the holders of those claims with special preference that they choose to settle such payment from the aggregate assets and without realisation of the properties, goods and rights secured. Once that option has been notified, the insolvency administrators must without delay settle all the repayment instalments and interest that have matured and shall undertake the obligation to honour the following ones as claims against the aggregate assets. In the event of infringement, the properties, goods and rights vested shall be realised to settle the claims with special preference.[211]

3. When, within the insolvency proceedings, even before the winding–up phase, it is necessary to dispose of the properties, goods and rights which secure claims with special preference, the Court, at the request of the insolvency administrators, and after hearing of the parties concerned, may authorise this with subsistence of the encumbrance and subrogation of the obligation of the debtor by the acquirer, that shall be excluded from the aggregate liabilities. If this is not authorised under these terms, the price obtained from the disposal shall be vested to pay the claim with special preference and, if there is a remainder, to payment of the other claims.

If a same asset or right is the security of more than one claim with special preference, payments shall be made according to the priority in time for each claim pursuant to the requisites and formalities foreseen in the specific legislation on their effects vis–à–vis third parties. The priority to pay claims with tacit legal mortgage shall be that arising from their regulation.

4. Realisation of the properties goods, and assets that secure claims with special preferences at any state of the insolvency proceedings shall be performed at auction, except if, at the request of insolvency administrator or the creditor with special preference within the composition, the Court authorises direct sale or assignment in payment or for payment to the preferential creditor, or to the person appointed by the latter, as long as this fully settles the special preference or, if appropriate, the remaining credit is recognised within the insolvency with the relevant classification.

Should the realisation take place outside the insolvency proceedings, the bidder must pay a higher price than the minimum agreed and in cash, except if the insolvent debtor and the creditor with special preference specifically express acceptance of a lower price, as long as those realisations are made at market value according to an official appraisal updated by a certified firm for immoveable goods and valuation by a firm specialised in moveable assets.[212]

The judicial authorisation and the conditions thereof shall be announced with the same publicity as applies to the auction of the asset and right affected and, if within the ten days following the last of the announcements, a best bidder appears, the Court shall open the bidding to all the bidders and order the deposit that must be provided.

Article 156. Payment of claims with general preference.[213]

1. After deduction from the estate he goods and assets required to settle the claims against the estate and against the assets not standing as collateral in favour of special preference claims, or of the remainder of these once such claims are paid, payment of those enjoying general preference shall be honoured, in the order established in Article 91 and, when appropriate, in proportion among them within each number.

2. The Court may approve payment of such claims without awaiting conclusion of the challenges that are filed, adopting the injunctive measures it may consider appropriate in each case to assure their effectiveness and that of the claims against the estate likely to be generated.

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211 See Article 56.3 of this Act.
212 Act 38/2011, dated 10th October, on reform of Act 22/2003, dated 9th July, on Insolvency
213 Act 38/2011, dated 10th October, on reform of Act 22/2003, dated 9th July, on Insolvency

Article 157. Payment of ordinary claims.

1. Payment of the ordinary claims shall be carried out once the claims against the estate and preferential claims are settled.

At the request of the insolvency administration, in exceptional cases, the Court may authorise giving the reasons payment of ordinary claims in advance when it deems payment of claims against the estate and preferential claims to be sufficiently covered.

The Court may also authorise payment of ordinary claims before conclusion of the challenges filed, adopting the injunctive measures it may deem appropriate in each case to assure their effectiveness and that of the claims against the estate that are likely to be generated.[214]

2. Ordinary claims shall be settled proportionally, along with the claims with special preference in the part in which these have not been settled against the properties, goods and rights on which they are secured.

3. The insolvency administrators shall settle payment of these claims in line with the liquidity of the aggregate assets and may arrange repayment instalments on an amount not lower than five per cent of the face value of each claim.

Article 158. Payment of subordinated claims.

1. Payment of the subordinated claims shall not be performed until the ordinary claims have been fully settled.

2. Payment of these claims shall be made in the order established in Article 92 and, when appropriate, proportionally within each number.

Article 159. Early payment.

If payment of a claim is performed before its maturity on the date winding-up commences, the relevant discount shall be made, calculated at the legal interest rate.

Article 160. Right of the creditor to the share of the joint and several debtor.

A creditor who, prior to insolvency proceedings being declared open, has collected part of the claim from a backer or guarantor, or from a joint and several debtor, shall be entitled to obtain the payments due thereto in the insolvency proceedings of the debtor up to amount that, added to that already received for his claim, cover the total amount thereof.

Article 161. Payment of claim recognised in two or more insolvency proceedings of joint and several debtors.

1. In the event of the claim having been lodged in two or more insolvency proceedings of joint and several debtors, the sum of the amount received in all the insolvency proceedings cannot exceed the amount of the claim.

2. The insolvency administrators may withhold payment until the creditor produces a certificate to accredit what he has received in the insolvency proceedings of the other joint and several debtors. Once the payment is made, they shall serve notice thereof on the insolvency administrators in the other insolvency proceedings.

3. The insolvent joint and several debtor who has made a partial payment to the creditor may not obtain payment in the insolvency proceedings of co–debtors while the creditor has not been fully satisfied.

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[214] Act 38/2011, dated 10th October, on reform of Act 22/2003, dated 9th July, on Insolvency

Article 162. Co–ordination with previous payments in composition phase.

1. If the winding–up has preceded the partial fulfilment of a composition, payments made therein shall be presumed to be legitimate, except if the existence of fraud, breach of the composition or alteration of equal treatment of the creditors, is proven.

2. Those who have received partial payments whose presumption of legitimacy is not detracted from by a final ruling of revocation shall retain these in their possession, but they may not participate in the collection from winding–up operations until the rest of the creditors in their same rank have received payments of an equivalent percentage.

TITLE VI

On classification of the insolvency

CHAPTER ONE

General provisions

Article 163. Classification of the insolvency.[215]

1. The insolvency shall be classified as fortuitous or tortuous.

2. The classification shall not be binding on the courts and tribunals of the criminal jurisdictional order that, if appropriate, may examine acts by the debtor that might constitute a criminal offence.

Article 164. Tortious insolvency.

1. The insolvency shall be classified as tortuous when the generation or aggravation of the state of insolvency may have involved malicious intent or gross negligence by the debtor or, his legal representatives, if any, and, in the case of a legal person, its *de facto* and *de jure* managers or liquidators, general proxies and those who have had any such status within the two years prior to the date of declaration opening the insolvency.[216]

2. In any case, the insolvency shall be classified as tortious when any of the following cases arise:

1. When the debtor legally obliged to keep accounts substantially breaches that obligation, keeps double accounts, or has committed a material irregularity impeding adequate comprehension of the subjacent economic or financial situation;

2. When the debtor has committed a severe misrepresentation in any of the documents attached to the petition to declare the insolvency proceedings open or in those submitted during such proceedings, or when he has attached or submitted false documents;

3. When opening the winding–up has been resolved by Court acting on its own motion due to breach of the composition for causes due to the insolvent debtor;

4. When the debtor has embezzled all or part of his assets to the detriment of his creditors, or has performed any act that delays, hinders, or prevents the effectiveness of a seizure of any kind of enforcement commenced or whose commencement is foreseeable;

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215 Act 38/2011, dated 10th October, on reform of Act 22/2003, dated 9th July, on Insolvency

216 Act 38/2011, dated 10th October, on reform of Act 22/2003, dated 9th July, on Insolvency

5. When, during the two years prior to the date of insolvency proceedings being declared open, properties, goods or rights have fraudulently been detracted from the debtor's estate;

6. When before the date the insolvency proceedings are declared open, any legal act aimed at simulating a fictitious state of assets has been performed.

3. The public register mentioned in Article 198 shall be informed of the content of the ruling classifying the insolvency.

Article 165. Presumptions of malicious intent or gross negligence.

The existence of malicious intent or gross negligence shall be presumed, in the absence of evidence to the contrary, when the debtor, or if appropriate, his legal representatives, directors, or liquidators:

1. Have breached the duty to petition for a declaration opening the insolvency proceedings;

2. Have breached the duty to collaborate with the insolvency Court and the insolvency administrators, have not provided them the necessary or convenient information for the interests of the insolvency proceedings, or have not attended the creditors' meeting, personally or by means of a proxy;

3. If the debtor who is legally bound to keep the accounts has not formulated the annual accounts, has not submitted them to audit, when bound to do so, or, once approved, has not deposited them at the Business Register in any of the three business years preceding insolvency being declared.

Article 166. Accomplices.

Those persons who, with malicious intent or gross negligence, have aided the debtor or, if he has any, his legal representatives and, in the case of a legal person, with its directors or liquidators, both *de jure* and *de facto*, or their general proxies, in performance of any act that has led to the insolvency being considered tortuous shall be deemed accomplices.

CHAPTER II

On the classification section

SECTION 1. ON FORMATION AND PROCEEDINGS

Article 167. Formation of Section Six.[217]

1. Formation of Section Six shall be ordered in the same judicial resolution that approves a composition, the winding up plan, or ordering winding up pursuant to the supplementary legal regulations.

As an exception to the provisions established in the preceding Paragraph, it shall not be appropriate to form a section to classify the insolvency when judicial approval of a composition takes place in which an acquittal lower than a third of the amount of the credits, or a waiting lower than three years is established for all the creditors, or for one or several classes, except if this is not fulfilled.

The section shall be headed by an attestation of the court resolution and certified copies of the petition for declaration of insolvency, the documentation produced by the debtor, the order declaring the insolvency and the administration report shall be attached.

[217] Act 38/2011, dated 10th October, on reform of Act 22/2003, dated 9th July, on Insolvency

2. In the case of reopening of the Classification Section due to breach of the composition, in order to determine the causes of the breach and the responsibilities that might arise therefrom the following procedure shall be used:

1. If an order has been handed down to dismiss, or a ruling of classification has been decreed, the same legal resolution that resolves opening winding up due to breach of the composition shall order reopening of the section, with attachment thereto of a written record of the proceedings and of the resolution itself.

2. Otherwise, the aforesaid judicial resolution shall order formation of a separate procedure within the Classification Section that is open, for autonomous processing and pursuant to the rules established in this Chapter that are applicable thereto.

Article 168. Appearance and status as a party.[218]

1. Within the ten days following the last publication that has been made of the judicial resolution ordering Section Six to be formed, any creditor or person proving legitimate interest may appear and be party to the Section, alleging in writing everything considered relevant to classify the insolvency as tortuous.

2. In the cases referred to in Section 2 of the preceding Article, the parties concerned may appear and be party in the Section or a separate procedure within the same term from the last publication that has been made of the judicial resolution opening the Classification Phase, although their writs shall be limited to determining whether the insolvency must be classified as tortuous due to breach of the composition for causes attributable to the insolvent debtor.

Article 169. Report by the insolvency administrators and learned opinion by the Public Prosecutor.

1. Within the fifteen days following the of expiry of the terms aforesaid for the parties concerned to appear, the insolvency administrators shall provide the Court a reasoned, documented report on the relevant facts to classify the insolvency, with a proposal for resolution. If they were to propose classification of the insolvency as tortious, the report shall state the identity of the persons the classification should affect and those who are to be considered accomplices, explaining the reasons, as well as the determination of the damages and losses that, if appropriate, have been caused by those persons.

2. Once the report by the insolvency administrators has been attached, the Court Clerk shall notify the Public Prosecutor of the content of Section Six in order for him to issue a learned opinion within the term of ten days. According to the circumstances, the Court may resolve to extend that term for a maximum of ten days more. If the Public Prosecutor does not issue his learned opinion within such term, the proceedings shall follow their course and it shall be understood that he does not oppose the classification proposed.[219]

3. In the cases referred to in Paragraph 2 of Article 167, the report by the insolvency administrators and, when appropriate, the learned opinion of the Public Prosecutor, shall be limited to determining the causes of breach and whether the insolvency must be classified as tortious.

Article 170. Processing the Section.

1. If the report by the insolvency administrators and the learned opinion that, when appropriate, has been issued by the Public Prosecutor, coincides in classifying the insolvency as fortuitous, the Court, with no further formalities, shall order the proceedings to be dismissed by order, against which no appeal whatsoever may be made.

2. Otherwise, the Court shall hear the debtor for the term of ten days and shall order summoning all the persons who pursuant to the terms stated, may be affected by classification of the insolvency, or declared

[218] Act 38/2011, dated 10th October, on reform of Act 22/2003, dated 9th July, on Insolvency

[219] Paragraph drafted pursuant to Act 13/2009, dated 3rd November.

accomplices thereof, in order that, within the term of five days, they may appear in the Section if they have not previously done so.

3. Those who appear on time shall be allowed by the Court Clerk to view the content of the Section so that, within the ten days following, they may allege whatever is convenient to protect their rights. If they were to appear after the term has expired, they shall be taken as a party without retrocession of the course of the actions. If they do not appear, the Court Clerk shall declare them in contempt of court and the proceedings shall follow their course without summoning them again.[220]

Article 171. Opposition to the classification.

1. If the debtor or any of the parties who have appeared were to raise an objection, such an objection shall deal with as an insolvency procedural plea. If several oppositions are raised, they shall be substantiated jointly in the same procedural plea.[221]

2. If no opposition is made, the Court shall hand down the ruling within the term of five days.

Article 172. Classification ruling[222]

1. The ruling shall declare the insolvency as fortuitous or tortious: In the latter case, the Court shall state the cause or causes on which the classification is based.

2. The judgement classifying the insolvency as tortuous shall also contain the following pronouncements:

1. Determining the persons affected by the classification, as well as, when appropriate, that of those declared accomplices. In the case of a legal person, the persons affected by the classification may include the *de facto* or *de jure* managers or liquidators, general proxies, and those who have had any such status during the two years prior to the date of declaration of insolvency. Should any of the persons affected be such as a *de facto* manager or liquidator, the ruling shall reason the attribution of that condition.

2. Barring of persons affected by a classification to administer third party goods for a period ranging from two to fifteen years, as well as to represent or manage any person during that same period, in all cases bearing in mind the severity of the facts and the scope of the damage, as well as being declared tortuous in other insolvencies.

   In the case of a composition, if so petitioned by the insolvency administration, the classification judgement may exceptionally authorise the person barred to continue managing the business, or as a director of the insolvent debtor company.

   If a same person is barred in two or more insolvencies, the period of barring shall be the sum of each one of these.

3. The loss of any right that the persons affected by the classification or declared accomplices may have as insolvency creditors or against the estate, and the sentencing to return assets or rights they may have unduly obtained from the assets of the debtor, or that they may have received from the estate, as well as to compensate the damages and losses caused.

3. The judgement classifying the insolvency as tortuous shall also condemn the accomplices who do not have creditor status to compensate the damages and losses caused.

4. Those who have been parties to the Classification Section may lodge an appeal against the ruling.

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220 Paragraph drafted pursuant to Act 13/2009, dated 3rd November (Official State Gazette nº 266, dated 4th November)

221 Paragraph drafted pursuant to Act 13/2009, dated 3rd November (Official State Gazette nº 266, dated 4th November)

222 Act 38/2011, dated 10th October, on reform of Act 22/2003, dated 9th July, on Insolvency
Sections 2 and 3 of Article 172 are hereby amended

Article 172 bis. Insolvency liability.[223]

1. When the Classification Section has been formed or reopened as a result of commencement of the winding up phase, the Court shall sentence all or some of *de facto* or *de jure* managers or liquidators or general proxies of the insolvent debtor that is a legal person who have been declared persons affected by the classification, to fully or partially cover the deficit.

Should the insolvency already have been classified as tortuous, in the event of reopening section six due to breach of the composition, the Court shall bear in mind in sentencing to pay the insolvency deficit both for the facts declared proven in the classification judgement as well as those causing the reopening.

If there are several parties being sentenced, the judgement shall individually state the sum to be paid by each of them, according to their participation in the events that have led to such classification of the insolvency.

2. The legitimation to petition for enforcement of the sentence shall lie with the insolvency administration. Creditors who have petitioned in writing to the insolvency administration to request enforcement shall be entitled to petition for this should the insolvency administration not do so within the month following their demand.

3. All the sums obtained from enforcement of the classification judgement shall be assigned to the estate.

4. Those who were party to the classification section may file a remedy of appeal to the Higher Court against the judgement.

Article 173. Substitution of the parties barred.

The directors and liquidators of the insolvent legal person who are barred shall be removed from office. If their severance prevents operation of the governing or liquidating body, the insolvency administrators shall summon a shareholders meeting or assembly to appoint those who are to cover the vacancies left by those barred.

SECTION 2. ON CLASSIFICATION IN THE CASE OF ADMINISTRATIVE INTERVENTION

Article 174. Formation of the Classification Section.

1.In cases of adoption of administrative measures involving dissolution and winding–up of an entity, which exclude the possibility of declaring insolvency, the supervisory authority that has resolved them shall without delay inform the Court that would be competent to declare the insolvency proceedings with reference to the aforesaid entity.

2. On receipt of the notice, and although the administrative resolution may not be final, the Court, on its own motion or at the request of the Public Prosecutor or the administrative authority, shall hand down an order to form an autonomous Classification Section, without previously declaring insolvency.

The order shall be given the publicity foreseen in this Act for judicial resolution of opening the winding-up.

Article 175. Specialities of the proceedings.

1. The Section shall be headed by the administrative resolution that has ordered the measures.

2. The parties concerned may appear and be parties to the Section within the term of 15 days from the publication foreseen in the preceding Article.[224]

3. The report on the classification shall be issued by the supervisory body that has ordered the intervention measure.

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[223] Act 38/2011, dated 10th October, on reform of Act 22/2003, dated 9th July, on Insolvency
A new Article 172 bis is hereby included

[224] Paragraph drafted pursuant to Royal Decree–Law 3/2009, dated 27th March (Official State Gazette number 78, dated 31st March).

TITLE VII

On conclusion and reopening the insolvency proceedings

SOLE CHAPTER

Article 176. Causes of conclusion.[225]

1. It shall be appropriate to conclude and archive insolvency proceedings in the following cases:

1. Once the order by the Provincial High Court revoking the order declaring the insolvency proceedings open upon appeal is final;

2. Once the order declaring fulfilment of the composition is final and, when appropriate, as having expired or having been rejected by final judgement the actions to declare breach thereof, or when conclusion of the winding up phase is declared;

3. At any state of the proceedings, when the aggregate assets are found to be insufficient to cover claims against the estate;

4. At any state of the proceedings, when payment or consignment of all the claims recognised or full settlement of the creditors by any other means, or that the situation of insolvency no longer exists, is verified;

5. When the common section of the insolvency has concluded, when the resolution accepting withdrawal or renunciation by all the recognised creditors has become final.

2. In the latter two cases of the preceding Section, conclusion shall be decreed by Court order, following a report by the insolvency administration, which shall be made available to all the parties that have appeared for the term of fifteen days.

If an objection to concluding the insolvency is raised within the term granted to hear the parties, an insolvency procedural plea shall be processed.

Article 176 bis. Specialities of conclusion due to insufficiency of the aggregate assets.[226]

1. As from the declaration of insolvency, it shall be appropriate to proceed to conclude due to insufficiency of aggregate assets, where action to obtain integration, to challenge or claim third party liability, or classification of the insolvency as tortuous, is not foreseeable, the assets of the insolvent debtor are not presumed to be sufficient to settle the claims against the estate, except if the Court considers those sums are sufficiently guaranteed by a third party.

The order of conclusion of the insolvency due to insufficient aggregate assets may not be handed down while the classification section is being processed, or while suits are pending to restore the aggregate assets, or to demand third party liability, except if the relevant actions have been assigned, or it becomes clear that the proceeds that might be obtained thereby would not be sufficient to settle the claims against the estate.

2. As soon as there is evidence that the aggregate assets are insufficient to pay the claims against the estate, the insolvency administration shall notify the insolvency Court, who shall make this known to the parties appearing through the Court office.

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225 Act 38/2011, dated 10th October, on reform of Act 22/2003, dated 9th July, on Insolvency

226 Act 38/2011, dated 10th October, on reform of Act 22/2003, dated 9th July, on Insolvency
A new Article 176 bis is hereby included

From that time, the insolvency administration shall proceed to pay off the claims against the estate in the following order, and when appropriate, in proportion within each number, except for the claims indispensable to conclude the winding up:

1. The salary claims of the last thirty days of effective work and up to an amount that does not exceed double the minimum interprofessional salary;

2. The claims for salaries and compensations, by the amount obtained by multiplying triple the minimum interprofessional salary by the number of days of salary pending payment;

3. Maintenance allowance claims pursuant to Article 145.2, in an amount that does not exceed the minimum interprofessional salary;

4. The claims for judicial costs and expenses of the insolvency;

5. The other claims against the estate.

3. When the aggregate assets are distributed, the insolvency administration shall provide the insolvency Court an explanatory report that shall affirm and reason, inexcusably, that the insolvency shall not be classified as tortuous and that there are no feasible actions to reintegrate the aggregate assets nor third party liability pending enforcement, or that what might be obtained through the relevant actions would not be sufficient to pay the claims against the estate. The declaration of insufficiency of the aggregate assets shall not prevent the debtor preserving the ownership of assets that may not be legally seized, or those that lack market value, or the realisation cost of which would be manifestly disproportionate in relation to their foreseeable fair market value.

The report shall be made available to all the parties appearing at the Court offices, for fifteen days.

Conclusion due to insufficient of the aggregate assets shall be decided by Court order. If objection to conclusion of the insolvency is raised within the term the parties are granted to conclude the insolvency, an insolvency procedural plea shall be processed.

4. Conclusion due to insufficient aggregate assets may also be resolved in the same order of declaration of insolvency when the Court considers that it is evident that the assets of the insolvent debtor shall presumably not suffice to settle the foreseeable claims against the estate in the proceedings, nor that the exercise of actions for reintegration, to contest, or of third party liability is not likely.

A remedy of appeal to the Higher Court may be filed against such order.

5. Until the date the order decreeing conclusion of the insolvency is handed down, the creditors and any other legitimated party may request reopening of the insolvency proceedings as long as sufficient prima facie evidence is supplied that reintegration actions may be taken, or providing a written record of relevant facts that may lead to a tortuous insolvency classification and that justifies deposit or consignment at the Court of a sufficient amount to settle foreseeable claims against the estate. Such deposit or consignment may also be performed by means of a joint and several bank guarantee with an indefinite term and payable at first demand, issued by a lending institution or reciprocal guarantee company, or by any other means that, in the opinion of the Court, guarantees immediate availability of the amount.

The Court Clerk shall admit the petition to consideration if the conditions of time and content established in this Act are fulfilled. If it is understood that the conditions are not fulfilled, or have not been corrected, the Court Clerk shall report to the Court for it to hand down an order accepting or rejecting the petition. Once the insolvency proceedings are recommenced, the petitioner shall be entitled to exercise action for reintegration or to contest, being subject to the provisions set forth in Article 54.4 as to costs and expenses."

Article 177. Resources and publicity.

1. No appeal whatsoever may be lodged against the order deciding conclusion of the insolvency proceedings.

2. The appeals foreseen in this Act for rulings handed down in insolvency procedural pleas may be lodged against the ruling resolving opposition to conclusion of the insolvency proceedings.

3. The final resolution on conclusion of the insolvency proceedings shall be notified by personal notice that provides evidence of receipt thereof or by the means referred to in the First Paragraph of Article 23.1 of this Act and it shall be given the publicity foreseen in Paragraph Two thereof and in Article 24.

Article 178. Effects of conclusion of the insolvency proceedings.[227]

1. In all cases of conclusion of the insolvency proceedings, the limitations on the powers of management and disposal of the debtor that subsist shall cease, except those contained in the final judgement of classification or as foreseen in the following chapters.

2. In cases of conclusion of the insolvency proceedings due to winding up or the insufficiency of aggregate assets, the debtor shall be held liable for payment of the remaining claims. Creditors may initiate singular enforcements, while reopening of the insolvency proceedings is not resolved, or the opening of new insolvency proceedings is not declared. For such enforcement, inclusion of their credit on the definitive list of creditors shall be equivalent to sentencing in a final judgement.

3. In cases of conclusion of the insolvency proceedings due to winding up or the insufficiency of aggregate assets of the debtor that is a legal person, the judicial resolution that declares this shall order its dissolution and shall provide for closure of the inscription sheet on the relevant public registers, to which end the Court shall issue an order containing an attestation of the final resolution.

Article 179. Reopening the insolvency proceedings.[228]

1. A declaration opening insolvency proceedings of a debtor who is a natural person due to winding up or the insufficiency of aggregate assets within the five years following conclusion of a preceding one shall be considered a reopening of the former one. The competent Court, on being aware of that circumstance, shall resolve incorporation to the ongoing proceedings of the complete written record of the former proceedings.

2. Reopening insolvency proceedings against a debtor that is a legal person concluded due to winding up or the insufficiency of aggregate assets shall be declared by the same Court that heard the former, being dealt within the same proceedings and shall be limited to the winding up phase of the goods and assets that have subsequently appeared. Such reopening shall be given the publicity foreseen in Articles 23 and 24, also proceeding to reopen the registry sheet in the manner foreseen in the Business Registry Regulations.

3. In the year following the date of resolution of conclusion of the insolvency due to insufficiency of aggregate assets, the creditors may petition to reopen the insolvency proceedings in order to exercise reintegration actions, stating the specific actions that must be initiated, or providing a written record of relevant facts that may lead to the insolvency being classified as tortuous, except if a ruling has been handed down on classification in the insolvency concluded.

Article 180. Inventory and list of creditors in the event of reopening.

1. The definitive texts of the inventory and of the creditor list formed in the previous proceedings must be updated by the insolvency administrators within the term of two months from the written record of the previous proceedings being included in the new insolvency proceedings. The updating shall be limited, with regard to the inventory, to suppressing the list of properties, goods and rights that have left the debtor's assets, to correcting the valuation of those that subsist and to include and evaluate those have subsequently appeared; with regard to the creditor list, to indicate the present amount and other amendments arising with regard to the claims subsisting and to be included in the subsequent list of creditors.

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227 Act 38/2011, dated 10th October, on reform of Act 22/2003, dated 9th July, on Insolvency Article 178 is hereby amended

228 Act 38/2011, dated 10th October, on reform of Act 22/2003, dated 9th July, on Insolvency Article 179 is hereby redrafted

2. The updating shall be performed and approved pursuant to the provisions contained in Chapters II and II of Title IV of this Act. Publicity of the new report by the insolvency administrators and of the updated documents and their challenging shall be governed by the provisions contained in Chapter IV of Title IV, but the Court shall reject claims that do not refer strictly to the matters subject to updating, on its own motion and without subsequent appeal.

Article 181. Rendering of accounts.

1. A complete rendering of accounts shall be included, that shall fully justify the use made of the powers of administration granted, in all the insolvency administrators' reports prior to the order concluding the insolvency proceedings. These shall also report the result and final balance of the operations performed, requesting approval thereof.

2. Both the debtor and the creditors may formulate a reasoned opposition to approval of the accounts within the term of 15 days referred to in Paragraph 2 of Article 176.

3. If no opposition is formulated, the Court shall declare them approved in the order concluding the insolvency proceedings. If there is opposition, it shall be substantiated as an insolvency procedural plea and resolved prior to the ruling, which shall also resolve on conclusion of the insolvency proceedings. If there is opposition to approval of the accounts and also to conclusion of the insolvency proceedings, both shall be substantiated in the same insolvency procedural plea and resolved in the same ruling, notwithstanding an attestation of the latter being recorded in Section Two.

4. Approval or disapproval of the accounts does not prejudge whether or not a liability action against the insolvency administrators is appropriate, but disapproval shall give rise to their temporary barring to be appointed in other insolvency proceedings for a period that shall be determined by the Court in the ruling of disapproval and that may not be less than six months, or exceed two years.[229]

Article 182. Death of the insolvent debtor.

1. The death or judicial certification of presumed death of the insolvent debtor shall not be a cause of conclusion of the insolvency proceedings, which shall continue to be dealt as an insolvency of the inheritance, it being the remit of the insolvency administrators to exercise the economic powers of management and disposal of the inheritance.

2. Representation of the estate in the proceedings shall be performed by the party legally holding that right and, in the event, by those appointed by the heirs.

3. The inheritance shall be maintained undivided during the insolvency proceedings.

[229] See Articles 28.2 and 38.4 of this Act.

TITLE VIII

On the general procedural regulations, on the abbreviated proceedings and appeals system[230]

CHAPTER ONE

On the carrying out of the proceedings

Article 183. Sections.[231]

Insolvency proceedings shall be divided into the following sections, organising the actions in each one of them in as many separate procedures as necessary or convenient:

1. Section One shall include the information concerning the declaration opening the insolvency proceedings, the preservation measures, the final resolution of the common phase, the conclusion and, when appropriate, reopening of the insolvency proceedings;

2. Section Two shall include everything concerning the administration or voluntary arrangement under Insolvency Law, the appointment and status of the insolvency administrators, determination of their powers and their exercise, rendering accounts and, when appropriate, the liability of the insolvency administrators;

3. Section three shall include matters of determining the aggregate assets, the authorisations to dispose of assets and rights of the aggregate assets, to the substantiation, decision and execution of reintegration and reduction actions and the debts of the estate.

4. Section four shall include matters of determining the aggregate liabilities, communication, recognition, grading and classification of the insolvency claims and payment of the creditors. This Section shall also include, in a separate piece, the declaratory trials against the debtor that may have been accumulated in the creditors' proceedings and enforcements initiated or that are reopened against the insolvent debtor.

5. Section five shall include all matters related to the composition and winding up, included in the early proposal and early winding up.

6. Section Six shall include matters related to classification of the insolvency and its effects.[232]

Article 184. Procedural representation and defence. Summons and ascertaining the domicile of the debtor.

1. The debtor and the insolvency administrators shall be recognised as parties in all the sections without having to appear in the due manner. The Salary Guarantee Fund must be summoned as a party when the proceedings may give rise to its liability for payment of salaries or compensations to employees. The Public Prosecutor shall also be a party in Section Six.

2. The debtor shall always be represented by a Barrister–at–Law and counselled by a Solicitor, without prejudice to the terms established in Paragraph 6 of this Article.

3. To petition for a declaration opening the insolvency proceedings, appear in the proceedings, file appeals, raise insolvency procedural pleas or lodge an appeal against acts of administration, creditors and other parties legitimated

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230 Act 38/2011, dated 10th October, on reform of Act 22/2003, dated 9th July, on Insolvency
The heading of Title VIII is hereby amended

231 Act 38/2011, dated 10th October, on reform of Act 22/2003, dated 9th July, on Insolvency
Sections 3, 4 and 5 of Article 183 are hereby amended

232 See Article 16 of this Act.

shall be represented by a Barrister–at–Law and counselled by a Solicitor. They may, when appropriate, lodge claims and formulate allegations, as well as attend and intervene at the meeting, without the need to appear in the due manner.

4. Any others who have a legitimate interest in the insolvency proceedings may appear as long as they do so represented by a Barrister–at–Law and counselled by a Solicitor.

5. The insolvency administration shall always be heard, without the need for formal appearance, although when it appears in appeals or insolvency procedural pleas, they must do so counselled by a Solicitor. The technical direction of these appeals and insolvency procedural pleas shall be understood to be included among the duties of the Solicitor member of the insolvency administrators.[233]

6. The provisions contained in this Article are understood to be notwithstanding what is established for representation and defence of workers in the Labour Procedure Act, including the powers attributed to Social Graduates and to the Trade Unions in order to exercise any actions and appeals as appropriate in the insolvency proceedings to ensure effectiveness of labour rights, as well as without prejudice to the rights of the Public Administrations, pursuant to the specific procedural provisions.[234]

7. If the domicile of the debtor were unknown, or if the result of summons is negative, the Court Clerk, on his own motion or at the request of the party concerned, may perform the investigations of domicile foreseen under Article 156 of the Civil Judicial Procedure Act. If the debtor is a natural person and has deceased, the rules on succession foreseen in the Civil Judicial Procedure Act shall apply. In the case of a legal person whose location is unknown, the Court Clerk may resort to the public registers to determine who were the directors or proxies of the Company in order to summon it through those persons. When the Court Clerk has exhausted all the channels to summon the debtor, the Court may issue the order to admit the insolvency proceedings on the basis of the documents and allegations produced by the creditors and the investigations carried out during this admission phase.[235]

Article 185. Right to examination of the written record of the proceedings.

Creditors who have not appeared in the due manner may petition the Court to peruse the documents or reports recorded in the proceedings on their respective claims, to which end they shall appear before the Court Office, personally, or through the Solicitor or Barrister–at–Law representing them, in the case of those who are not obliged to become parties.[236]

Article 186. Court acting on its own motion.

1. Once the insolvency proceedings are declared open, the procedural driving force shall be the Court Clerk acting on his own motion.

2. The Court shall resolve on withdrawal or renunciation by the person who has requested the opening of the insolvency proceedings, having heard the other creditors recognised in the definitive list. During carrying out of the proceedings, insolvency procedural pleas shall not give rise to suspension, except if the Court exceptionally resolves otherwise, giving the reasons.

3. When the law does not set a term to issue a judicial resolution, this must be handed down without delay.[237]

Article 187. Extension of the powers of the insolvency Court.

1. The Court may enable the days and hours required to perform the proceedings considered urgent in benefit of the insolvency proceedings. Such enabling may also be effected by the Court Clerk when the object thereof is the

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233 Act 38/2011, dated 10th October, on reform of Act 22/2003, dated 9th July, on Insolvency

234 Act 38/2011, dated 10th October, on reform of Act 22/2003, dated 9th July, on Insolvency

235 Paragraph drafted pursuant to Act 13/2009, dated 3rd November (Official State Gazette nº 266, dated 4th November)

236 Paragraph drafted pursuant to Act 13/2009, dated 3rd November (Official State Gazette nº 266, dated 4th November)

237 Paragraph drafted pursuant to Act 13/2009, dated 3rd November, on reform of procedural laws in order to establish the new Court Office.

carrying out of procedural actions ordered by him or when the object thereof is the implementation of resolutions adopted by the Court.[238]

2. The Court may obtain evidence outside the scope of its territorial competence, previously serving notice on the competent Court, when this does not affect the competence of the relevant Court and is justified for reasons of procedural economy.

Article 188. Judicial authorisations.

1. In cases in which the law establishes the need to obtain authorisation from the Court or insolvency administrators, the petition shall be made in writing.

2. All the parties that must be heard with regard to its object shall be notified of the petition submitted, granting them an identical term for allegations of no less than three days, nor exceeding ten, according to the complexity and importance of the matter. The Court shall decide on the petition by order within the five days following the last deadline set.

3. None other than a remedy of appeal to the same Court may be lodged against the order granting or refusing the authorisation requested.[239]

Article 189. Prejudicial nature of criminal proceedings.

1. Inchoation of criminal proceedings related to the insolvency shall not cause suspension of the insolvency proceedings.

2. Once a criminal suit or complaint is admitted to consideration on facts related to or influencing the insolvency proceedings, it shall be the competence of the insolvency Court to adopt the measures to withhold payments from creditors indicted or other similar measures that shall allow the insolvency proceedings to continue, as long as these measures do not make enforcement of the pronouncements of an economic nature in eventual criminal rulings impossible to enforce.

CHAPTER II

On the abbreviated procedure[240]

Article 190. Scope of application.

1. The Court shall apply the abbreviated procedure when, considering the available information, it considers the insolvency is not especially complex, in view of the following circumstances:

1. That the list presented by the debtor shall include at least fifty creditors;

2. That the initial estimate of the liabilities shall not exceed five million euros.

3. That the valuation of the assets and rights shall not reach five million euros.

When the debtor is a natural person, the Court shall especially evaluate whether he is liable for or the guarantor of debts of a legal person and whether he is the manager of any legal person.

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238 Paragraph drafted pursuant to Act 13/2009, dated 3rd November (Official State Gazette nº 266, dated 4th November)

239 Paragraph drafted pursuant to Royal Decree–Law 3/2009, dated 27th March (Official State Gazette number 78, dated 31st March), bear in mind its Transitional Provision 8.

240 Act 38/2011, dated 10th October, on reform of Act 22/2003, dated 9th July, on Insolvency
Chapter II of Title VIII is hereby redrafted

2. The Court may also apply the abbreviated procedure when the debtor submits an early proposal of composition or a proposal of composition that includes a structural modification by which his full assets and liabilities are conveyed.

3. The Court shall necessarily apply the abbreviated procedure when the debtor submits a winding up plan along with the petition for insolvency that contains a binding written commitment to purchase the operating productive unit, or that the debtor has completely ceased his activity and has no work contracts are in force.

4. The Court, of its own motion, on request by the debtor or the insolvency administration, or of any creditor, may at any time, considering changes in the circumstances foreseen in the preceding sections and according to the greater or lesser complexity of the insolvency, transform an abbreviate procedure into an ordinary one, or an ordinary one into an abbreviated procedure.

Article 191. Content

1. The insolvency administrator shall present an inventory of assets and rights of creditors within the 15 days following acceptance of office.

2. The insolvency administrator shall submit the report foreseen in Article 75, within the term of one month from accepting office. He may submit a reasoned petition to the Court for an extension that shall not exceed 15 days in any case.

3. The insolvency administrator shall issue the notification foreseen in Article 95.1 at least day days prior to submitting the list of creditors.

4. The Court Clerk shall form a separate piece to process everything related to challenges the inventory and the list of creditors, and, on the following day, without commencing a procedural plea, shall notify the insolvency administrator thereof.

Within the term of ten days, the insolvency administrator shall notify the Court whether he accepts the claim, including it in the definitive texts, or if formally opposes it, in turn proposing the evidence he may deem appropriate.

When the suit has been replied to or the term to do so has elapsed, the proceedings shall continue pursuant to the formalities of verbal trial pursuant to the Civil Procedure Act and Article 194.4 shall apply to all matters not contrary to the provisions contained in this provision.

If there is more than one challenge, these shall be accumulated so they may be processed and resolved at a sole hearing.

The insolvency administrator shall immediately notify the Court of the effect of challenges on the quorum and majorities required to approve the composition.

Should the challenges affect less than twenty per cent of the insolvency assets or liabilities, the Court may order conclusion of the common phase and commencement of the composition or winding up phase, without prejudice to the effect such contestations may have on the definitive texts.

Costs shall be imposed pursuant to the criterion of the plea being successful or not, except if the Court appreciates and reasons the existence of serious doubts of fact or law.

5. The term to submit ordinary proposals for composition shall end, in all cases, five days after the report by the insolvency administrator is notified.

When the proposal for composition is admitted to consideration, the Court Clerk shall set the date to hold the creditors' meeting within the following thirty working days.

6. If no proposal for composition has been presented within the term foreseen in the preceding Section, the Court Clerk shall immediately commence the winding up phase, requiring the insolvency administrator to submit the winding up plan within a term of ten days, which cannot be extended.

When the plan is approved, the winding up operations may not last more than three months, which may be extended, at the request of the insolvency administration, for one month more.

Article 191 bis. Specialities of the abbreviated procedure in the case of petition for insolvency with presentation of the proposal for composition.

1. In the order of declaration of insolvency, the Court shall resolve on admission to consideration of the proposal for composition presented by the debtor with his petition.

The insolvency administrator shall assess the proposal for composition submitted by the debtor, within the term of ten days from publication of the declaration of insolvency.

2. Acceptance of the proposal for composition shall be issued in writing. Creditors who have not adhered to the proposal for composition presented by the debtor beforehand may do so up to five days after the date of presentation of the report by the insolvency administrator.

3. Within the three days following that when the term to formulate adhesions has elapsed, the Court Clerk shall verify whether the proposal for composition reaches the legally required majority and shall proclaim the result by decree.

Should the majority be obtained, immediately after expiry of the term to oppose the judicial approval of the composition, the Court shall hand down a judgement of approval, except if opposition to that approval is formulated or if the Court proceeds to reject it of its own motion.

If opposition is raised, the Court Clerk shall admit the suit and the Court may require the party contesting to provide a guarantee for damages and losses to the aggregate insolvency liabilities and assets that may be caused by the delay in approving the composition.

Article 191 ter. Specialities of the abbreviated procedure in the event of petition for insolvency with presentation of the winding up plan

1. If the debtor has petitioned for winding up pursuant to the provisions contained in Article 190.2, the Court shall immediately order commencement of the winding up phase.

2. When the winding up phase has commenced, the Court Clerk shall notify the winding up plan presented by the debtor for a report thereon to be issued by the insolvency administrator within the term of ten days and for creditors to be able to make allegations.

The report by the insolvency administrator must necessarily include the inventory of the aggregate insolvency assets and assess the effect of termination of contracts on the aggregate insolvency assets and liabilities.

In the order approving the winding up plan, the Court may order termination of the contracts pending fulfilment by both parties, with the exception of those that are bound to an effective offer to purchase the productive unit or part thereof.

3. In the event of the winding up operations being suspended due to the inventory or list of creditors being contested, the Court may require those contesting to provide a deposit to guarantee to cover possible damages and losses due to the delay.

Article 191 quater. Supplementary application of the rules of the ordinary procedure

In all matters not specifically regulated in this Chapter, the rules foreseen in the ordinary procedure shall apply.

CHAPTER III

On insolvency procedural pleas

Article 192. Scope and nature of the insolvency procedural plea.

1. All matters arising during insolvency proceedings that do not have any other procedure set under this Act shall be dealt with as an insolvency procedural plea.

Actions that must be executed by the insolvency Court pursuant to the provisions contained in Paragraph 1 of Article 50 and trials accumulated by virtue of the provisions established in Paragraph 1 of Article 51 shall also be conducted by this procedure.

In the latter case, the insolvency Court shall order whatever is necessary to continue the trial without repeating actions and allowing intervention, from that moment, of the parties to the insolvency proceedings who have not been party to the accumulated trial.

2. An insolvency procedural plea shall not suspend the insolvency proceedings; nevertheless, the Court, on its own motion or at a party's request, may resolve suspension of actions it deems may be affected by the resolution handed down.

3. Insolvency procedural pleas aimed at petitioning for acts of administration or to challenge them for reasons of opportunity shall not be admitted.

Article 193. Parties to the insolvency procedural plea.

1. Parties considered as defendants in the insolvency procedural plea shall be those against whom the application is lodged and any others who hold positions contrary to what the plaintiff has pleaded.

2. Any person who has appeared in the insolvency proceedings in the due manner may intervene with full autonomy in the insolvency procedural plea, acting jointly with the party that has promoted it, or with the opposing side.

3. When applications are accumulated in an insolvency procedural plea whose petitions do not coincide, all the parties intervening must reply to the applications whose claims are opposed to each other, if allowed at the moment of their intervention, and clearly and precisely state the specific protection they are petitioning for. If this is not done, the Court shall reject their intervention outright, without any appeal whatsoever being admissible against this.

Article 194. Insolvency procedural plea and admission to consideration.

1. Pleas shall be submitted in the manner foreseen in Article 399 of the Civil Judicial Procedure Act.

2. If the Court were to deem that the matter raised is not pertinent or lacks the necessary substance to deal therewith by means of an insolvency procedural plea, the Court shall resolve, by order, not to admit it, giving the matter raised the relevant course. A remedy of appeal may be lodged against such order under the terms established in Paragraph 1 of Article 197.

3. Otherwise, the Court shall hand down a resolution admitting the insolvency procedural plea to consideration and summoning the other parties that have appeared, with delivery of the application or applications, so that within the common term of ten days, they may reply in the manner foreseen under Article 405 of the Civil Judicial Procedure Act.[241]

4. The parties shall only be summoned to the hearing when a writ of answer to the suit has been lodged, when there is dispute over the facts and these are material in the Court's opinion, and when the writs of allegations have

[241] Paragraphs 2 and 3 drafted pursuant to Act 13/2009, dated 3rd November.

proposed means of evidence, following declaration of their appropriateness and usefulness. That hearing shall be conducted in the manner foreseen in Article 443 of the Civil Procedure Act for verbal trials.

Otherwise, the Court shall hand down a judgement with no further formalities. The same shall take place when the sole evidence admitted being that of documents, and when these have already been produced in the proceedings without being contested, or when only expert witness reports have been produced, and neither the parties nor the Court request the presence of the experts in the trial to ratify their report.

In any of the cases foreseen in the preceding Paragraph, if procedural matters are raised in the writ of answer, or there are raised by the claimant at the hearing in view of the writ, within the term of five days from notification thereof, the Court shall resolve them handing down the appropriate resolution pursuant to the provisions set forth in the Civil Procedure Act for written resolution of such matters, pursuant to the provisions foreseen in the hearing prior to the ordinary trial. If the decision is made to continue with the proceedings, the Court hall hand down judgement within the term of ten days.[242]

Article 195. Insolvency procedural plea in labour matters.

1. If the insolvency procedural plea referred to in Article 64.8 of this Act is raised, the application shall be formulated pursuant to the terms established in Article 437 of the Civil Judicial Procedure Act. When appropriate, the Court Clerk shall warn the party of the defects, omissions or imprecision he has committed when drafting the application, in order for him to correct these within the term of four days, with the warning that, if he were not do so, it shall be set aside. Paragraph 2 of the preceding Article shall not apply to this insolvency procedural plea.

2. If the application is admitted to consideration by the Court, the Court Clerk shall set the date and time, within the following ten days, for the hearing to be held, summoning the defendants with delivery of a copy of the application and other documents, and in all cases a minimum of four days must elapse between the summons and the day the hearing is actually held. This shall commence with an attempt at conciliation or composition over the object of the insolvency procedural plea. Should this not be achieved, the plaintiff shall ratify his application, or may expand it, without materially altering his claims, the defendant answering verbally, and the parties shall then propose the evidence on the facts over which an agreement has not been reached, continuing the proceedings pursuant to the verbal trial formalities of the Civil Judicial Procedure Act, although after giving the evidence, the parties shall be granted a turn for summing up.[243]

Article 196. Ruling.

1. On conclusion of the trial, the Court shall hand down ruling within the term of ten days to resolve the insolvency procedural plea.

2. The ruling handed down in the insolvency procedural plea referred to in Article 194 shall be governed by the Civil Judicial Procedure Act in matters of costs, both with regard to imposing them as well as to their exaction, and they shall immediately fall due, once the ruling is final, regardless of the state of the insolvency proceedings.[244]

3. The ruling handed down in the insolvency procedural plea to which Article 195 refers shall be governed in matters of costs by the provisions contained in the Labour Procedure Act.[245]

4. Once they are final, the rulings that put an end to the insolvency procedural pleas shall have the effects of *res iuducata.*

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242 Act 38/2011, dated 10th October, on reform of Act 22/2003, dated 9th July, on Insolvency

243 Article drafted pursuant to Act 13/2009, dated 3rd November (Official State Gazette nº 266, dated 4th November)

244 See Articles 394 to 398 of the Civil Judicial Procedure Act.

245 See Article 233 of the Labour Procedure Act.

CHAPTER IV

On appeals

Article 197. Appropriate appeals and procedure thereof.[246]

1. Appeals against resolutions handed down by the Court Clerk in the insolvency proceedings shall be the same as those provided in the Civil Judicial Procedure Act and shall be dealt in the manner foreseen therein.

2. Appeals against resolutions handed down by the Court in the insolvency proceedings shall be dealt with in the manner provided in the Civil Judicial Procedure Act, with the peculiarities indicated below and without prejudice to the provisions established in Article 64 of this Act.

3. Only a remedy of repeal to the same Court may be lodged against the resolutions and orders handed down by the insolvency Court, except if this Act excludes any appeal whatsoever or grants another one.

4. No appeal whatsoever hall be admitted against orders resolving appeals to the same Court and against judgements handed down in procedural pleas raised in the common section or that of the composition, although the parties may reproduce the matter at the nearest appeal as long as they have filed a protest within the term of five days. To these ends, the nearest appeal shall be considered the relevant one against the order to commence the composition section, that ordering commencement of the winding up phase and that approving the early proposal of composition. This does not include judgements handed down in the procedural pleas referred to in Article 72.4 and Article 80.2, which shall be directly appealable. This remedy of appeal shall have preferential status.

5. The remedy of appeal to the Higher Court, which shall be processed with preferential status, may be filed against the judgements approving the composition, or those resolving insolvency procedural pleas arising after or during the winding up phase.

6. The insolvency Court, of its own motion or at the request of a party, may issue a reasoned order on admitting the remedy of appeal to the Higher Court suspending those acts that may be affected by the resolution thereof. This decision may be revised by the Provincial High Court at the request of a party, formulated by writ filed before it within the five days following notification of the decision by the insolvency Court, in which case the matter must be resolved prior to examination of the merits of the appeal and within ten days following receipt of the proceedings by the Court, without it being possible to file any appeal whatsoever against the decision handed down.

If suspension of the composition has been petitioned for on appealing, the Court may grant fully or partially.

7. An appeal in cassation and an extraordinary appeal for procedural infringement may be lodged, pursuant to the criteria for admission foreseen in the Civil Judicial Procedure Act, against rulings handed down by the Provincial High Courts over approval or fulfilment of the composition, the classification or conclusion of the insolvency proceedings, or that resolve actions among those included in Sections Three and Four.

8. Supplication appeal and the other appeals foreseen in the Labour Procedure Act may be lodged against the ruling resolving insolvency procedural pleas concerning social actions that are to be heard by the insolvency Court, without any of these having suspension effects on the processing of the insolvency proceedings or any of its parts.[247]

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246 Act 38/2011, dated 10th October, on reform of Act 22/2003, dated 9th July, on Insolvency
Sections 4, 5 and 6 of Article 197 are hereby amended

247 Article drafted pursuant to Act 13/2009, dated 3rd November (Official State Gazette nº 266, dated 4th November)

CHAPTER V

Public insolvency register[248]

Article 198. Public Insolvency Register.[249]

1. The Public Insolvency Register shall be kept under the auspices of the Ministry of Justice and shall consist of two sections:

a) In the first section, of insolvency edicts, the resolutions that must be published pursuant to the provisions set forth in Article 23 and by virtue of the order sent by Court Clerk shall be recorded, organised by insolvent debtor and dates;

b) In the second section, that of registry publicity, the registry resolutions annotated or registered at all the public registers of persons referred to in Article 24.1, 2 and 3 shall be recorded, organised by insolvent debtor and dates, including those that declare the insolvent debtors tortuous, or that order appointment or barring of the insolvency administrators and by virtue of certifications sent of its own motion by the registry officer, once the relevant entry has been performed.

2. Publication of the judicial provisions or extracts thereof shall have a merely informative value, or of being deemed as publicly known.

3. The publicity structure, content and system shall be implemented pursuant to the implementing regulations via this registry and with the insertion and access procedures, under the following principles:

1. Judicial resolutions may be published in extract recording the indispensable data to determine the content and scope of the resolution, indicating the data that may be recorded when these have given rise to annotation or inscription at the relevant public registers.

2. Insertion of the resolutions or their statements shall be effected preferentially, through co-ordination mechanisms with the Civil Register, the Business Register or the remaining registers of persons at which there is a record of the insolvent debtor who is a natural person, pursuant to the forms to be approved by the implementing regulations.

3. The registry must have a device that allows knowledge and verifiable accreditation of commencement of public disclosure of the resolutions and of the information included therein.

4. The content of the register shall be accessible free of charge on the Internet, or by other equivalent means for telematic queries.

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248 Heading drafted pursuant to Royal Decree–Law 3/2009, dated 27th March (Official State Gazette number 78, dated 31st March).

249 Act 38/2011, dated 10th October, on reform of Act 22/2003, dated 9th July, on Insolvency

TITLE IX

On the rules of Private International Law

CHAPTER ONE

General aspects

Article 199. On relations between orders.

The rules of this Title shall be applied without prejudice to the provisions contained in Council Regulation (EC) 1346/2000, on insolvency proceedings, and other Community or conventional rules that regulate the matter.[250]

In the event of lack of reciprocity, or when there is a systematic failure to co-operate by the authorities of a foreign State, Chapters III and IV of this Title shall not apply with regard to proceedings followed in that State.

Article 200. General rule.

Without prejudice to the provisions contained in the following Articles, Spanish Law shall determine the cases and effects of insolvency proceedings declared open in Spain, as well as the furtherance and conclusion thereof.

CHAPTER II

On the applicable law

SECTION 1. ON THE MAIN PROCEDURE

Article 201. Rights in rem and reservation of title.

1. The effects of insolvency proceedings on the rights *in rem* of a creditor or third party in respect of properties, goods or rights of any kind whatsoever belonging to the debtor, including collections of assets as a whole which change from time to, which are situated in the territory of Spain at the time the insolvency proceedings are declared open, shall be governed exclusively by Spanish Law.

The same rule shall apply to the seller's rights with regard to the assets sold to the insolvent debtor with reservation of title.

2. The declaration opening the insolvency proceedings of the seller of an asset with reservation of title that has already been delivered and that, at the moment of declaration, is situated in the territory of another State, shall not constitute, in itself, grounds for rescinding or terminating the sale and shall not prevent the buyer from acquiring title.

3. The provisions contained in the preceding Paragraphs are understood to be notwithstanding the reintegration actions that may be appropriate.[251]

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250 The said Regulation 1346/2000, dated 29th May 2000 was published in the "OJEC" number 160, dated 30th June; correction of errors in "OJEC" number 176, dated 5th July 2002, the annexes of which have undergone diverse amendments.

251 See Articles 204, 218.1 and 223 of this Act.

Article 202. Rights of the debtor subject to registration.

The effects of the insolvency proceedings on the rights of the debtor in immoveable goods, a ship or aircraft subject to registration in a public register shall be determined by the law of the State under the authority of which the register is kept.

Article 203. Third party acquirers.

The validity of acts of disposal for a consideration by the debtor of immoveable property, a ship or aircraft subject to registration in a public register, effected after the insolvency proceedings were declared open, shall be determined, respectively, by the law of the State where the immoveable property is situated or under the authority of which the register of the ship or aircraft is kept.

Article 204. Rights to securities, payment systems, and financial markets.

The effects of the insolvency proceedings on the rights to negotiable securities represented by annotations in accounts shall be governed by the laws of the State of the register where those securities are annotated. This rule includes any legally recognised register of securities, including those kept by financial entities subject to legal supervision.

Without prejudice to the provisions contained in Article 201, the effects of the insolvency proceedings on the rights and duties of the participants in a payment or clearing system or in a financial market shall be governed solely by the law of the State applicable to that system or market.

Article 205. Set–offs

1. The declaration opening the insolvency proceedings shall not affect the right of a creditor to set off his claim when the law governing the reciprocal claim of the insolvent debtor allows this in situations of insolvency.

2. The provisions contained in the preceding Paragraph are understood to be without prejudice to reintegration actions, should these be appropriate.

Article 206. Contracts relating to immoveable property.

The effects of the insolvency proceedings on a contract conferring the right to acquire or make use of immoveable property shall be governed solely by the law of the State within the territory of which the immoveable property is situated.

Article 207. Contracts of employment.

The effects of the insolvency proceedings on employment contracts and relationships shall be governed solely by the law of the State applicable to the contract.

Article 208. Reintegration actions.

It shall not be possible to exercise reintegration actions under this Act when the party that benefits from the act that is detrimental to the aggregate assets proves that such act is subject to the law of another State that does not allow contesting it in any case.

Article 209. Declaratory trials pending.

The effects of the insolvency proceedings on the declaratory trials pending in relation to goods or rights pertaining to the estate shall be governed exclusively by the law of the State in which they are being conducted.

SECTION 2. ON THE SECONDARY INSOLVENCY PROCEEDINGS

Article 210. General rule.

Except for the provisions established in this Paragraph, the secondary insolvency proceedings shall be governed by the same rules as the main insolvency proceedings.

Article 211. Assumption of insolvency.

Recognition of foreign main proceedings shall allow secondary insolvency proceedings to be opened in Spain without the need to examine the insolvency of the debtor.

Article 212. Legitimacy.

Declaration of secondary insolvency may be applied for by:

1. Any person legitimated to petition for a declaration opening the insolvency proceedings pursuant to this Act;

2. The representative of the foreign main insolvency proceedings.

Article 213. Scope of a composition with creditors.

The limitations on the rights of creditors arising from a composition approved in a secondary insolvency, such as discharge of debts and stay of payment, shall only take effect with regard to the assets of the debtor that are not included in those insolvency proceedings if all the creditors with an interest consent thereto.

SECTION 3. ON THE RULES THAT ARE COMMON TO BOTH TYPES OF PROCEEDINGS

Article 214. Information for creditors abroad.

1. Once insolvency proceedings are declared open, the insolvency administrators shall inform known creditors whose habitual residence, domicile, or seat is located abroad, if these are found recorded in the books and documents of the debtor, or if recorded in the proceedings for any other reason.

2. The information shall include identification of the proceedings, the date of the order declaring the insolvency proceedings open, the main or secondary nature of the insolvency, the personal circumstances of the debtor, the effects on the powers of administration and disposal with regard to his assets, summoning of creditors, including secured ones, the term to lodge claims with the insolvency administrators and the postal address of the Court.

3. The information shall be provided in writing and sent individually, except if the Court provides any other means that it deems more appropriate given the circumstances of the case.[252]

Article 215. Advertising and recording abroad.

1. The Court, on its own motion or at the request of the party concerned, may order publication of the essential content of the order declaring the insolvency proceedings open in any foreign State where it is convenient to the interests of the insolvency proceedings, pursuant to the publication modes foreseen in that State for insolvency proceedings.

[252] See Article 219.1 of this Act.

2. The insolvency administrators may request register publicity of the order declaring the insolvency proceedings open abroad and other procedural acts when this is convenient to the interests of the insolvency proceedings.

Article 216. Payment to the insolvent debtor abroad.

1. Payment made to the insolvent abroad by a debtor with his usual residence, domicile or registered office abroad, shall only act as a discharge if he were to do so in ignorance of insolvency proceedings having been declared open in Spain.

2. In the absence of evidence to the contrary, it shall be presumed that anyone who made payment before opening of the insolvency proceedings were given the publicity referred to in Paragraph 1 of the preceding Article ignored their existence.

Article 217. Lodging of claims.

1. Creditors who have their usual residence, domicile, or registered office abroad shall lodge with the insolvency administrators their claims as set forth in Article 85.

2. All creditors may lodge their claims in the main or secondary proceedings open in Spain, regardless of them also having been lodged in insolvency proceedings open abroad.

This rule includes, subject to reciprocity, the tax and Social Security claims of other States, which in this case shall be admitted as ordinary claims.

Article 218. Rehabilitation and imputation.

1. A creditor who, after main proceedings are opened in Spain, obtains a total or partial payment of his claim against the assets of the debtor located abroad, or by realisation or foreclosure upon these, must restore what he has obtained to the estate, without prejudice to the provisions of Article 201.

In the event of that payment being obtained in insolvency proceedings open abroad, the rule of imputation of payments of Article 229 shall apply.

2. When the State where the assets are situated does not recognise the insolvency proceedings declared in Spain, or when the difficulties to locate and realise those assets make it justifiable, the Court may authorise the creditors to instigate individual enforcement abroad, with application, in all cases, of the imputation rule foreseen in Article 229.

Article 219. Languages.

1. The information foreseen in Article 214 shall be provided in Spanish and, where appropriate, in any of the other official languages (in Spain), but the heading of its text shall also bear the English and French terms: “Invitation to lodge a claim. Time limits to be observed”.

2. Creditors with their usual residence, domicile or registered address abroad shall lodge their claims in Spanish, or another official language of the Autonomous Community where the insolvency Court has it seat. If they were to do so in another language, the insolvency administrators may subsequently require a translation into Spanish.

CHAPTER III

On recognition of foreign insolvency proceedings

Article 220. Registration of the opening resolution.

1. Foreign resolutions to declare opening insolvency proceedings shall be recognised in Spain by the exequatur procedure regulated by the Civil Judicial Procedure Act[253], if they fulfil the following requisites:

1. That the resolution refers to collective proceedings based on insolvency of the debtor, by virtue of which his assets and activities are subject to control or supervision by a court or a foreign authority for the purposes of the reorganisation or winding-up thereof;

2. That the resolution be final pursuant to the law of the State where the proceedings are opened;

3. That the competence of the court or authority that has opened the insolvency proceedings is be based on one of the criteria contained in Article 10 of this Act, or to reasonably related one of an equivalent nature;

4. That the resolution has not been handed down in contempt of court by the debtor or, if this were so, it has been preceded by service or notice of the summons or equivalent document, in due process and with enough advance notice to oppose it;

5. That the resolution not be contrary to Spanish public order.

2. The foreign insolvency proceedings shall be recognised:

1. As main foreign proceedings, if they are being dealt in the State where the debtor has the centre of his main interests;

2. As foreign secondary proceedings, if it is being dealt in a State where the debtor has an establishment or in whose territory there is a reasonable connection of an equivalent nature, such as the presence of assets vested for an economic activity.

3. Recognition of main foreign proceedings shall not prevent secondary proceedings being opened in Spain.

4. Processing the exequatur may be suspended when the resolution to open the insolvency proceedings has been subject to an ordinary appeal, or when the term to file it has not expired in their State of origin.

5. What is set forth in this Article shall not prevent amendment or revocation of the recognition if a relevant alteration or disappearance of the reasons for the granting thereof is evidenced.

Article 221. Foreign administrator or representative.

1. Administrator or representative status in the foreign proceedings shall be held by the person or body, even if appointed provisionally, that is empowered to administer or supervise the reorganisation or winding-up of the assets and activities of the debtor, or to act as representative of the proceedings.

2. The appointment of the administrator or representative shall be accredited by authenticated copy of the original of the resolution of appointment, or by certificate issued by the competent court or authority, fulfilling the requisites to be undisputable evidence n Spain.

3. Once the main foreign proceedings are recognised, the administrator or representative shall be bound to:

[253] Articles 951 to 958 of the Civil Judicial Procedure Act 1881.

1. Grant the proceedings a publicity equivalent to that ordered in Article 23 of this Act, when the debtor has an establishment in Spain;

2. To petition for the appropriate entries at the relevant public registers, pursuant to Article 24 of this Act.

The expenses arising from the publicity and registration measures shall be paid by the administrator or representative from the main proceedings.[254]

4. Once main foreign proceedings are recognised, the administrator or representative thereof may exercise the powers granted to him pursuant to the law of the State of opening, except when these are incompatible with the effects of the secondary insolvency proceedings declared in Spain or with the preservation measures adopted by virtue of a petition for insolvency and, in all cases, when their content is contrary to public order.

When exercising their powers, the administrator or representative must respect Spanish Law, in particular with regard to the means of realising the assets and rights of the debtor.

Article 222. Recognition of other resolutions.

1. Once the exequatur of the resolution opening the insolvency proceedings is obtained, any other resolution handed down in those insolvency proceedings that have their basis in the insolvency legislation shall be recognised in Spain, without the need for any formalities whatsoever, as long as such resolutions fulfil the requisites foreseen in Article 220. The requisite of prior delivery or notice of summons or equivalent document shall also be a requisite with regard to any person other than the debtor who is sued in the foreign insolvency proceedings and in relation to the resolutions affecting that party.

2. In the event of opposition to the recognition, any person interested may petition for it to be declared as the main question in the exequatur proceedings regulated in the Civil Judicial Procedure Act.

If recognition of the foreign resolution were to be invoked in ongoing proceedings as a procedural plea, the Court hearing the underlying matter shall be competent to resolve thereon.

Article 223. Effects of the recognition.

1. Except in the cases foreseen in Articles 201 to 209, foreign resolutions recognised shall take the effects in Spain that they are attributed by the law of the State where the proceedings were commenced.

2. The effects of foreign secondary proceedings shall be limited to the goods and assets situated in the State of opening at the time of it being declared.

3. In the case of a declaration opening secondary insolvency proceedings in Spain, the effects of the foreign proceedings shall be governed by what is set forth in Chapter IV of this Title.

Article 224. Enforcement.

Foreign resolutions that are enforceable pursuant to the laws of the State of opening the proceedings in which they were handed down shall require a prior exequatur for enforcement in Spain.

Article 225. Fulfilment in favour of the debtor.

1. Payment made in Spain to a debtor subject to insolvency proceedings open in another State and pursuant to which it should be made to the administrator or representative appointed therein shall only act as discharge of debts for those who did so ignoring the existence of the proceedings.

[254] See Article 225.2 of this Act.

2. In the absence of evidence to the contrary, those who made payment before the foreign insolvency proceedings opened were publicised as ordered in Paragraph 3 of Article 221 shall be presumed to have ignored the existence of the proceedings.

Article 226. Preservation measures.

1. Preservation measures adopted prior to opening insolvency proceedings abroad by a court that is competent to open these may be recognised and enforced in Spain following the relevant exequatur.

2. Prior to recognition of foreign insolvency proceedings and at the request of their administrator or representative, preservation measures may be adopted pursuant to Spanish Law, including the following:

1. To halt any enforcement measure against the properties, goods and rights of the debtor;

2. Entrusting the foreign administrator or representative, or the person appointed on adopting the measure, the administration or realisation of those goods or rights situated in Spain that, due to their nature or circumstances arising, are perishable, liable to suffer severe deterioration or to considerably decrease in value;

3. To suspend exercise of the powers of disposal, alienation and encumbrance of properties, goods and rights of the debtor.

If the petition for preservation measures has preceded that of recognition of the resolution to open the insolvency proceedings, the resolution that adopts them shall condition their subsistence to submission of the latter petition within the term of twenty days.

CHAPTER IV

On co–ordination between parallel insolvency proceedings[255]

Article 227. Co–operation obligations.

1. Without prejudice of compliance with the applicable provisions in each one of the proceedings, the insolvency administrators in insolvency proceedings declared in Spain and the administrator or representative of foreign insolvency proceedings related to the same debtor that are recognised in Spain shall be subject to a duty of reciprocal co–operation in the exercise of their functions, under the supervision of the respective competent Courts or authorities. Refusal to co–operate by the administrator or representative, or the foreign court or authority, shall release the relevant Spanish bodies of that duty.

2. Co–operation may consist, in particular, of:

1. Exchange, by any means considered appropriate, of information that may be useful to the other proceedings, without prejudice to the obligatory respect of the rules with regard to secrecy or confidentiality of the data that are the object of the information, or protected in any other way.

   In all cases, there shall be the obligation of informing of any significant change in the situation of the respective procedure, including appointment of the administrator or representative, and of the opening of insolvency proceedings in another State with regard to the same debtor.

2. Co–ordination of the administrator and control or supervision of the goods and activities of the debtor.

3. Approval and application of arrangements related to co–ordination of the proceedings by the competent courts or authorities.

[255] See Articles 10.3, 199 and 223.2 of this Act.

3. The insolvency administrators in the secondary insolvency proceedings declared open in Spain must allow the administrator or representative in the main foreign proceedings to submit proposals in a timely manner for composition, winding–up plans or any other means of realisation of properties, goods and rights of the estate or for payment of the claims.

The insolvency administrators in the main insolvency proceedings declared in Spain shall demand the same treatment in any other proceedings opened abroad.

Article 228. Exercise of the rights of the creditors.

1. To the extent allowed by the law applicable to the foreign insolvency proceedings, his administrator or representative may inform in the insolvency proceedings declared in Spain and, pursuant to the provisions established in this Act, of the claims recognised in the former. Under the same conditions, the administrator or representative shall be empowered to participate in the insolvency proceedings on behalf of the creditors whose claims he has notified.

2. The insolvency administrators in insolvency proceedings declared in Spain may lodge the claims recognised on the definitive list of creditors in foreign insolvency proceedings, whether main or secondary, as long as this is allowed by the law applicable to those proceedings. Under the same conditions, the insolvency administrators, or person appointed by them, shall be empowered to participate in those proceedings on behalf of the creditors whose claims they have lodged.

Article 229. Rules on payment.

A creditor who obtains partial payment of his claim in foreign insolvency proceedings may not demand any additional payment in the insolvency proceedings declared open in Spain until the remaining creditors of the same class and rank have obtained an equivalent percentage to that sum.[256]

Article 230. Surplus assets from secondary proceedings.

On condition of reciprocity, the assets remaining on conclusion of secondary insolvency proceedings shall be made available to the administrator or representative of the main foreign proceedings recognised in Spain. The insolvency administrators of the main insolvency proceedings declared in Spain shall demand the same treatment in any other proceedings open abroad.

ADDITIONAL PROVISIONS

One. Legal references to insolvency proceedings previously in force.

The Courts of Law shall construe and apply the legal rules that refer to insolvency proceedings repealed by this Act, relating them to those of the insolvency proceedings regulated in this one, bearing in mind fundamentally their spirit and purpose, and in particular to the following rules:

1. All references to receivership or to discharge of debts and stay of payment proceedings contained in legal provisions that have not been specifically amended by this Act shall be understood to relate to insolvency proceedings in which the winding–up phase has not yet arisen.

2. All references to bankruptcy or to creditors' proceedings contained in the legal provisions that have not been specifically amended by this Act shall be understood to relate to insolvency proceedings in which the winding-up phase has already been opened.

3. All declarations of incapacity of the bankrupt or insolvent debtors and prohibitions for these to hold offices or duties, or to perform any kind of activities established in legal provisions not specifically amended by this Act shall

[256] See Article 218 of this Act.

be understood to refer to persons subject to insolvency proceedings in which in which the winding-up phase has already been opened.

Two. Special regime applicable to credit institutions, investment service companies and insurance undertakings.

1. In insolvencies of credit institutions or entities that are legally assimilated thereto, as well as entities that are members of official securities markets and entities participating in the securities clearing and liquidation systems, the specialities or insolvency situations established in their specific legislation shall apply, except those related to composition, appointment and operation of the administration under Insolvency Law.

2. The specifications of the following laws are considered special legislation for the purposes of application of Paragraph 1:

a) Articles 10, 14 and 15 of Act 2/1981, dated 25th March, on Regulation of the Mortgage Market, as well as the rules regulating other securities or instruments that are legally attributed the same solvency regime as that applicable to mortgage certificates;

b) Article 16 of Royal Decree–Law 3/1993, dated 26th February, on urgent measures in budgetary, tax, financial and employment matters:

c) Act 24/1988, dated 28th July, on the Stock Market, with regard to the regime applicable to the clearing and liquidation systems regulated thereby, and the entities participating in those systems and, in particular, Articles 44 bis, 44 ter, 58 and 59.

d) Additional Provision Five of Act 3/1994, dated 14th April, on adaptation of Spanish legislation in matters of credit institutions to the Second Directive on Banking Coordination;

e) Act 13/1994, dated 1st June, on Autonomy of the Bank of Spain, with regard to the regime applicable to guarantees established in favour of the Bank of Spain, of the European Central Bank, or other national central banks of the European Union, in the exercise of their functions;

f) Additional Provision Three of Act 1/1999, dated 5th January, that regulates capital risk companies and their management firms;

g) Act 41/1999, dated 12th November, on payment systems and the settlement systems of securities;

h) Articles 26 to 37, both inclusive, 39 and 59 of the Consolidated Text of the Act on Organisation and Supervision of Private Insurance, approved by Royal Legislative Decree 6/2004, dated 29th October, and the Consolidated Text of the Legal Statute of the Insurance Compensation Consortium, approved by Royal Legislative Decree 7/2004, dated 29th October;

i) Chapter II of Title I of Royal Decree–Law 5/2005, dated 11th March, on urgent reforms to boost productivity and to improve public contracting;

j) Act 6/2005, dated 22nd April, on Restructuring and Winding–up of Credit institutions;

k) Additional Provision Three of Royal Decree–Law 9/2009, dated 26th June, on banking restructuring and reinforcement of the shareholders' funds of credit institutions.[257]

3. The legal provisions mentioned in the preceding Paragraph shall be applied with the subjective and objective scope foreseen and for the operations or contracts provided for therein and, in particular, those related to the

[257] Paragraph drafted pursuant to Act 30/2007, dated 30th October (Official State Gazette number 261, dated 31st October), on Public Sector Contracts, except for letter a) that was drafted pursuant to Royal Decree–Law 3/2009, dated 27th March (Official State Gazette number 78, dated 31st March), and letter k), added by Royal Decree–Law 9/2009, dated 26th June (Official State Gazette number 155, dated 27th June).

operations of payment, liquidation and clearing systems for securities, purchase–sale operations, operations with buy–back clauses, or when they are financial operations related to derivative instruments.[258]

Two bis. Special regime applicable to situations of insolvency of sporting societies.[259]

In insolvency proceedings involving sporting societies that participate in official competitions, the special provisions for insolvency situations foreseen in the sports legislation and implementing regulations shall apply. In any case, the fact those entities are subjected to this Act shall not prevent application of the regulations governing participation in sporting competitions.

Within the six months following enactment of this Act, the Government shall submit a bill to Parliament on specialities of the insolvency treatment of professional sporting societies and associations, classified as such by Act 10/1990, dated 15th October, on Sports, and on the salary claims by their sportsmen."

Three. Reform of the Public Limited Companies Act and Private Limited Companies Act.

The Government shall submit a Bill to the Congress of Deputies to amend the Public Limited Companies Act, whose Consolidated Text approved by Royal Legislative Decree 1564/1989, dated 12th December, and Act 21/1995, dated 23rd March[260], on Private Limited Companies, in order to adapt them to this Act.

Four. Endorsement of refinancing agreements.[261]

1. Judicial endorsement may be provided of a refinancing agreement when it fulfils the conditions of Article 71.6 and has been signed by creditors representing at least seventy- five per cent of the liabilities held by financial institutions at the time of adoption of the composition. By virtue of the judicial endorsement, the effects of the time extension agreed for financial institutions that have signed shall be extended to the remaining creditor financial institutions that did not participate, or dissenters whose claims are not covered by an *in rem* guarantee.

2. The competence to hear said endorsement shall lie with the mercantile Court that may be competent, as appropriate, to declare the insolvency.

The petition shall be made by the debtor and shall be accompanied the refinancing agreement adopted and the report issued by the expert. The same petition may request stoppage of individual enforcements.

When the Court Clerk has examined the request for endorsement, he shall issue a decree admitting it to consideration and, if petitioned, declaring stoppage of individual enforcements until the endorsement and, in any event, for a maximum term of one month. Notwithstanding this, he shall notify the Court so it may resolve on admission when there is deemed to be a lack of competence or the existence of a formal defect, and when this has not been corrected by the petitioner within the term granted for the purpose, that may not exceed one month. The Court Clerk shall order publication of the decree at the Public Insolvency Register by means of an announcement that shall contain the data identifying the debtor, the competent Court, the registry file number appointing an expert and of the judicial endorsement proceedings, the date of the refinancing agreement and the effects of the time extension contained therein, stating that the agreement is available to the creditors at the competent Business Register where it shall be deposited for publicity thereof, including telematic disclosure of its content.

3. The Court shall grant the endorsement as long as the agreement complies with the requisites foreseen in section one and does not cause the creditor financial institutions that did not subscribe it a disproportionate sacrifice.

In the endorsement, the Court, after pondering the circumstances arising, may declare that stoppage of enforcements promoted by creditor financial institutions shall subsist for the time extension foreseen in the refinancing agreement, which may not exceed three years.

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258 Paragraph added by Act 36/2003, dated 11th November.

259 Act 38/2011, dated 10th October, on reform of Act 22/2003, dated 9th July, on Insolvency
A new Additional Provision Two bis is hereby introduced

260 This must mean Act 2/1995, dated 23rd March.

261 Act 38/2011, dated 10th October, on reform of Act 22/2003, dated 9th July, on Insolvency
Additional Provision Four is hereby amended

The resolution approving the endorsement of the refinancing agreement shall be adopted by urgent procedure within the shortest possible term, and shall be published by announcement inserted in the Public Insolvency Register and in the Official State Gazette, by means of an extract that shall contain the data provided in Paragraph Three of Section Two above.

4. Within the fifteen days following publication, creditors affected by the judicial endorsement who have not provided their consent may contest it. The reasons to contest shall be limited exclusively to the concurrence of the percentage required for endorsement and assessment of the disproportion of the sacrifice demanded. All challenges shall be processed jointly by the insolvency procedural plea procedure, and the debtor and rest of the creditors who are party to the refinancing agreement shall be notified of all these so they may oppose the contestation. The judgement resolving the contestation of the endorsement shall not be liable to the remedy of appeal and shall be granted the same publicity as foreseen for the endorsement resolution.

5. The effects of endorsement of the refinancing agreement shall take place in all cases and without the possibility of suspension from the day following publication of the judgement in the Official State Gazette. In all cases, the creditor financial institutions affected by the enforcement shall maintain their rights against the parties jointly and severally bound with the debtor and against his guarantors or granters of bank guarantees, who may not invoke either approval of the refinancing agreement, nor the effects of the endorsement to the detriment of such institutions.

6. Should the debtor not fulfil the provisions of the refinancing agreement, any creditor, whether or not he has adhered thereto, may petition the same Court that has endorsed it for declaration of breach thereof, through the procedure equivalent to the insolvency procedural plea, of which the debtor and all the creditors who have appeared shall be notified so they may oppose it.

When the breach has been declared, the creditors may call for the declaration of insolvency or commence individual enforcements. The judgement resolving the procedural plea shall not be liable to remedy of appeal.

7. When an endorsement is petitioned for, another may not be petitioned for by the same debtor within the term of one year.

Five. Public deeds of formalisation of refinancing agreements.[262]

In order to calculate the notarial fees of the public deed of formalisation of the refinancing agreements referred to in Article 71.6 and Additional Provision Four, the relevant tariffs to be applied shall be those for "Documents without an amount" foreseen under Number 1 of Royal Decree 1426/1989, dated 17th November, approving the tariffs of Notaries Public. The folios of the original public deed and the first copies thereof that are issued shall not accrue any sum whatsoever as of the tenth folio inclusive.

Six. Corporate group.[263]

For the purposes this Act, a group of companies shall be understood as that defined in Article 42.1 of the Code of Commerce.

TRANSITIONAL PROVISIONS

One. Insolvency proceedings in process.

Proceedings pertaining to bankruptcy, arrangements under Insolvency Law, discharge of debts and stay of payment or receivership that are pending at the time of enactment of this Act shall remain governed until their conclusion by the previous law, with no further exceptions than the following:

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[262] Act 38/2011, dated 10th October, on reform of Act 22/2003, dated 9th July, on Insolvency
A new Additional Provision Five is hereby added

[263] Act 38/2011, dated 10th October, on reform of Act 22/2003, dated 9th July, on Insolvency
A new Additional Provision Six is hereby added

1. The provisions contained in Articles 176 to 180 of this Act shall be immediately applicable, with exclusion of Paragraphs 1 and 2 of Paragraph 1 of Article 176. To these ends, it shall be understood: that the reference to the common phase of the insolvency proceedings of Paragraph 1.5 of Article 176 refers to the proceedings for recognition of claims or their equivalent; that the reference to the insolvency proceedings of Paragraph 5 of the same principle refers to the proceedings of Article 393 of the Civil Judicial Procedure Act; that a remedy of appeal may be lodged against the ruling resolving the opposition to conclusion of the insolvency proceedings; and that against the ruling that resolves the latter, an appeal in cassation may be lodged, or that of procedural infringement under the provisions established in the aforesaid Act.

2. The legal resolution declaring breach of an approved composition in any of the insolvency proceedings to which this transitional provision refers and that becomes final after enactment of this Act, shall give rise to the automatic opening of insolvency proceedings of the debtor, to the sole effects of processing the winding-up phase regulated in it. These insolvency proceedings shall be held by the same Court as that which has dealt the preceding insolvency proceedings.

3. In insolvency of any kind by companies, no proposed composition may be approved before the formalities to recognise claims have been concluded.

4. The composition proposals that are formulated after this Act has come into force in any of the insolvency proceedings to which this transitional provision refers must fulfil the requisites established in Articles 99 and 100 hereof. In processing and approval of these proposals pursuant to the relevant procedure in each case, the provisions established in Article 103, in Paragraph 3 of Article 118 and in Subparagraph Two of Paragraph 4 of Article 121 of this Act shall apply, and it shall be understood that the term to present written adhesions shall run from submission of the proposed composition until the moment of forming the attendance list at the meeting that shall be submitted for approval, except in the case of receiverships or bankruptcies of companies whose composition is to be approved without a meeting being held, in which case that term shall be that stated to present adhesions in the relevant proceedings.

5. The resolutions handed own after enactment of this Act may be appealed pursuant to the specialities foreseen in Paragraph 197.

Two. Mercantile Courts of Law.

Until such time as the Mercantile Courts of Law[264] come into operation, the functions attributed to these shall be performed by the present Courts of First Instance and Criminal Investigation that are competent pursuant to the Judicial Demarcation and Staff Act, applying the rules of competence established in Article 10 and related ones of this Act.

REPEALING PROVISION

Sole Provision

1. The Receivership Act dated 26th July 1922 is hereby repealed.

2. The following Acts are also hereby repealed:

1. The Act dated 12th November 1869, on bankruptcy of railway companies, concession holders of canals and other similar public works;

2. The Act dated 19th September 1896, on compositions between railway companies and their creditors, without reaching the state of receivership;

[264] Pursuant to Final Provision 2 of Organic Act 8/2003, dated 9th July, the Mercantile Courts came into operation on 1st September 2004.

3. The Act dated 9th April 1904, on approval of compositions of canal, railway and other public works concession companies;

4. The Act dated 2nd January 1915, on receivership of railway companies and businesses and other general public service works.

3. The following legal provisions and rules are also hereby repealed:

1. Book IV of the Code of Commerce of 1829;

2. Articles 1,912 to 1,920 and Paragraphs A) and G) of Paragraph 2 of Article 1,924 of the Civil Code;

3. Articles 376 and 870 to 941 of the Code of Commerce of 1885;

4. Paragraph L) of Base Five of Article 1 of the Act dated 2nd March 1917, on receivership or bankruptcy of entities that are debtors to the State and to the Industrial Credit Bank for protection and encouragement of national production;

5. Chapter Two of the Act dated 21st April 1949, on encouragement of extensions and improvement of the narrow gage railways and organisation of assistance those whose operation is deficient;

6. Article 281 of the Consolidated Text of the Public Limited Companies Act, approved by Royal Legislative Decree 1564/1989, dated 22nd December;

7. Article 124 of Act 2/1995, dated 23rd March, on Private Limited Companies;

8. Paragraph 7 of Article 73 and Additional Provision Four of Act 27/1999, dated 16th July, on Co–operatives;

9. Article 54 of the Consolidated Text of the Intellectual Property Act, regularising, removing ambiguities and harmonising the current legal provisions on the subject, enacted by Royal Legislative Decree 1/1996, dated 12th April;

10. Article 51 of the Act dated 21st August 1893, on Naval Mortgage;

11. Article 568 of Act 1/2000, dated 7th January, on Civil Judicial Procedure;

12. Paragraph 10 of Article 51 of the Statute of Workers.

4. Likewise, all provisions whatsoever opposed to or incompatible with the provisions contained in this Act are hereby repealed.

FINAL PROVISIONS

One. Reform of the Civil Code.

A second Paragraph is added to Article 1,921 of the Civil Code, drafted as follows:

"In the event of insolvency proceedings, the ranking and graduation of claims shall be governed by the provisions established in the Insolvency Act."

Two. Reform of the Code of Commerce.

The Code of Commerce is hereby amended as follows:

1. Paragraph 2 of Article 13 shall henceforth be drafted as follows:

".Persons who have been barred due to a final judgement pursuant to the Insolvency Act, while the period of barring has not elapsed. Should the person barred have been authorised to remain in charge of the company, or be a

director of the insolvent debtor company, the effects of the authorisation shall be limited to the terms specifically foreseen in the judicial provision containing such authorisation.[265]

2. Article 157 shall henceforth be drafted as follows:

"Apart from the causes of dissolution foreseen in the Public Limited Companies Act, a company shall be dissolved due to death, cessation, incapacity or opening of the winding–up phase in the insolvency proceedings of all the general partners, except if, within the term of six months, and by amendment of the Articles of Association, another general partner joins, or transformation of the company to another corporate type is resolved."

3. Cause 3 of those foreseen in Article 221 shall henceforth be drafted as follows:

"3) Opening the winding–up phase of the company subjected to insolvency proceedings."

4. Cause 3 of those foreseen in Article 222 shall henceforth be drafted as follows:

"3) Opening the winding–up phase in the insolvency proceedings of any of the general partners."

5. Article 227 shall henceforth be drafted as follows:

"In the winding–up and division of the corporate assets, the rules established in the deed of incorporation and, failing that, in those stated in the following Articles shall be observed. However, when the company is dissolved for cause 3 foreseen in Articles 221 and 222, the winding-up shall be performed pursuant to the provisions established in Chapter II of Title V of the Insolvency Act.".

6. Paragraph Two of Article 274 shall henceforth be drafted as follows:

"If the insurer is subject to insolvency proceedings, the commission agent shall be under obligation to arrange a new insurance contract, except if the principal has provided otherwise."

7. A new Paragraph is added to the end of Article 580, as Paragraph Two, drafted as follows:

"As an exception, if the right to separation of the ship has not been exercised in the insolvency proceedings, pursuant to the provisions established in the Insolvency Act, the ranking and graduation of claims shall be governed by the provisions established therein."

Three. Reform of the Civil Judicial Procedure Act.

Act 1/2000, dated 7th January, on Civil Judicial Procedure, is hereby amended as follows:

A Paragraph 8 is added to Article 7, drafted as follows:

"8. The limitations on the capacity of those who are subject to insolvency proceedings and the means to overcome such limitations shall be governed by the provisions established in the Insolvency Act.".

A Paragraph 3 is added to Article 17, drafted as follows:

"3. The procedural succession arising from disposal of properties, goods and rights subject to litigation in insolvency proceedings shall be governed by the provisions established in the Insolvency Act. In these cases, the other party may effectively oppose to the acquirer all the rights and exceptions to which he is entitled against the insolvent debtor".

Subparagraph Two of Paragraph 1.2 of Article 98 shall henceforth be drafted as follows:

[265] Act 38/2011, dated 10th October, on reform of Act 22/2003, dated 9th July, on Insolvency

"From the accumulation to which this Subparagraph refers enforcement procedures in which only mortgaged or encumbered assets are pursued are excepted, which under no circumstances shall be included in the procedure related to the succession whatever the date of commencement of the enforcement.".

Paragraph 1 of Article 463 shall henceforth be drafted as follows:

"1. Once the remedies of appeal are lodged and the writs of opposition or appeal submitted, when appropriate, the Court that has handed down the resolution appealed shall order submission of the proceedings to the competent Court to resolve the appeal, summoning the parties to appear before the latter within thirty days; although if provisional enforcement has been applied for, an attested copy of what is necessary for that enforcement shall be taken from the written record of the proceedings in the first place."

5. Article 472 shall henceforth be drafted as follows:

"Once the writ of appeal is lodged and within the following five days, the complete written record of the proceedings shall be sent to the Chamber mentioned in Article 468, summoning the parties to appear before the aforesaid Chamber within thirty days; nevertheless, when a litigant or litigants other than those appealing over a procedural breach have prepared an appeal in cassation against the same ruling, the competent Chamber for the appeal in cassation shall be sent an attestation of the ruling and of the particulars that the appellant in cassation may require, annotating in the written record of the proceedings that an extraordinary appeal has been prepared for breach of procedure, for the purposes provided in Article 488 of this Act."

6. Paragraph 1 of Article 482 shall henceforth be drafted as follows:

"1. Once the appeal is formalised and within the five days thereafter, the complete original written record proceedings shall be sent to the competent Court to hear and decide on the appeal in cassation, summoning the parties to appear before it within thirty days."

7. Section 2 of Article 568 shall henceforth be drafted as follows:

" The Court Clerk shall decree suspension of enforcement in the state which it is found at the time when, within the procedure, the declaration of insolvency becomes known. Commencement of enforcement and continuation of the proceedings already initiated, aimed exclusively at mortgaged and pledged assets shall be subject to all provisions established in the Insolvency Act. "[266]

Four. Reform of the Legal Aid Act.

Amendment of Paragraph d) of Article 2 f Act 1/1996, of 10th January, on Legal Aid, that shall henceforth be drafted as follows:

"d) In the labour jurisdictional order, moreover, workers and beneficiaries of the Social Security System, both for defence in trial as well as to exercise actions for the effectiveness of employment rights in insolvency proceedings".

Five. Supplementary Procedural Law.

The provisions contained in the Civil Judicial Procedure Act shall apply in all matters not foreseen in this Act and, specifically, with regard to calculation of all the time terms determined herein, as well as far as the system of recording and reproducing images and sound is concerned.

Within the scope of insolvency proceedings, the principles of the Civil Judicial Procedure Act shall apply with regard to the formal and substantive organisation of the procedure.[267]

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[266] Act 38/2011, dated 10th October, on reform of Act 22/2003, dated 9th July, on Insolvency
Section 7 of Final Provision Three, on reform of the Civil Procedure Act, is hereby amended

[267] Provision drafted pursuant to Act 13/2009, dated 3rd November (Official State Gazette nº 266, dated 4th November)

Six. Functions of Court Clerks.

Intervention of Court Clerks in the formal and substantive organisation and in handing down resolutions in the insolvency proceedings, as well as in the interpretation of what must be done in each case when a controversy arises over such matters, shall be pursuant to the Organic Act on the Judiciary and to the Civil Judicial Procedure Act.

Seven. Reform of the Mortgage Act.

Paragraph seven of Article 127 of the Mortgage Act dated 8th February 1946, shall henceforth be drafted as follows:

"The competent Court of Law to hear and decide on proceedings shall be the competent one with regard to the debtor. Under no circumstances whatsoever shall the executive procedure be suspended in the case of a claim by a third party if not based on a title previously registered, not even in case of death of the debtor nor of the third party possessor. In the event of insolvency proceedings, the provisions established in the Insolvency Act shall apply."

Eight. Reform of the Act on Chattel Mortgages and Pledge without Displacement.

The Act on Chattel Mortgage and Pledge without Displacement of Possession, dated 16th December 1954, is hereby amended as follows:

Paragraph Two of Article 10 shall henceforth be drafted as follows:

"In the event of insolvency proceedings, the preference and precedence of a creditor secured with a mortgage or pledge shall be governed by the provisions established in the Insolvency Act."

2. Article 66 shall henceforth be drafted as follows:

"Notwithstanding the provisions established in Paragraph One of Article 10, the following shall be settled with precedence to the claim secured with a pledge:

1. Duly justified claims for seeds, crop expenses and collection of crops or fruit;

2. Those of leases or rents for the last twelve months, regarding the property where the assets pledged are produced, stored, or deposited.

In the event of insolvency proceedings, the provisions contained in the Insolvency Act shall apply."

Nine. Reform of the Naval Mortgage Act.

The Act dated 21st August 1893, on Naval Mortgage, is hereby amended as follows:

1. A new Paragraph is added at the end of Article 31, as Paragraph Two, which shall henceforth be drafted as follows:

"As an exception, if, in the event of insolvency proceedings, the right to separation of the ship is not exercised as foreseen in the Insolvency Act, the ranking and graduation of claims shall be governed by the provisions established therein."

A new Paragraph is added at the end of Article 32, as Paragraph Two, drafted as follows:

"As an exception, if in the case of insolvency proceedings, the right to separation of the ship has not been exercised as foreseen in the Insolvency Act, the ranking and graduation of claims shall be governed by the provisions established therein."

Ten. Reform of the General Budget Act.

Article 39 of the Consolidated Text of the General Budget Act, approved by Royal Legislative Decree 1091/1988, dated 23rd September, shall henceforth be drafted as follows:[268]

Eleven. Amendment of Act 58/2003, dated 17th December, General on Taxes.[269]

1. Paragraph 2 of Article 77 shall henceforth be drafted as follows:

"2. In insolvency proceedings, tax claims shall be subject to the provisions established in Act 22/2003, dated 9th July, on Insolvency."

2. Article 164 shall henceforth be drafted as follows:

"Article 164. Concurrent proceedings

1. Without prejudice to the order of preference for collection of claims that is established by the law according to the nature thereof, in the event of concurrence of enforcement proceedings to collect taxes with other enforcement proceedings, either individual or universal, judicial or non judicial, preference in enforcement of assets seized in the proceedings shall be determined pursuant to the following rules:

1. When concurring with other individual enforcement procedures or proceedings, administrative enforcement proceedings shall have preference if the seizure effected in the course of the enforcement proceedings is from an earlier date.

2. When concurring with other insolvency or universal enforcement procedures or proceedings, administrative enforcement proceedings shall have preference for enforcement of assets or rights seized therein, as long as the seizure ordered therein has been made prior to the date on which insolvency was declared.

In both cases, the date of the act of seizure of the assets or rights shall apply.

2. In the event of insolvency of creditors, the provisions contained in Act 22/2003, dated 9th July, on Insolvency, shall apply, and when appropriate, Act 47/2003, dated 26th November, General on State Budgets, without this preventing the relevant enforcement order being issued and the surcharges being accrued for the executive period, if the conditions for such were to concur prior to the date of declaration of insolvency, or in the case of claims against the estate.

3. The courts and tribunals shall collaborate with the Tax Authorities, providing the collection bodies the data on the procedural or universal enforcement processes that they require to perform their duties.

That duty of collaboration shall also apply, with regard to their proceedings, to any administrative bodies with powers to process enforcement proceedings.

4. The preferential nature of the tax claims grants the Public Treasury the right to abstain in insolvency proceedings. Notwithstanding this, the Public Treasury may sign the compositions or agreements foreseen in the insolvency legislation during the course of such proceedings, as well as agree, with approval by the debtor and with the guarantees it may deem appropriate, specific terms of payment, that may not be more favourable for the debtor than those recorded in the composition or agreement that puts an end to the judicial process. That preference shall be exercised pursuant to the provisions contained in the insolvency legislation. It may also agree to compensate such claims under the provisions contained in the tax regulations.

In order to sign and enter into the compositions and agreements referred to in the preceding Paragraph, only authorisation by the competent body of the Tax Authorities shall be required."

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268 The aforesaid Consolidated Text was repealed by Act 47/2003, dated 26th November (Official State Gazette number 284, dated 27th November), on General Budgetary Law.

269 Act 38/2011, dated 10th October, on reform of Act 22/2003, dated 9th July, on Insolvency
Final Provision Eleven is hereby amended

Eleven bis. Reform of the Value Added Tax Act.[270]

Act 37/1992, dated 28th December, on Value Added Tax, is hereby amended as follows:

1. A letter e) is included in Article 84.1.2, to read as follows:

"e) In the case of deliveries of immoveable goods performed as a consequence of insolvency proceedings."

2. Additional Provision Six shall henceforth be drafted as follows:

" Additional Provision Six.

Administrative and judicial enforcement proceedings

In administrative and judicial enforcement proceedings, awardees who have the status of a businessperson or of a profession for the purposes of this tax are entitled, in name and on behalf of the tax payer, and with regard to deliveries of goods and provision of services subject thereto that arise therein, to:

1. Issue the invoice documenting the operation and to pass on the tax, to lodge the relevant tax return and liquidation and to deposit the resulting tax amount.

2. When appropriate, to waive the exemptions foreseen in Article 20.2.

The conditions and requisites to exercise such entitlement shall be determined in the implementing regulations.

The terms set forth in these provisions shall not apply to deliveries of immoveable goods in which the tax payer thereof is their receiver under the terms set forth in letter e) of Article 84.1.2."

Eleven ter. Amendment of Act 20/1991, dated 7th June, on amendment of tax aspects of the Canary Islands Economic and Tax Regime.[271]

A new letter g) is added to Article 19.1.2. of Act 20/1991, of 7th June, on amendment of the tax aspects of the Canary Islands Economic and Tax Regime, that shall henceforth be drafted as follows:

"g) In the case of deliveries of immoveable goods performed as a consequence of insolvency proceedings."

Twelve. Reform of the Property Conveyance Tax and Stamp Duty Act.

The Consolidated Text of the Property Conveyance Tax and Stamp Duty Act, approved by Royal Legislative Decree 1/1993, dated 24th September, is hereby amended as follows:

1. A new number is added as letter B) of Paragraph 1 of Article 45, as Subparagraph 19 thereof, drafted as follows:

"19. Capital increases performed by legal persons subject to insolvency proceedings to honour a conversion of claims to capital as established in a judicially approved composition pursuant to the Insolvency Act."

A Paragraph 5 is added to Article 46, drafted as follows:

"5. It shall be considered that the value set in the resolutions by the insolvency Court for the properties, goods and assets conveyed matches their real value, thus not proceeding to check values, in conveyance of properties, goods

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[270] Act 38/2011, dated 10th October, on reform of Act 22/2003, dated 9th July, on Insolvency
A new Final Provision Eleven bis is hereby added

[271] Act 38/2011, dated 10th October, on reform of Act 22/2003, dated 9th July, on Insolvency
A new Final Provision Eleven ter is hereby added

and rights that arise from insolvency proceedings, including vesting of claims foreseen in a judicially approved composition and disposals of assets carried out in the winding–up phase."

Thirteen. Reform of the Public Administrations Contracts Act.

The Consolidated Text of the Public Administrations Contracts Act, approved by Royal Legislative Decree 2/2000, dated 16th June, is hereby amended as follows:

Paragraph "b)" of Article 20 shall henceforth be drafted as follows:

"b) Having applied for a declaration opening insolvency proceedings, having been declared insolvent in any proceedings, having been declared bankrupt, being subject to judicial intervention or having been barred pursuant to the Insolvency Act without the period of barring set in the ruling classifying the insolvency proceedings having elapsed."

3. Paragraphs 2 and 7 of Article 112 shall henceforth be drafted, respectively, as follows:

*"*2. Declaration of insolvency in any proceedings and, in the case of insolvency proceedings, opening of the winding–up phase, shall always give rise to termination of the contract.

In the remaining cases of termination of the contract, the right to exercise rescission shall be discretional for the party not held liable for the circumstance that gave rise thereto, notwithstanding the provisions established in Paragraph 7 and that in the cases of amendments of more than 20 per cent foreseen in Articles 149, Paragraph e); 192, Paragraph c) and 214, Paragraph c), the Administration may also call for termination."

"7. In the event of a declaration opening the insolvency proceedings and while opening the winding-up phase has not taken place, the Administration may discretionally continue the contract if the contractor provides what the Administration considers sufficient guarantees of the completion thereof."

Fourteen. Reform of the Statute of Workers.

The Consolidated Text of the Statute of Workers, approved by Royal Legislative Decree 1/1995, dated 24th March, is hereby amended as follows:

1. Article 32 shall henceforth be drafted as follows:

"1. Salary claims for the last thirty days of work and in an amount not exceeding double the minimum interprofessional salary, shall enjoy preference over any other claim, even though such claim is secured with a pledge or mortgage.

2. Salary claims shall enjoy preference over any other claim with regard to the objects prepared by the workers while they are the property or are in the possession of the employer.

3. Salary claims not covered in the preceding Paragraphs shall have the status of singularly preferential claims up to the amount arising from multiplying the triple of the minimum interprofessional salary by the number of days of salary pending payment, enjoying preference over any other claim, except claims with an in rem guarantee, in cases in which these are preferential pursuant to the Law. The same consideration shall be given to compensations for dismissal up to the amount equivalent to the legal minimum calculated on a basis that does not exceed triple the minimum salary.

4. The term to execute a preferential salary claim is one year, from the moment when the salary should have been received, after which those rights shall expire.

5. The preferences recognised in the preceding Paragraphs shall be applicable in all cases in which, the employer not being subject to insolvency proceedings, the relevant claims concur with another or others on his assets. In the event of insolvency proceedings, the provisions of the Insolvency Act on ranking of claims and enforcement and collection shall apply."

2. A new Paragraph is added to Chapter III of Title I that, like Paragraph 5, and under the Title "Insolvency Proceedings", shall be composed by the following Article:

"Article 57 bis. Insolvency proceedings. In the event of insolvency proceedings, the specialities foreseen in the Insolvency Act shall be applied to cases of collective amendment, suspension, and extinction of employment contracts and of corporate succession."

3. Section 3 of Article 33 is hereby amended and shall henceforth be drafted as follows:

"3. In the case of insolvency proceedings, from the time the existence of labour claims being obtained is known, or when the possibility of their existence may be presumed, the Court, of its own motion or at the request of a party, shall summon the FOGASA, without which requisite it shall not be liable for the obligations set forth in the preceding Sections. The Fund shall appear in the proceedings as a party with subsidiary liability for payment of said claims, being able to allege whatever is in its legal interest and without prejudice to, once such payment is made, to continue as a creditor in the proceedings. The following rules shall be taken into account for the purposes of payment by the FOGASA of the sums the workers are recognised:

One. Without prejudice to the cases of direct liability of the Fund in the legally established cases, recognition of the right to payment shall require the claims of the workers to be included in the list of creditors or, when appropriate, be recognised as debts against the estate by the competent insolvency body, in an amount equal to or higher than that demanded from FOGASA, without prejudice to their obligation to reduce their demand, or to reimburse FOGASA the relevant amount when the sum recognised in the definitive list is lower than that demanded or the one already received.

Two. Compensation to be paid from the FOGASA, regardless of what may be agreed in the insolvency proceedings, shall be calculated on the basis of twenty days per year of service, with a maximum limit of one year, without the daily salary, on which the calculation shall be bases, exceeding three times the minimum interprofessional salary, including the proportional part of the extraordinary pays.

Three. In the event of the workers receiving these compensations demanding payment by FOGASA of the part of compensation not paid by their employer, the limit of the compensation payment by the Fund shall be reduced by the amount they have already received".[272]

Fifteen. Reform of the Labour Procedure Act.

The Consolidated Text of the Labour Procedure Act, approved by Royal Legislative Decree 2/1995, dated 7th April, is hereby amended as follows:

1. Paragraph "a)" of Article 2 shall henceforth be drafted as follows:

"a) Between employers and workers as a consequence of employment contracts, except as set forth in the Insolvency Act."

2. Paragraph "d)" is added to Paragraph 1 of Article 3, drafted as follows:

"d) On claims for which the competence to hear and decide are reserved by the Insolvency Act to the exclusive and excluding jurisdiction of the insolvency Court."

3. Paragraph 1 of Article 4 shall henceforth be drafted as follows:

"1. The competence of the jurisdictional bodies of a labour nature shall include hearing and decision on preliminary and prejudicial matters that do not belong to that order, which are directly related to those attributed thereto, except as foreseen in Paragraph 3 of this Article and in the Insolvency Act."

[272] Act 38/2011, dated 10th October, on reform of Act 22/2003, dated 9th July, on Insolvency
A new Paragraph 3 is hereby added to Final Provision Fourteen (amendment of the Workers' Statute)

4. Article 6 shall henceforth be drafted as follows:

"Labour Courts shall hear and decide all the proceedings attributed to the labour jurisdictional order at sole instance, except as foreseen in Articles 7 and 8 of this Act and in the Insolvency Act."

5. Paragraph 1 of Article 188 shall henceforth be drafted as follows:

"The Labour Chambers of the High Courts of Justice shall hear and decide supplication appeals that are lodged against resolutions handed down by the Labour Courts of their district, as well as against orders and rulings that may be handed down by the Mercantile Courts of Law within their district that affect Labour Law."

6. A Paragraph 5 is added to Article 189, drafted as follows:

"The orders and rulings handed down by the Mercantile Courts in insolvency proceedings that resolve matters of an employment nature."

7. A Paragraph 5 is added to Article 235, drafted as follows:

"5. In the event of insolvency proceedings, the provisions contained in the Insolvency Act shall apply."

8. Paragraph 3 of Article 246 shall henceforth be drafted as follows:

"3. In the case of insolvency proceedings, enforcement actions that may be brought by the workers to collect the salaries they may be owed are subject to the provisions of the Insolvency Act."

9. A Paragraph 5 is added to Article 274, drafted as follows:

"5. The declaration opening the insolvency proceedings of the party subject to enforcement shall be published in the Official Journal of the Business Registers".

10. An Additional Provision Eight is added, drafted as follows:

"Additional Provision Eight.

The provisions of this Act shall not be applicable in matters of labour litigation that are raised in the event of insolvency and whose resolution is the competence of the Insolvency Court pursuant to the Insolvency Act, with the specific exceptions the aforesaid Act contains."

Sixteen. Reform of the General Social Security Act.[273]

The Consolidated Text of the General Social Security Act, approved by Royal Legislative Decree 1/1994, dated 20th June, is hereby amended as follows:

1. Article 22 shall henceforth be drafted as follows:

"Article 22. *Precedence of claims.* Claims for Social Security contributions and joint collection items and, when appropriate, the appropriate surcharges or interests thereon, shall enjoy, with regard to their entirety, the same order of preference as the claims referred to in Paragraph 1 of Article 1,924 of the Civil Code. The other Social Security claims shall enjoy the same order of preference established in Paragraph 2, Paragraph E) of the aforesaid provision.

In the event of insolvency proceedings, claims for Social Security contributions and, when appropriate, the appropriate surcharges and interest thereon, shall be subject to the provisions established in the Insolvency Act.

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[273] Act 38/2011, dated 10th October, on reform of Act 22/2003, dated 9th July, on Insolvency
Section 2 of Final Provision Sixteen, on reform of the General Social Security Act, is hereby amended and a new Paragraph 5 is also added

Notwithstanding the order of precedence for collection of claims established by Law, when the administrative collection proceedings coincide with other singular enforcement proceedings, of an administrative or judicial nature, that in which seizure was first performed shall enjoy preference.”.

2. Article 24 shall henceforth be drafted as follows:

“Article 24. Transactions on Social Security rights

No judicial or extrajudicial compromise may be reached over the Social Security rights, nor may disputes arising in relation to these be submitted to arbitration, except by Royal Decree approved by the Council of Ministers, after hearing the Council of State.

The preferential nature of Social Security claims grants the Treasury General of the Social Security the right to abstain in insolvency proceedings. Notwithstanding this, the Treasury General of the Social Security may sign the agreements or compositions foreseen in the insolvency legislation in the course of these proceedings, as well as agree to individual payment conditions with approval by the debtor and with the guarantees deemed appropriate, that may not be more favourable to the debtor than those recorded in the agreement or composition that puts an end to the judicial process.”

“**3.** Subparagraph a) of Paragraph 1.1. of Article 208 shall henceforth be drafted as follows:

“a) By virtue of redundancy proceedings or judicial resolutions passed within the insolvency proceedings.”

4. Subparagraph 2 of Paragraph 1 of Article 208 shall henceforth be drafted as follows:

“2. When the employment relationships are suspended due to redundancy proceedings or a judicial resolution passed within insolvency proceedings.”

5. Number 3 of Section 1 of Article 208 shall henceforth be drafted as follows:

“3. When the ordinary working day is temporarily reduced, by virtue of partial redundancy proceedings or a judicial resolution adopted within insolvency proceedings, pursuant to the provisions contained in Article 203.3.”

Seventeen. Reform of the Bills of Exchange and Cheques Act.

Article 50 of Act 19/1985, dated 16th July, on Bills of Exchange and Cheques, shall henceforth be drafted as follows:

“The holder may exercise his reimbursement action against the endorsers, the drawer and other persons bound, once the bill has matured, if payment has not been made.

The same action may be taken before expiry in the following cases:

a) When acceptance has been fully or partially refused;

b) When the drawee, whether or not he accepts, is declared insolvent or the seizure of his assets has been unsuccessful;

c) When the drawer of a bill of exchange, whose presentation for acceptance has been prohibited, is subjected to insolvency proceedings.

In the cases in Paragraphs b) and c), the defendants may obtain a term for payment from the Court that, under no circumstance, shall exceed the day of maturity of the bill of exchange.”

Eighteen. Reform of the Stock Market Act.

Act 24/1988, dated 28th July, on the Stock Market, is hereby amended as follows:

1. Paragraphs 8 and 9 of Article 44 bis shall henceforth be drafted as follows:

"8. Once insolvency proceedings affecting an entity participating in the systems managed by the systems company are declared open, the latter shall have the absolute right to separation with regard to the goods or rights materialising the guarantees constituted by those entities participating in the systems managed by it. Without prejudice to the foregoing, the surplus remaining after clearance of the guaranteed operations shall be added to the aggregate assets in the insolvency proceedings of the participant.

9. Once insolvency proceedings affecting a firm participating in the systems to which this Article refers have been declared open, the National Stock Exchange Commission, without prejudice to the powers of the Bank of Spain, may immediately dispose of, without cost to the investor, transferral of his account entries of securities to another firm authorised to perform that activity. Likewise, the holders of those securities may apply for them to be transferred to another firm. If no firm is able to take charge of the records stated, such activity shall be undertaken by the systems company on a provisional basis, until the holders apply for transferral of the register of their securities. To these ends, both the insolvency Court as well as the insolvency administrators shall facilitate access by the firm to which the securities are to be transferred to the necessary documentation and accounting and computer records to perform the transfer. The existence of the insolvency proceedings shall not prevent the holders of the securities obtaining the cash from the exercise of their economic or sale rights."

2. A new Paragraph 6 is introduced in Article 58, drafted as follows:

"6. Once insolvency of a management entity on the Market for Public Debt in Annotations has been subjected to insolvency proceedings, the Bank of Spain may provide, immediately and at no cost to the investor, for transferral of the securities annotated of third parties to other management firms. Likewise, the holders of the securities may request their transferral to another management firm. To these ends, both the insolvency Court as well as the insolvency administrators shall facilitate access by the recipient management firm to the necessary documentation and the accounting and computer records required to perform the transfer, thus ensuring exercise of the rights of the holders of the securities. The existence of the insolvency proceedings shall not prevent the holders of the securities obtaining the cash from exercising their economic or selling rights".

3. Paragraph g of Paragraph 2 of Article 67 shall henceforth be drafted as follows:

"g) That none of the members of its Board of Directors, nor any of its General Managers or similar, has been barred, in Spain, or abroad, as a consequence of insolvency proceedings; or has been indicted or, in the case of the proceedings referred to in Title III of Book IV of the Criminal Procedure Act, an order has been issued to open the criminal hearing against him; has a criminal record for offences of misrepresentation against the Public Treasury, of disloyalty in custody of documents, of violation of secrets, money laundering, embezzlement of public funds, discovery and disclosure of secrets or against property; or be barred or suspended, criminally or administratively, to obtain or hold public office or administrative or management posts at financial institutions."

4. Paragraph h) of Article 73 shall henceforth be drafted as follows:

"h) If the investment service company or the person or firm is judicially declared subject to insolvency proceedings"

5. Article 76 bis shall henceforth be drafted as follows:
"The National Stock Exchange Commission shall be authorised to apply for a declaration opening the insolvency proceedings of investment services companies, as long as the accounting statements submitted by the firms, or the auditing carried out by the services of the Commission itself, show that they are in a state of insolvency pursuant to the provisions established in the Insolvency Act.".

Nineteen. Reform of the Mortgage Market Act and the Act on Measures for Reform of the Financial System.

1. Two new Paragraphs are added to Article 14 of Act 2/1981, dated 25th March, on regulation of the Mortgage Market, as Paragraph Two, drafted as follows:

"In the event of insolvency proceedings, holders of mortgage certificates and bonds shall enjoy the special preference established in Subparagraph 1 of Paragraph 1 of Article 90 of the Insolvency Act.

Without prejudice to the foregoing, during the insolvency proceedings, pursuant to the provisions established in Subparagraph 7 of Paragraph 2 of Article 84 of the Insolvency Act, and as claims against the aggregate assets, payments due for repayment of capital and interest on mortgage certificates and bonds issued and pending repayment on the date of petition for insolvency proceedings to be opened shall be honoured, up to the amount of the revenue received by the insolvent debtor from the mortgage loans that back the mortgage certificates and bonds."

2. A Paragraph Seven is added to Article 13 of Act 44/2002, dated 22nd November, on Measures to Reform the Financial System, drafted as follows:

"Seven. In the event of insolvency proceedings, holders of territorial certificates shall enjoy the special preference established in Subparagraph 1 of Paragraph 1 of Article 90 of the Insolvency Act.

Without prejudice to the foregoing, during insolvency proceedings, payments due for repayment of capital and interest on the territorial certificates issued and pending repayment on the date of petition for insolvency proceedings to be opened shall be honoured pursuant to the provisions established in Subparagraph 7 of Paragraph 2 of Article 84 of the Insolvency Act, and as claims against the aggregate assets, up to the amount of the revenue received by the insolvent debtor from the loans backing the certificates."

Twenty. Reform of the Public Limited Companies Act.

The Consolidated Text of the Public Limited Companies Act, approved by Royal Legislative Decree 1564/1989, dated 22nd December, is hereby amended under the following terms:

1. Article 124 shall henceforth be drafted as follows:

"Article 124. *Prohibitions*. 1. Unemancipated minors, persons judicially barred, and persons barred under the Insolvency Act, while the barring period set in the ruling classifying the insolvency has not elapsed, and those condemned for criminal offences against freedom, property, the social and economic order, collective safety, the Administration of Justice or due to any kind of forgery or misrepresentation, as well as those who, due to their office, are not allowed to trade, may not be directors.

2, Nor may civil servants of the Public Administration with duties related to the activities inherent to the companies concerned, judges or magistrates and other persons affected by a legal incompatibility be directors."

2. Paragraph 2 of Article 260 shall henceforth be drafted as follows:

"2. The declaration opening the insolvency proceedings shall not constitute, in itself, a cause of dissolution, but if opening of the winding-up phase were to arise during the proceedings, the company shall be automatically dissolved. In this latter case, the insolvency Court shall record the dissolution in the resolution of opening and, without appointing liquidators, shall perform the winding-up of the company pursuant to the provisions established in Chapter II of Title V of the Insolvency Act.".

3. Subparagraph 4 of Paragraph 1 of Article 260 shall henceforth be drafted as follows:

"4. As a consequence of losses that leave the assets reduced to a sum less than half the share capital, unless this is increased or reduced to a sufficient extent, provided it is not appropriate to apply for a declaration opening the insolvency proceedings pursuant to the provisions of the Insolvency Act."

4. Paragraph 2 of Article 262 shall henceforth be drafted as follows:

"2. The directors must call the General Meeting of Shareholders or partners within the term of two months in order for such Meeting to pass a resolution of dissolution.

A declaration opening the insolvency proceedings may also be applied for due to losses that leave the assets reduced to a sum under half the share capital, unless this is increased or reduced to a sufficient extent, as long as that reduction determines insolvency of the company under the provisions contained in Article 2 of the Insolvency Act.

Any shareholder may require the directors to call the Meeting if, in his opinion, there is a legitimate cause for dissolution or for insolvency."

5. Paragraph 4 of Article 262 shall henceforth be drafted as follows:

"4. The directors shall be bound to petition for a judicial dissolution of the company when the corporate body is against the dissolution or this cannot be achieved. The petition must be made within the term of two months from the date foreseen for the Meeting to be held, when it has not been held, or from the day of the Meeting, if such Meeting resolved against dissolution or the resolution to be dissolved was not passed."

6. Paragraph 5 of Article 262 shall henceforth be drafted as follows:

"5. The directors who breach the obligation to call the General Meeting of Shareholders within the term of two months to pass the resolution on dissolution, when appropriate, shall be held jointly and severally liable, as shall those directors who do not petition for judicial dissolution or, if appropriate, for the company to be subjected to insolvency proceedings, within the term of two months from the date foreseen to hold the Meeting, when it has not been constituted, or from the date of the Meeting, when the resolution was contrary to dissolution or to request for insolvency proceedings to be opened."

Twenty–one. Reform of the Private Limited Companies Act.

Act 2/1995, dated 23rd March, on Private Limited Companies, is hereby amended as follows:

1. Paragraph 3 of Article 58 shall henceforth be drafted as follows:

"3. Unemancipated minors, persons judicially barred, and persons barred under the Insolvency Act, while the barring period set in the ruling classifying the insolvency has not elapsed, and those condemned for criminal offences against freedom, property, the social and economic order, collective safety, the Administration of Justice or due to any kind of forgery or misrepresentation, as well as those who, due to their office, are not allowed to trade, may not be directors. Nor may civil servants of the Public Administration with duties related to the activities inherent to the companies concerned, judges, or magistrates and other persons affected by a legal incompatibility be directors."

2. Paragraph e) of Paragraph 1 of Article 104 shall henceforth be drafted as follows:

"e) Due to losses that leave the accounting assets reduced to less than half the share capital, unless this is increased or reduced to a sufficient extent, and as long as it is not appropriate to petition for a declaration opening the insolvency proceedings pursuant to the provisions contained in the Insolvency Act."

3. Paragraph 2 of Article 104 shall henceforth be drafted as follows:

"2. A declaration opening the insolvency proceedings shall not constitute, in itself, a cause of dissolution, but if opening the winding–up phase takes place during the proceedings, the company shall automatically be dissolved. In this latter case, the insolvency Court shall record the dissolution in the resolution of opening and, without appointing liquidators, shall wind-up the company pursuant to the provisions established in Chapter II of Title V of the Insolvency Act."

4. Paragraphs 1 and 5 of Article 105 of the Private Limited Companies Act are drafted as follows:

"1. In the cases foreseen in Paragraphs c) to g) of Paragraph 1 of the preceding Article, the dissolution, or the petition for insolvency proceedings to be opened, shall require a resolution by the General Meeting of Shareholders, passed by the majority referred to in Paragraph 1 of Article 53. The directors must call the General Meeting of Shareholders within the term of two months for it to pass the resolution of dissolution or petition for insolvency proceedings. Any shareholder may apply to the directors to call it if, in his opinion, any of those causes of dissolution were to arise, or if the insolvency of the company were to arise, under the provisions referred to in Article 2 of the Insolvency Act."

"5. Breach of the obligation to call the General Meeting of Shareholders or to petition for judicial dissolution or, if appropriate, administration under Insolvency Law of the company, shall make the directors jointly and severally liable for all the corporate debts."

5. Paragraph 2 of Article 128 shall henceforth be drafted as follows:

"2. In the event of insolvency of the sole shareholder or of the company, contracts included in the preceding Paragraph may not be claimed against the estate if they have not been transcribed in the register book and are not referenced in the annual report, or have been recorded in a report not deposited pursuant to the law."

Twenty–two. Reform of the Co–operatives Act.

Paragraph d) of Article 41 of Act 27/1999 dated 16th July, on Co-operatives, shall henceforth be drafted as follows:

"d) Persons who are barred pursuant to the Insolvency Act, while the period of barring set in the ruling classifying the insolvency has not elapsed, those barred from holding public employment or office and those who, due to their office, may not perform gainful activities."

Twenty–three. Reform of the Reciprocal Guaranty Companies Act.

Act 1/1994, dated 11th March, on the Legal Regime of Reciprocal Guaranty Societies, is hereby amended as follows:

Subparagraph Two of Paragraph 2 of Article 43 shall henceforth be drafted as follows:

"Commercial and professional honourableness is attained by those who have had a personal career marked by respect for the Mercantile Laws or others regulating financial activity and business life, as well as commercial, financial and banking good practice. In any case, it shall be understood that those who have criminal records for offences of money laundering related to offences against public health, of forgery or misrepresentation, against the Public Revenue, for disloyalty in custody of documents, violation of secrets, embezzlement of public funds, for discovery and disclosure of secrets, or against property, those barred from holding public or administrative offices or managing financial institutions, and those barred pursuant to the Insolvency Act, while the term set in the ruling classifying the insolvency has not elapsed, shall be deem to lack such honourableness."

Paragraph g) of Article 59 shall henceforth be drafted as follows:

"g) Due to opening the winding-up phase, when the company is subject to insolvency proceedings".

A Paragraph 3 is added to Article 59, drafted as follows:

"3. In the case foreseen in Subparagraph g) of Paragraph one, the company shall automatically be dissolved when the opening winding-up phase arises in the insolvency proceedings. The insolvency Court shall decree the dissolution in the resolution opening such phase and, without appointing liquidators, shall wind-up the company pursuant to the provisions established in Chapter II of Title V of the Insolvency Act."

Twenty–four. Reform of the Act on Capital Risk Companies.

Act 1/1999, dated 5th January, that regulates capital risk companies and their management firms, is hereby amended as follows.[274]

Twenty–five. Reform of the Act on Economic Interest Groups.

Act 12/1991, dated 29th April, on economic interest groups, is hereby amended as follows:

1. Subparagraph 3) of Paragraph 1 of Article 18 shall henceforth be drafted as follows:

[274] Act 1/1999, of 5 January, was repealed by Act 25/2005, dated 24th November (Official State Gazette number 282, dated 25th November) that establishes new regulations for those entities.

"3) By opening the winding-up phase, when the Group is subject to insolvency proceedings."

A new Paragraph is added to Article 18 as Paragraph 2, drafted as follows:

"2. In the event foreseen in Subparagraph 3) of the preceding Paragraph, the group shall automatically be dissolved on opening the winding-up phase in the insolvency proceedings. The Court shall record the dissolution in the resolution on ordering the opening and, without appointing liquidators, shall perform the winding-up of the group pursuant to the provisions established in Chapter II of Title V of the Insolvency Act."

3. Paragraph 2 of Article 18 shall become Paragraph 3, drafted as follows:

"3. In the cases considered in Subparagraphs 4 and 5 of Paragraph 1, dissolution shall require a majority resolution by the meeting. If the resolution is not passed within the three months following the date on which the cause of dissolution occurs, any shareholder may petition for it to be declared judicially."

4. Paragraphs 3 and 4 of Article 18 shall become Paragraphs 4 and 5, respectively, conserving their present text.

Twenty–six. Reform of the legal statute of the Insurance Compensation Consortium, contained in Article 4 of Act 21/1990, dated 19th December, to transpose to Spanish Law Directive 88/357/EEC, on freedom of services in insurance other than life and on updating the private insurance legislation, shall be drafted is follows.[275]

Twenty–seven. Reform of the Act on Organisation and Supervision of Private Insurance. Act 30/1995, dated 8th November, on Organisation and Supervision of Private Insurance, is hereby amended as follows.[276]

Twenty–eight. Reform of the Insurance Contracts Act.

Article 37 of Act 50/1980, dated 8th October, on Insurance Contracts, shall henceforth be drafted as follows:

"The rules of Articles 34 to 26 shall be applied in the event of death of the taker of the insurance or of the insured and in the case of insolvency proceedings of either in the event of opening the winding-up phase.

Twenty–nine. Reform of the Agency Contracts Act.

Paragraph b) of Paragraph 1 of Article 26 of Act 12/1992, dated 27th May, on Agency Contracts, shall henceforth be drafted as follows:

"b) When the other party has been subjected to insolvency proceedings."

Thirty. Reform of the Act on Air Navigation[277]

Two new Paragraphs are added to the end of Article 133 of Act 48/1960, dated 21st July, on Air Navigation, as well as Paragraphs Three and Four, drafted as follows:

"The preferences and order of preference established in the preceding Sections shall solely govern cases of individual enforcement.

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275 This Final Provision has been repealed by Royal Legislative Decree 7/2004, dated 29th October (Official State Gazette number 267, dated 5th November) that approves the Consolidated Text of the Legal Statute of the Insurance Compensation Consortium.

276 Final provision repealed by Royal Legislative Decree 6/2004, dated 29th October (Official State Gazette number 267, dated 5th November), that approves the Consolidated Text of the Act on Organisation and Supervision of Private Insurance.

277 Act 38/2011, dated 10th October, on reform of Act 22/2003, dated 9th July, on Insolvency
Final Provision Thirty is hereby redrafted as follows

In the event of insolvency proceedings, the right to separation of the aircraft foreseen in the Insolvency Act shall be recognised to holders of preferential claims included under Numbers 1 to 5 of Paragraph One".

Thirty–one. Reform of the Consumers and Users Defence Act.

A new Paragraph 4 is added to Article 31 of Act 26/1984, dated 19th July, on Defence of Consumers and Users, drafted as follows:

"4. Arbitration bonds and public offers to submit to consumer arbitration formalised by those declared subject to insolvency proceedings shall be unenforceable. To such end, the order declaring the insolvency proceedings open shall be notified to the body through which the bond was formalised and to the National Arbitration Board, and from that moment the insolvent debtor shall be excluded from all effects of the consumer arbitration system.".

Thirty–two. Title of competence.

This Act is approved by virtue of the competence held by the State pursuant to Article 149.1.6 and 8 of the Constitution, without prejudice to the necessary specialities in this sphere that arise from the particularities of the substantive law of the Autonomous Communities.

Thirty–three. Bill to regulate the concurrence and precedence of claims.

Within the term of six months from this Act coming into force, the Government shall submit to Parliament a bill on regulation of concurrence and order of precedence of claims in the case of singular enforcements.

Thirty–four. Tariff of remunerations.

Within a term not exceeding nine months, the Government shall approve, by Royal Decree, the tariff of remuneration for insolvency practitioners.[278]

Thirty–five. Entry into force.

his Act shall come into force on 1st September 2004, except with regard to the amendment of Articles 463, 472 and 482 of the Civil Judicial Procedure Act, effected by Final Provision Thirty-two, which shall come into force on the day following publication hereof in the Official State Gazette.

[278] See Royal Decree 1860/2004, dated 6th September (Official State Gazette number 216, dated 7th September), that establishes the tariff of insolvency administrators' fees.

ACT 38/2011, DATED 10TH OCTOBER, ON REFORM OF ACT 22/2003, DATED 9TH JULY, ON INSOLVENCY

THE ARTICLES ARE NOT INCLUDED IN ACT 22/2003, DATED 9TH JULY, ON INSOLVENCY

Sole Additional Provision

Within the term of six months, the Government shall submit a report to Parliament on the implementation and effects of the set of measures passed to improve the situation of natural persons and of families who are having difficulties to settle their obligations, especially those guaranteed by a mortgage.

That report shall include possible adoption of other measures, both substantive as well as procedural that, through the appropriate initiatives, may complete the economic and social protection of consumers and families. To such purposes, options for extrajudicial solutions in these cases, whether of a notarial or of registry nature, or of mediation, or of another nature may be proposed.

Transitional Provision One. General regime

1. This Act shall apply to petitions filed and insolvencies declared as of it being enacted.

2. The aforesaid notwithstanding it shall be immediately applicable in relation to insolvency proceedings in process when this Act is enacted, with regard to the provisions set forth in Articles 9.2, 84.3, 4 and 5, Additional Provision Two bis, Additional Provision Six, Final Provision Eleven bis, Final Provision Eleven ter, Paragraph 3 of Final Provision Fourteen, Section 2 of Final Provision Sixteen, Final Provision Thirty, Articles 154, 155.4, 156, 157.1, 163, as well as Section 7 of Final Provision Three of the Insolvency Act, amended by this Act.

Transitional Provision Two. Insolvency administration

1. Articles 27, 27 bis, 28.2, 3 and 4, 29.1, 2, 4, 5 and 6, 30.1 Paragraph Two, 31 and 32.1 of the Insolvency Act, amended by this Act, shall be applicable to insolvencies petitioned for prior to its date of enactment, provided the appointment of the insolvency administrator has not been effected.

2. Articles 35.2 and 3 and 43.2 and 3 of the Insolvency Act, amended by this Act, shall be applicable to insolvencies in process on the date it is enacted.

3. Article 75.2 of the Insolvency Act, amended by this Act, shall be applicable to insolvency proceedings in process in which the report has not yet been submitted by the insolvency administrator.

Transitional Provision Three. Pre-insolvency institutions

1. Articles 5 bis, Article 15.3 and 22.1, as well as Additional Provision Four of the Insolvency Act, amended by this Act, shall be applied as of the date of the enactment thereof.

2. Sections 6 and 7 of Article 71 and the new Additional Provision Five of the Insolvency Act, amended by this Act, shall be applicable to refinancing agreements signed as of the date of the enactment thereof.

The restriction on active legitimation introduced in Article 72.2 of the Insolvency Act, amended by this Act, shall be applicable to insolvency proceedings in process, to exercise actions that have not been subject to prior requirement under the provisions of Article 71.1 of the Insolvency Act.

Transitional Provision Four. Notification, recognition and classification of claims

1. Articles 23.1, Paragraph two, 29.4 and 6, and Article 85.2, 3 and 4 of the Insolvency Act, amended by this Act, shall apply to insolvency proceedings in process on the date of the enactment thereof, if the announcement pursuant to Article 23 of the of Insolvency Act has not yet been published in the Official State Gazette.

2. Articles 49, 84 – except for new Sections 3, 4 and 5 –, 86.2, 3 and 4, 90.1, 91, Numbers 1, 3, 5, 6 and 7, 92, Numbers 1, 3 and 5, 93.2.3. and 94.4 of the Insolvency Act, amended by this Act, for the purposes of classification of the claims affected, as well as procedural effects provided in Articles 94.4, 95.1 and 96.4 and 5 of the Insolvency Act, amended by this Act, and these shall be applied to insolvency proceedings in process at the time of the enactment thereof, provided the report by the insolvency administrator has not yet been submitted. To those ends and for those proceedings, enactment of this Act constitutes an extraordinary circumstance that enables judicial extension of the term foreseen to issue the report under the provisions set forth in Article 74 of the Insolvency Act.

3. Articles 87.8, 96 bis, 97.1, 3 and 4, 97 bis and 97 ter of the Insolvency Act, amended by this Act, shall apply to insolvency proceedings in process, provided the definitive texts have not been submitted.

Transitional Provision Five. Composition

Articles 100.3, 101.2, 102, 115 bis. 1, 2 and 5, 122.1.2., 124, 128.3, 129.2, 131.1 and 3 and 133 of the Insolvency Act, amended by this Act, shall apply to the proposals for composition that are submitted, processed or voted as of the date of the enactment thereof, as well as to substantiate opposition thereto and, when appropriate, determine the effectiveness of compositions that may be approved thereafter.

Transitional Provision Six. Winding up

Articles 142, Number 3 of Section 1 of Article 143, Article 144, Sections 2 and 3 of Article 145, Sections 1, 2 and 4 of Article 148, Rule 2 of Section 1 and new Section 3 of Article 149 and Article 152 of the Insolvency Act, amended by this Act, shall apply to insolvency proceedings in process on the date of the enactment thereof, in which the ordinary or early winding up has not yet commenced.

Transitional Provision Seven. Labour aspects

1. The new Paragraph of Number 2 of Article 8, the new Section 4 of Article 44, Article 64 and Article 149.1.2. of the Insolvency Act, amended by this Act, shall be applicable to insolvency proceedings in process on the date of the enactment thereof, to the administrative proceedings and to adopt the measures petitioned thereafter and that involve collective extinction, suspension or collective of employment contracts.

2. As of the date of enactment of this Act, the new Article 65.1 of the Insolvency Act shall be applicable to resolve disputes arising over extinction or suspension of top management contracts in insolvency proceedings in process.

Transitional Provision Eight. Related insolvencies

Articles 25 bis and 25 ter of the Insolvency Act, amended by this Act, shall be applicable to insolvency proceedings in process on the date of the enactment thereof, provided the definitive texts, list of creditors and inventory have not been approved therein.

Transitional Provision Nine. Effects of insolvency in relation to individual actions and the claims in particular

1. New Sections 2 and 5 of Article 56, Article 58 and the new Section 3 of Article 76 of the Insolvency Act, amended by this Act, as well as new Section 2 of Final Provision Eleven, that redrafts Article 164 of Act 58/2003, dated 17th

December, General on Taxes, shall be applicable to initial insolvency proceedings on the date of this Act coming into force, in relation to enforcements that have not reopened or are initiated after the declaration of insolvency, respectively.

2. Articles 58 and 59 bis of the Insolvency Act, as drafted under this Act, shall apply to insolvency proceedings in process on the date of the enactment hereof in which the report has not yet been submitted.

Transitional Provision Ten. Insolvency classification

1. New Section 1 of Article 164, as well as Articles 167 and 168, Sections 2 and 3 of Article 172 and Article 172 bis of the Insolvency Act, amended by this Act, shall be applicable to insolvency proceedings in process, in which formation of the classification section has not yet been resolved on the date of the enactment thereof.

2. New Section 2 of Article 13 of the Code of Commerce, that contains Section 1 of Final Provision Two of the Insolvency Act, as drafted by this Act, shall be applied to the classification judgements handed down as of the date of the enactment thereof.

Transitional Provision Eleven. Conclusion of the insolvency

Article 176 and 176 bis – with the exception of Section 4 thereof–, as well as Articles 178 and 179 of the Insolvency Act, amended by this Act, shall begin to be applied to insolvency proceedings in process on the date of enactment.

Transitional Provision Twelve. Abbreviated proceedings

Sections 5 and 6 of Article 184 and Articles 190, 191, 191 bis, 191 ter and 191 quater of the Insolvency Act, amended by this Act, shall be applicable in insolvency proceedings initiated after its date of enactment.

Transitional Provision Thirteen. Appeal regime

Sections 4, 5 and 6 of Article 197 of the Insolvency Act, amended by this Act, shall be applied to appeals filed against resolutions handed down as of the enactment thereof.

Sole Repealing Provision. Repeal of legal provisions

The following Articles of Act 22/2003, dated 9th July, on Insolvency, are hereby repealed:

Section 5 of Article 3

Section 3 of Article 5

Section 4 of Article 6

Article 98

Article 142 bis

Section 7 of Final Provision Two, which adds a new Section to the end of Article 580 of the Code of Commerce.

Final Provision one. References to the insolvency administrator

The references in the Insolvency Act to “the insolvency administrators” shall be replaced by the term “the insolvency administration”.

Final Provision Two. Title of competence

This Act is handed down under the scope of the title of powers attributed to the State in Article 149.1.6. of the Spanish Constitution, in matters of mercantile legislation and procedural legislation.

Final Provision Three. Enactment

1. This Act shall come into force on 1st January 2012.

2. Notwithstanding the foregoing, Sections One (Article 5 bis of the Insolvency Act), Ten (Article 15 of the Insolvency Act), Fifty (Article 71.6 and 7 of the Insolvency Act), Fifty- seven (Article 84.2.11. exclusively), Sixty- two (Article 91.6. exclusively) and One hundred and twelve (Additional Provision Four of the Insolvency Act) of the Sole Article of this Act, shall come into force on the day following the publication thereof in the Official State Gazette.


GOBIERNO
DE ESPAÑA
MINISTERIO
DE JUSTICIA