

## **THE REFORM TO THE BANKRUPTCY LAW**

### **I.**

- Unitary bankruptcy system that applies to organisations and individuals, irrespective of whether they are entrepreneurs or professionals.
- It is governed by the principles of legal, disciplinary and procedural unity.
- One of the main principles of the law is the preservation of the professional or business activity of the bankrupted party.
- This is justified by the fact that it is most often concluded with the liquidation of the company, the cessation of activities and workers' redundancy. This creates a stigma that continues to hang over the bankruptcy, without increasing the level of satisfaction of ordinary creditors.

### **II.**

- This is not a radical reform to the bankruptcy law but a recognition of its basic principles; namely, the triple legal, disciplinary and procedural unity, described above.
- The reform can be considered to be all-encompassing as it introduces a series of important amendments, the aim of which is to correct errors of focus detected in the practice and close any loopholes detected in the law. It constitutes an integral update.
- It takes the current economic situation as its reference.

### **III.**

- It analyses "alternatives" to bankruptcy or so-called pre-bankruptcy institutions, offering businesses a more streamlined and economic solution to their crises through refinancing agreements.
- It formally communicates that negotiations are beginning with creditors, closely regulates the duties of the parties negotiating the agreement and, above all, establishes the legal endorsement of this agreement which – consequently and within certain limits – extends to dissident creditors.
- It incorporates the so-called "new money privilege" into our system. These changes complete the reform carried out by Royal Decree Law 3/2009, of 27 March 2009.

### **IV.**

- Its aim is for the insolvency solution not to be delayed, as this reduces the value of the assets on which payment of creditors depends, to eliminate possibilities of ensuring their feasibility and to increase costs.
- It streamlines the bankruptcy process, favouring early liquidation, fostering and regulating a truly abbreviated procedure and offering specific solutions during the common phase and in the agreement. Early liquidation is a very important new feature: the start of the bankruptcy liquidation phase is structured differently.
- The regulation of a truly abbreviated bankruptcy.
- It incentivises debtors so that the classification section is not opened if they reach an early agreement with their creditors, providing that it is not especially costly.
- The procedural amendments also affect bankruptcy cases, which restricts even further the possibility of a hearing.
- It also improves the system of public registration of bankruptcy.

### **V.**

- It seeks to favour conservative bankruptcy solutions by strengthening the possibility of making structural modifications during bankruptcy proceedings.
- In the same vein, it responds to the fact that credits that came into being after the agreement were legally approved must be credits against the mass, if the liquidation phase began subsequent to this. It favours granting credit to a company during the agreement phase and also as a protective mechanism for the "new money" which enables it to continue with its activity.
- The possibility of acquiring bankruptcy credits, abolishing prohibitions on voting, only when the buyer is an institution that is subject to financial supervision.

## VI. EMPLOYMENT.

- It significantly improves protection for workers affected by latent social issues. It has special bearing on the latest employment reform.
- It introduces specific amendments to Article 64 of the Bankruptcy Law.
- Coordination with the latest employment reform carried out by Law 35/2010, of 17 September 2010, regarding urgent measures for the reform of the employment market.
- It also resolves legal doubts regarding the classification of salary credits and compensation as credits against the mass in the event of redundancy or termination of employment relationships.
- The express regulation during bankruptcy proceedings of the legal subrogation of the Wage Guarantee Fund is incorporated into the framework of the provisions of Article 33 of the Employees Charter.

## VII. BANKRUPTCY ADMINISTRATORS.

- Aware of the important role played by bankruptcy administrators in this field, it seeks greater professionalism while carrying out their duties and responsibility.
- It increases the level of requirements to be appointed.
- It extends the situations by which bankruptcy administration comprises a single member.
- Recognition of organisations as bankruptcy administrators.
- Workers' representation before an Administration is combined with plans for significant creditors also to have a presence in especially important bankruptcies.

## VIII. COMPANY BODIES.

- Liability of administrators of trading companies during the bankruptcy, aiming to harmonise the different systems of administrator liability that may co-exist while it is being conducted:
  1. Liability for damages to the company.
  2. Bankruptcy liability for the liquidation deficit.
- It strengthens the related bankruptcies system, the accumulation of various debtor bankruptcies and sets a payment order for credits against the mass.
- Tighter regulation of insufficiency of the mass.

## IX. FINAL.

- The final provisions have also been adjusted.
  1. The Code of Commerce, where Section 2 of Article 13 recovers the wording that it had prior to the approval of the bankruptcy law.
  2. A new Additional Provision 2b sets out a special system that applies to sports organisations. Professional sport has unique characteristics and its being subject to the Bankruptcy Law will not impede the application of the sports regulations which govern competition.
  3. It reforms Article 164 of the Spanish General Tax Law and amends the Spanish Value Added Tax Law in the disposal of property, applying the taxpayer investment mechanism.

## X. SUMMARY.

As well as the points analysed, within certain timescales, it also affects the formalisation of annual accounts, the provisions for individual debtors, the treatment of the continuation and accumulation of declarative actions when bankruptcy is declared, compensation for credits, the right to withhold goods, the validity of contracts with reciprocal obligations, repayment actions, appeal against the Bankruptcy Administration Report, the agreement, payment of credits, the special system in the Canaries and air traffic. Finally, and with regard to individuals, an additional unique provision calls for the Government to draw up a report within six months on the current situation regarding bankruptcy procedures affecting individuals and the improvements that need to be introduced.

<b>BARCELONA</b> Beethoven 13, 7º 08021 Barcelona Tel: +34 93 241 3020 Fax: +34 93 414 38 85 / 11 57 bcn@pintorizdelvalle.com www.pintorizdelvalle.com	<b>MADRID</b> Guadalquivir, 22 28002 Madrid +34 91 745 49 58 Fax: +34 91 411 5045 ma@pintorizdelvalle.com www.pintorizdelvalle.com	<b>PALMA</b> Sindicato, 69-7º Edificio Banco Santander 07002 Palma de Mallorca Tel: +34 971 71 6029 Fax: +34 971 71 9075 palma@pintorizdelvalle.com	<b>ALICANTE</b> César Elguezábal 39, pp1 dcha 03001 Alicante Tel: +34 96 514 3928 Fax: +34 96 514 5353 ali@pintorizdelvalle.com www.pintorizdelvalle.com
--	--	---	--

Member of PANNONE LAW GROUP / A.E.I.E.

Alicante, Andorra, Beijing, Barcelona, Berlin, Bruxelles, Buenos Aires, Dili (Democratic Republic of East Timor), Düsseldorf, Frankfurt am Main, Genève, Lisboa, London, Lyon, Madrid, Manchester, Milano, Montevideo, Montreal, München, Nicosia, Palma de Mallorca, Paris, Québec, Roma, Rotterdam, San José de Costa Rica, Santiago de Chile, Sao Paulo, Shanghai, Tel-Aviv, Trois Rivières, Warsaw and Vienna.

© December 2011 Pintó Ruiz & Del Valle