

NOVELTIES INTRODUCED BY LAW 3/2020, OF 18TH SEPTEMBER, IN INSOLVENCY PROCEEDINGS

It is well known that, during the State of alert, many provisions were adopted to alleviate the consequences of the crisis caused by COVID-19. Among the measures adopted, one of the most remarkable provisions was the Royal Decree-Law 16/2020, of 28th April, procedural and organizational measures to address COVID-19 in the Administration of Justice (*RDL 16/2020, de 28 de abril, de medidas procesales y organizativas para hacer frente al COVID-19 en el ámbito de la Administración de Justicia*, henceforth, “RDL 16/2020”).

Afterwards, the RDL 16/2020 was validated and approved as a bill through an urgent parliamentary procedure. Finally, Saturday 19th September 2020, Law 3/2020, of 18th September, procedural and organizational measures to address COVID-19 in the Administration of Justice (*Ley 3/2020, de 18 de septiembre, de medidas procesales y organizativas para hacer frente al COVID-19 en el ámbito de la Administración de Justicia*, henceforth, “Ley 3/2020”) was published in the Spanish Official Gazette (BOE). Accordingly, this law mainly reaffirms the measures approved by its predecessor RDL 16/2020.

Nevertheless, in this moment, we would like to focus on the main novelties introduced by Law 3/2020 in insolvency proceedings, since, even if they are marginal, they are very relevant and significant for our daily practice. Furthermore, we should bear in mind that these novelties will temporarily coexist with the Consolidated Text of the Bankruptcy Law (*Texto Refundido de la Ley Concursal*, henceforth, “TRLR”) that entered into force the 1st September 2020.

Hence, we will briefly underline the main novelties of Law 3/2020:

- Overall, Law 3/2020 specifies the dates as from which the measures approved are applicable and the duration of these measures, notwithstanding the fact that their duration may be extended in the near future.
- Regarding the debt renegotiation proposals that have been presented by the debtor, the duration of the priority given against applications for the declaration of default has been extended, both, in the so-called pre-insolvency phase and in the phase of convention.

It is especially interesting to point that the Court will notify the debtor of all the applications for the declaration of default that have been presented until 31/10/2020, but it will not admit them for processing until:

- (i) Three months from the date signaled (31/10/2020) have elapsed without a proposal of the debtor for the modification of the bankruptcy agreement (*reconvenio*) or the extrajudicial payment agreements (*acuerdo extrajudicial de pagos*), or

- (ii) Concerning refinancing agreements (*Acuerdos de refinanciación*), until one month from the 31/10/2020 has elapsed without a communication of the debtor to express the intention to initiate or the opening of the negotiations with its creditors. In case this communication is made during this period, the Court will not admit for processing the applications for the declaration of default until three months have elapsed since the communication without reaching a new refinancing agreement or according the modification of the original agreement in force.
- Law 3/2020 has clarified the doubt raised by RDL 16/2020 regarding the deadline that the debtors had to apply for an insolvency proceeding before Courts when they have communicated the opening of pre-insolvency negotiations with its debtors, on the basis of article 5 bis of the former Bankruptcy Law (now collected in arts. 583 and ff. TRLC). More precisely, the criteria have been harmonized and the deadline to communicate the start of pre-insolvency negotiations has been extended until the 31st December 2020, date included. In case the debtor communicates the start of pre-insolvency negotiations during this period, he will not have the duty to apply for an insolvency proceeding before courts during the six months following the communication.
- The possibility of qualifying credits of a person especially related (PER) to the debtor as ordinary credits, or even as privileged credits, when they meet the requirements of art. 7 Law 3/2020 regarding the financing and payments on behalf of the debtor made by a PER.
- Preferential treatment in court of (i) insolvency proceedings started after a failed attempt of extrajudicial payment agreement (*concurso consecutivo*) of a natural person without assets and (ii) full discharge of debt (*beneficio de exoneración de pasivo insatisfecho*).
- Judicial and extrajudicial auctions or any other execution mode of assets and rights authorized by the judge are specifically admitted. Thus, judicial auction will not be limited to the disposal of the entire company or one or more production units, as it was established by RDL 16/2020.

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