

# Composition of active mass: description of goods and rights

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## Introduction

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## Introduction

Article 192 of the Consolidated Text of the Bankruptcy Law (TRLC) introduces the concept of the 'active mass' of a bankruptcy, which constitutes all of the assets and rights integrated into the bankrupt's assets on the date of the declaration of bankruptcy, as well as those that are reintegrated to the bankrupt or acquired before the conclusion of the bankruptcy proceedings.

The active mass incorporates the principle of universality derived from Article 1.911 of the Civil Code (ie, the debtor is liable for all of its present and future assets).

Under Article 198 *et seq* of the TRLC, the bankruptcy administration must prepare an inventory of the insolvent party's assets and rights, including their value, by the end of the day immediately preceding the day on which it presents its report (for further details please see "[Composition of active mass: inventory of goods and rights](#)"). This article discusses the inclusion of certain goods and rights in the inventory. **(1)**

## Description of goods and rights

Under Article 199 of the TRLC, the inventory must set out, with respect to each of the assets and rights included therein:

- their nature;
- their features;
- their location;
- their registration identification data (if applicable); and
- any associated rights, encumbrances or charges in favour of a creditor or third party, as well as their nature and, if applicable, registry identification data.

## Case law

### ***Non-debtor mortgagers***

An insolvent company mortgaged real estate assets which it owned as collateral for a financing transaction granted to another company of the same group. The company did not provide a bond for the transaction.

This raised questions as to how the mortgages be reflected in the inventory and whether the financial transaction should be included in the insolvent company's liabilities.

According to the Madrid Court of Appeal (28th Section, Judgment 349/2017, 7 July 2017), the secured claim should not be recognised in the insolvent company's liabilities because it would become a debtor when it agreed to be subject to liability for non-payment of the mortgaged property, but not other assets. Otherwise, it would be subjecting all of its assets (ie, the active mass) to the payment of those credits, giving full effect to the principle of universal patrimonial liability (Article 1.911 of the Civil Code), against the third-party mortgagor.

The company would be given the right to vote on a settlement proposal. However, to ensure that the bankruptcy information was correct, the existence of this charge had to be included in the inventory.

### ***Urbanisation fees***

Urbanisation fees paid by a compensation board accrued prior to the date of the declaration of bankruptcy. Their assignment was recorded in the Property Registry.

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According to the Supreme Court, bankruptcy credits with special privilege are considered tacit legal mortgages and meet the requirements established in Article 271.1 of the Bankruptcy Law for the purposes of recognising the special privilege of Article 270.1 (Supreme Court decisions of 15 July 2014, 21 July 2014 and 23 July 2015). Thus, the fees have a credit classification and should be included in the inventory of good and rights.

In such cases, the inventory must state that the property is encumbered *in rem* with said urbanisation fees.

### **Urban development**

A city council contested an insolvent company's inventory of assets and rights, requesting the inclusion of information on the administrative encumbrances on certain properties owned by the company regarding the provision of a municipal public service (sports facilities). It was not possible to demolish such facilities until the new municipal sports centre had been built. This raised the question of whether such encumbrances should be included in the inventory.

According to the Barcelona Court of Appeal (621/2020, 22 April 2020), 'encumbrances' – when referring to encumbrances and charges affecting assets (Article 199 of the TRLC) – does not include urban planning limitations that may affect properties to be included in an inventory of goods and rights.

Article 199 of the TRLC refers to private charges, not to the limitations derived from urban planning.

### **Productive units**

Article 200 of the TRLC defines a 'productive unit' as a set of means organised for the exercise of an essential or accessory economic activity.

If there are one or more establishments, farms or any other productive units of goods or services in a party's active mass, they must be described in an annex to the inventory, including details of their perimeter. Similarly, an appraisal is required.

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### **Endnotes**

(1) This article is part of a series on the active mass under the TRLC. For other articles in the series, please see:

- "[Composition of active mass under TRLC](#)";
- "[Composition of active mass under TRLC – case law](#)";
- "[Composition of active mass: inventory of goods and rights](#)"; and
- "[Composition of active mass: inventory of goods and rights – special cases](#)".

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