

# Composition of active mass: practical guidance on inventory of good and rights

21 May 2021 | Contributed by [Augusta Abogados](#)

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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 provides practical guidance on the inventory of goods and rights.<sup>(1)</sup>

## Complementary relationships

Under Article 202 of the TRLC, a list of the following should be added to the inventory:

- all litigation, the outcome of which may affect the assets; and
- actions which should be taken, in the bankruptcy administration's opinion, to reintegrate the active mass into the estate.

For both of the above, information must be provided on the feasibility, risks, costs and financing possibilities of the corresponding legal proceedings.

## Advice from independent experts

Under Article 203 of the TRLC, the bankruptcy administration may request the advice of independent experts to estimate the value of assets or the feasibility of ongoing litigation and actions to be brought. Such request must be submitted to the court, whose decision cannot be appealed.

The regime of incompatibilities, prohibitions, recusal and liability established for bankruptcy administrators also applies to independent experts.

The bankruptcy administration must remunerate independent experts.

The reports issued and details of the applicable fees must be attached to the inventory.

## Draft inventory

Under Article 289 of the TRLC, the inventory must be communicated to the insolvent party and creditors via email at least 10 days (or five in case of abbreviated filing of the report) before it is presented to the court.

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Up to three days prior to the filing of the report, the insolvent party and the creditors may request the bankruptcy administration, via email, to rectify errors and supplement the data reported.

The bankruptcy administration must email the insolvent party and creditors a list of the requests for rectification and supplementation received. The same documents and the list of requests for rectification or supplementation will be published in the Public Registry of Bankruptcy.

A request for rectification does not limit a party's legal standing to challenge the inventory presented via incidental proceedings.

### **Abbreviated procedures**

Under Article 525.1 of the TRLC, the bankruptcy administration must submit the inventory within 15 days of accepting the position in case of an abbreviated procedure.

### **Presentation of inventory**

Under Article 293 of the TRLC, the inventory must be submitted as an annex to the bankruptcy administration's report within two months from the date of it accepting the position (or one month in the case of an abbreviated procedure).

### **Publicity**

Under Article 294 of the TRLC, the inventory must be:

- notified to the parties to the bankruptcy proceeding;
- published on the court's bulletin board; and
- published in the Public Registry of Bankruptcy.

The court may order – *ex officio*, at the request of the interested party – any additional publicity that it deems necessary, in official or private media.

### **Obtaining copies**

Under Article 295 of the TRLC, the parties to bankruptcy proceedings are entitled to obtain a copy of the bankruptcy administration's report and the attached documents, immediately and at their own expense.

*For further information on this topic please contact [Alicia Herrador Muñoz](mailto:a.herrador@augustaabogados.com) at Augusta Abogados by telephone (+34 933 621 620) or email ([a.herrador@augustaabogados.com](mailto:a.herrador@augustaabogados.com)). The Augusta Abogados website can be accessed at [www.augustaabogados.com](http://www.augustaabogados.com).*

### **Endnotes**

(1) This is the final article in a series on the active mass under the TRLC. For earlier 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](#)";
- "[Composition of active mass: inventory of goods and rights – special cases](#)";
- "[Composition of active mass: description of goods and rights](#)"; and
- "[Composition of active mass: valuation of goods and rights](#)".

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