Ministerio de Justicia

ACT 22/2003, DATED 9TH JULY, ON INSOLVENCY

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ACT 22/2003, DATED 9TH JULY, ON INSOLVENCY

References made to “insolvency administrators” shall be understood to refer to “insolvency practitioners” as established by Final Provision 1 of Act 38/2011, of 10th October.

TITLE I

ON THE DECLARATION OF INSOLVENCY PROCEEDINGS

CHAPTER I
ON THE PREMISES OF 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 to entities that form the territorial organisation of the State, public bodies and other Public Law entities.

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 duly 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 duly 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 whereof enforcement or collection proceedings have been dispatched without the seizure discovering sufficient free assets for the payment thereof, 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 foreclosures pending with an overall effect on the debtor's aggregate assets;

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.

Article 3. *Legitimacy.*[1]

1. The debtor, any of his creditors and the insolvency mediator are entitled to petition for insolvency proceedings to be opened when that is the procedure regulated in Title X 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

[1] Amendment of Paragraph 1 by Article 21.1 of Act 14/2013, dated 27th September.

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 aggregate assets 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.

5. Repeal.[2]

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.

Article 5. *Duty to petition for a declaration opening the insolvency proceedings.*[3]

1. A debtor shall 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.

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[2] Repeal of Paragraph 5 by the Sole Repealing Provision of Act 38/2011, dated 10th October.

[3] Repeal of Paragraph 3 by the Sole Repealing Provision of Act 38/2011, dated 10th October. Addition of Paragraph 3 by Article 10.1 of Royal Decree-Law 3/2009, dated 27th March.

Article 5 bis. *Notification of negotiations and effects thereof.*[4]

1. The debtor may notify the Court that is competent to issue a declaration of opening its insolvency proceedings of initiation of negotiations to reach a refinancing composition of those foreseen in Article 71 bis.1 and in Additional Provision four, or to obtain adhesions to an advanced proposal of composition under the terms foreseen in this Act.

In the event of requesting an out of court payment composition, once the insolvency practitioner proposed accepts office, the Business Registrar or Notary Public who has been requested to appoint the insolvency practitioner shall notify the Court that is competent to declare the insolvency proceedings, of his own motion, of opening of the negotiations.

2. That notification may be made at any time prior to expiry of the term established in Article 5. Once the notification has been issued prior to that moment, the duty to request voluntary declaration of opening of the insolvency proceedings shall not be required.

3. The Court Clerk shall order publication on the Public Insolvency Register of the statement of the resolution that records the notification lodged by the debtor or, in cases of an out of court payment composition being negotiated, by the Notary Public or Business Registrar, under the terms determined by the implementing regulations.

Should the debtor specifically request notification of the negotiations to be confidential, the order to publish the statement of the resolution shall not be issued.

The debtor may request that the confidential nature of the notification be raised at any time.

4. From presentation of the communication, no judicial or extrajudicial foreclosures may be performed on assets or rights that may be necessary to continue the professional or corporate activity of the debtor until any of the following circumstances concurs:

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[4] Amendment of Section 4 by Sole Article. Four.1 of Act 9/2015, of 25th May.
Please see, with regard to the transitory regime, Transitional Provision 1.1 thereof.
Amended by Article 1 of Act 17/2014, dated 30th September.
Amendment of Sections 1, 3 and 4 by Article 21.2 of Act 14/2013, dated 27th September.
Addition by Article 1 of Act 38/2011, dated 10th October.

a) formalisation of the refinancing agreement foreseen in Article 71 bis. 1;

b) an order is handed down admitting the application for judicial homologation of the refinancing agreement to consideration;

c) an extrajudicial agreement on payments is adopted;

d) the necessary number of adhesions has been obtained to admit an early composition proposal to process;

e) or if the insolvency proceedings are declared open.

In his notification, the debtor shall state what foreclosures are being brought against his assets and which befall assets he considers necessary for continuity of his professional or corporate activity, which shall be recorded in the decree by which the Court Clerk declares notice of the proceedings to have been made. In the event of dispute over whether the asset is necessary, the decree may be appealed before the Court that is competent to hear the insolvency proceedings.

Foreclosure of such assets or rights that are in process shall be suspended by the Court hearing such, on submission of the resolution by the Court Clerk, recording that notification. The limitations foreseen in Paragraph One of this Section shall be raised if the Court that is competent to hear the insolvency proceedings resolves that the assets or rights affected by the foreclosure are not necessary for continuity of the professional or corporate activity and, in all cases, once the terms foreseen in the following Section have elapsed.

Nor may unique foreclosures be initiated or, where appropriate, individual judicial or extrajudicial foreclosures shall be suspended, if promoted by creditors of the financial liabilities referred to in Additional Provision Four on any other of the debtor's assets or rights, as long as documentary evidence is provided that a proportion not lower than 51 per cent of the financial liabilities has specifically supported commencement of the negotiations aimed at signing a refinancing agreement, undertaking not to commence or continue individual foreclosures against the debtor whilst such negotiations are taking place.

The terms set forth in the preceding four Paragraphs shall not prevent creditors with in rem securities from foreclosing their security interests against the properties, assets and rights their security befalls, without prejudice to the fact that, once the proceedings are initiated, they shall be halted whilst any of the actions foreseen in the first Paragraph of this

Section have not been performed or the term foreseen in the following Section has not elapsed.

In all cases, the provisions contained in this Section exclude foreclosure proceedings intended to settle Public Law credits.

5. Once three months have elapsed from notification to the Court, whether or not the debtor has reached a refinancing composition, or an extrajudicial payment composition, or the necessary adhesions for admission to consideration of an early composition proposal, the debtor must apply for the declaration of opening of insolvency proceedings within the following working month, unless this has already been applied for by the insolvency practitioner, or the debtor is not in a state of insolvency.

6. After filing the notification foreseen in this Article, no other may be filed by the same debtor within the term of one year.

Article 6. *Petition by the debtor.*[5]

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 granting of an apud acta empowerment.

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 aggregate assets.

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.

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[5] Amendment of Paragraph 2 and repeal of Paragraph 4 by Article 2 and by Sole Repealing Provision of Act 38/2011, dated 10th October.

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, by alphabetical order, stating the identity, address and electronic mail address of each one of them, as well as the amount and maturity of the respective claims and the securities in personam or in rem constituted. If any creditor has claimed payment judicially, the relevant proceedings shall be identified and the state of the procedure indicated.

5. The staff of workers, where appropriate, and the identity of their representative body, if any.

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 financial years.

2. Report on the significant changes occurred in his aggregate assets 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 trade 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 thereof or to submit these to the supervisory authorities.

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 financial 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.

4. (Repealed)

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.

Article 7. *Petition by the creditor and other parties legitimated.*[6]

1. The creditor instigating a declaration opening the insolvency proceedings shall state in the petition the title or fact on which the petition is based pursuant to Article 2.4, as well as the origin, nature, amount, dates of acquisition, maturity, and present status of the claim, to which he shall attach documentation as evidence.

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.

CHAPTER II
ON THE DECLARATORY PROCEEDINGS

Section 1. Jurisdiction and Competence

Article 8. *Insolvency Court.*[7]

The Mercantile Courts of Law are competent to hear and decide on insolvency. The Mercantile Judge's jurisdiction is exclusive and excludes others in the following domains:

1. Civil actions with an economic impact lodged against the insolvent debtor's aggregate assets 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 Procedure Act. 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 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

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6 Amendment of Paragraph one of Section 1 by Article 3 of Act 38/2011 dated 10th October.

7 Amendment of Sections 2, 6 and 7 by Article 4 of Act 38/2011, dated 10th October.
Amendment of Paragraph 4 by Final Provision 3.1 of Act 11/2011, dated 20th May.
Amendment of Paragraph 6 and addition of 7 by Article 17.1 of Act 13/2009, dated 3rd November.

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.

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

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

4. All preservation measures that affect the insolvent debtor's aggregate assets, except those adopted in civil proceedings that are excluded from its jurisdiction in Paragraph 1. of this provision and, where appropriate, pursuant to the terms set forth in Article 52, those handed down by arbitrators in arbitration proceedings, without prejudice to the competence of the Court to resolve to suspend such, or petition for them to be raised when considered to be damaging to processing the insolvency proceedings.

5. Those that 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.

6. Legal actions directed at claiming company debts lodged against partners who are liable subordinately for the claims of the company subject to insolvency proceedings, whenever originated, as well as actions to demand from the partners of the company subject to insolvency proceedings to pay up the unpaid stock capital or fulfilment of the ancillary commitments.

7. Legal actions directed at claiming civil liability against company directors or liquidators, de jure or de facto, and the auditors of the company subject to insolvency proceedings, for damages caused to the insolvent debtor.

Article 9. *Extension of jurisdiction.*[8]

1. The jurisdiction of the Court is extended to all the prejudicial civil, except those excluded in Article 8, the administrative or labour matters directly related to the insolvency or whose resolution is necessary for proper performance of the insolvency proceedings.

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[8] Amended by Article 6 of Act 38/2011, dated 10th October.

2. The decision on the matters referred to in the preceding Section shall not take effect outside the insolvency proceedings in which it arises.

Article 10. *International and territorial competence.*[9]

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 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 here, 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.

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[9] Deletion of Paragraph 4 and renumbering of 5 as 4 by Article 7 of Act 38/2011, dated 10th October.

The effects of this insolvency, which in the international scope shall be considered a "territorial 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.*[10]

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.

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 shall 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.

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[10] Amendment of Paragraph 1 by Article 6.1 of Royal Decree-Law 3/2009, dated 27th March.

Section 2. On deciding on the petition

Article 13. *Term to decide.*[11]

1. On the same day, or if not possible, the following working day after distribution, the Court shall examine the petition 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.

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

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.

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[11] Amendment of Paragraph one of Section 2 by Article 8 of Act 38/2011, dated 10th October. Amendment of Paragraphs two and three of Section 1 by Article 17.2 of Act 13/2009, dated 3rd November.

Article 14. *Decision on the petition by the debtor.*[12]

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.*[13]

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

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

2. When the petition has been presented by any legitimated party other than the debtor and for a reason other than that foreseen in the preceding Paragraph, the Court shall hand down an order to admit it to consideration, and summoning the debtor pursuant to the terms set forth in Article 184, with notification of the petition within the term of five days, within which the proceedings shall be notified and opposition to the petition may be made, proposing the means of proof of which it intends to avail itself.

Once the petition is admitted to consideration, those lodged thereafter shall be accumulated to the one first distributed and shall be attached to the proceedings, the new applicants being declared to have appeared without backdating the proceedings.

3. Once the notification foreseen in Article 5 bis has been made and while the term of three months foreseen in that premise has not elapsed, no

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[12] Deletion of Paragraph 2 and renumbering of 3 as 2 by Article 9 of Act 38/2011, dated 10th October.

[13] Amendment of Paragraph one of Section 3 by Article 21.3 of Act 14/2013, dated 27th September.
Amended by Article 10 of Act 38/2011, dated 10th October
Addition of Paragraph 3 by Article 10.2 of Royal Decree-Law 3/2009, dated 27th March.

petitions for insolvency proceedings shall be admitted at the instance of other parties legitimated other than the debtor or, in the proceedings foreseen in Title X of this Act, other than those of the debtor or the insolvency practitioner.

Petitions lodged thereafter shall only be attended when the term of one working month has elapsed as foreseen in said Article, if the debtor has not lodged a petition to open insolvency proceedings. If the debtor lodges a petition to open insolvency proceedings within that term, it shall first be processed pursuant to Article 14. Once the declaration opening the insolvency proceedings is issued, the petitions previously submitted and those submitted thereafter shall be attached to the proceedings, the applicants being deemed to have appeared.

Article 16. *Forming Section One.*[14]

Once the insolvency proceedings are opened, or the petition for a declaration opening the insolvency proceedings is admitted, the Court shall order formation of Section One, 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 aggregate assets, pursuant to the provisions foreseen in the Civil 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.

[14] Amended by Article 11 of Act 38/2011, dated 10th October

Article 18. *Admission of the claim or opposition thereto by the debtor.*[15]

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.

Article 19. *Hearing.*[16]

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.

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[15] Amendment of the second Paragraph of Section 2 by Article 12 of Act 38/2011, dated 10th October. Amendment of the second Paragraph of Section 2 by Article 17.3 of Act 13/2009, dated 3rd November.

[16] Amendment of Paragraph 4 by Article 17.4 of Act 13/2009, dated 3rd November.

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 grant 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 Procedure Act.

Article 20. *Resolution on the petition and appeals.*[17]

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 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.

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[17] Amendment of Paragraph 4 by Article 13 of Act 38/2011, dated 10th October.
Amendment of Paragraph 4 by Article 6.2 of Royal Decree-Law 3/2009, dated 27th March.

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 shall 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.

4. The term to file an appeal to the Court and to prepare the appeal to a Higher Court shall be calculated, with regard to the parties who have appeared, from notice being served of the order, and with regard to the other parties legitimated, from the publication of the extract of the declaration of insolvency in the "Official State Gazette".

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

Section 3. On the declaration of insolvency proceedings

Article 21. *Order declaring the opening of insolvency proceedings.*[18]

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 whether, when appropriate, the debtor has applied for liquidation, or has submitted an early composition proposal.

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[18] Amendment of Sections 1.1 and 4 by Article 14 of Act 38/2011, dated 10th October.
Amendment of Paragraph 5 by Article 17.5 of Act 13/2009, dated 3rd November.
Amendment of Paragraph 1.5 and first Paragraph of 5 by Articles 6.3 and 6.4 of Royal Decree-Law 3/2009, dated 27th March.

2.The effects on the rights of management and disposal of the debtor with regard to his aggregate assets, as well as the appointment and powers of the insolvency practitioners.

3.In the case of compulsory insolvency, the demand 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 aggregate assets, until the insolvency practitioners accept office.

5.Calling the creditors to lodge with the insolvency practitioners 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.

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 administration shall serve an individual notice, without delay, to each one of the creditors whose identity and domicile are recorded in the insolvency proceedings, informing them that they have been declared open and of their duty to lodge their claims in the manner established by the law.

The notice shall be served by telematic, computer or electronic means when the electronic address of the creditor is recorded.

The notification shall be addressed by electronic means to the State Tax Administration Agency and the General Treasury of the Social Security, through the means these provide at their relevant electronic seats, whether or not there is a record of their creditor status. The representatives of the workers, if any, shall also be notified, informing them of their right to appear as a party in the proceedings.

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.*[19]

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.

[19] Amendment of the second Paragraph of Section 1 by Article 15 of Act 38/2011, dated 10th October. Addition of Paragraph two of Section 1 by Article 10.3 of Royal Decree-Law 3/2009, dated 27th March.

For the purposes of this Article, the petition by the debtor made within the term of Article 5 bis shall be understood to have been submitted when the communication foreseen in that Article was made.

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.*[20]

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 implementing regulations, guaranteeing the security and integrity of the communications.

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 case number and the General Number of the Proceedings, the date of the court order declaring opening of the insolvency proceedings, the term established to lodge the claims, the identity of the insolvency practitioners, the postal address and electronic address, as chosen by the creditors to notify their claims pursuant to Article 85, the suspension or intervention regime of the rights of the insolvent debtor and the web site of the Public Insolvency Register where the resolutions arising from the insolvency proceedings shall be published.

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 procedure 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.

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[20] Amendment of Paragraph two of Section 1 by Article 16 of Act 38/2011, dated 10th October Amendment of Paragraph three of Section 3 by Article 17.6 of Act 13/2009, dated 3rd November. Amended by Article 6.5 of Royal Decree-Law 3/2009, dated 27th March.

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 shall 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 implementing regulations shall establish.

Article 24. *Register publicity.*[21]

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

2. If the debtor is a subject to entry in the Business Register, it shall be subject to inscription on the sheet open for the company, preferably by telematic means, the orders and judgments declaring voluntary or mandatory reopening of the insolvency proceedings, opening of the composition phase, of approval of the composition, opening the winding-up phase, approval of the winding-up plan, conclusion of the insolvency proceedings and the resolution on the challenge of the order of conclusion, forming the classification piece and the classification sentence of the insolvency proceedings under culpable terms, as well as all orders handed down on matters of intervention or suspension of the rights of administration and disposal of the debtor over the assets and rights that form the aggregate assets shall be subject to inscription on the sheet open for the

[21] Amended by Article 17 of Act 38/2011, dated 10th October.
Amendment of Paragraph three of Section 5 by Article 17.7 of Act 13/2009, dated 3rd November.
Amended by Article 6.5 of Royal Decree-Law 3/2009, dated 27th March.

company. When not recorded on the sheet open for the company, shall previously be registered at the Register.

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

4. If the debtor has property or assets registered on the public registers, the declaration opening the insolvency proceedings, the intervention, or when appropriate the suspension of his rights of management and disposal, shall be preventively annotated on the relevant folio for each one, stating the date, as well as the appointment of the insolvency practitioners.

Once the preventive annotation or inscription is performed, no subsequent seizures or attachments may be recorded after the declaration opening the insolvency proceedings, other than those ordered by the Court in the proceedings, except as established in Paragraph 1 of Article 55 of this Act.

5. The registrations referred to in the preceding Sections 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 any case, the preventive annotations that must be made at public registers of persons or of assets due to lack of final status of the resolution shall expire four years from the date of their annotation and they shall be cancelled at its own motion, or at the request of any interested party. The Court Clerk may decree their extension for a further four years.

6. Notice of the necessary documentation to perform the entries shall preferentially be performed by telematic means from the Court to the relevant registers.

Exceptionally and if what is foreseen in the preceding Paragraph is not possible, notice shall be served by edicts delivered to the Barrister-at-Law to the petitioner for insolvency, with the necessary orders to have the register entries foreseen in this Article effected without delay.

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 to the relevant registers.

7. The implementing regulations may establish co-ordination mechanisms between the diverse public registers on which, according to the terms foreseen in the preceding Sections, they shall record the order declaring the opening and other circumstances of the insolvency proceedings.

CHAPTER III
ON RELATED INSOLVENCY PROCEEDINGS[22]

Article 25. *Declaration of joint insolvency proceedings against various debtors.*[23]

1. A petition may be lodged to declare joint insolvency proceedings against debtors who are spouses or who are administrators, partners, members or partners personally liable for the debts of a same legal person, as well as when they form part of the same corporate group.

2. The creditor may submit a petition for declaration of joint insolvency proceedings of several of its debtors, when they are spouses, when confusion of assets exists between them, or when they form part of the same corporate group.

3. The Court may declare joint insolvency proceedings against two persons who have registered as a common-law marriage, at the request of the members of the couple or a creditor, when there are signs of the existence of specific or tacit pacts, or of conclusive facts that give rise to the unequivocal will of the parties cohabitating to establish common assets.

4. The competent Court to declare opening of joint insolvency proceedings is that of the place where the debtor with the greatest liabilities has his main centre of interests and, if it is a corporate group, that of the controlling company or, in cases in which the insolvency proceedings are not brought against the latter, that of the company with the largest liabilities.

Article 25 bis. *Accumulation of insolvency proceedings.*[24]

1. Any of the debtors, or any of the insolvency practitioners may petition the Court, by reasoned writ, for accumulation of the following insolvency proceedings already declared open:

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22 Addition by Article 18 of Act 38/2011, dated 10th October

23 Amended by Article 18 of Act 38/2011, dated 10th October.

24 Addition by Article18 of Act 38/2011, dated 10th October.

1.Of those forming part of a corporate group;

2.Of those who have mingled assets;

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

4.Of those who are members or stakeholders of an entity without legal personality, and who are personally liable for trading debts contracted in its name;

5.Of spouses;

6.Of the registered civil partner, when any of the circumstances foreseen in Article 25.3 concurs.

2. Should a petition not be filed by any of the debtors or by the insolvency practitioners, the accumulation may be requested by any of the creditors by reasoned writ.

3. Accumulation shall be appropriate even though the insolvency proceedings have been declared by different courts. In that case, the competence to process accumulated insolvency proceedings shall lie with the Court that is hearing the insolvency proceedings against the debtor with the highest liabilities at the moment of filing the petition for insolvency proceedings or, where appropriate, of insolvency proceedings of the parent company, or when insolvency proceedings have not been declared against it, that which has first heard the insolvency proceedings against any of the companies in the group.

Article 25 ter. *Co-ordinated formalisation of the insolvency proceedings.*[25]

1. Insolvency proceedings declared jointly and accumulated shall be processed in co-ordination, without consolidation of the joint assets.

2. Exceptionally, inventories and lists of creditors may be consolidated in order to prepare the report by the insolvency practitioners when there are mingled assets and it is not possible to distinguish the ownership of assets and liabilities without incurring an inappropriate expense or delay.

[25] Addition by Article 18 of Act 38/2011, dated 10th October.

TITLE II

ON INSOLVENCY PRACTITIONERS

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, which shall include everything related to the administration in the insolvency proceedings, the appointment and the status of the insolvency practitioners, the setting out of their powers and the exercise thereof, the giving of accounts and, when appropriate, regarding the liability of the insolvency practitioners.w

CHAPTER I

ON APPOINTMENT OF INSOLVENCY PRACTITIONERS

Article 27. *Subjective conditions for appointment of insolvency practitioners.*[26]

1. A single insolvency practitioner shall administer the insolvency.

2. Only natural or legal persons who are registered in Section Four of the Public Insolvency Register and who have declared they are available to perform the tasks of insolvency practitioner within the scope of the territorial competence of the court of the insolvency proceedings may be appointed.

3. Natural and legal persons who fulfil the requisites set out by the implementing regulations may register in Section Four of the Public Insolvency Register. Such requisites refer to the required qualifications, to the experience to be proven and to the sitting or passing of specific tests

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[26] Amended by Article 2 of Act 17/2014, dated 30th September.
Please bear in mind that this amendment shall come into force on approval of its implementing regulation, as established in Transitional Provision 2 of said Act.
Amended by Article 19 of Act 38/2011, dated 10th October.
Amendment of Paragraph 4 by Article 7.1 of Royal Decree-Law 3/2009, dated 27th March.

or courses. Specific requisites may be established to practise as an insolvency practitioner in medium and large-scale insolvency proceedings.

4. For the purposes of appointing insolvency practitioners, a distinction shall be made between small, medium or large-scale insolvency proceedings. The implementing regulations shall also establish the characteristics that allow definition of the scale of the insolvency proceedings.

5. Appointment of the insolvency practitioner shall befall the natural or legal person on the list of Section Four of the Public Insolvency Register obtained by correlative rotation and who, fulfilling the conditions established in the preceding Sections, has declared, at the time of requesting inscription on that register, or thereafter, that he wishes to act within the scope of territorial competence of the court appointing him. The first appointment from the list shall be performed by draw.

Notwithstanding this, in large scale insolvency proceedings, the Court may perform a reasoned appointment of an insolvency practitioner other than the one assigned by correlative rotation whose alternative receiver profile it deems to be better suited to the characteristics of the insolvency proceedings. The Court shall reason its appointment according to any of the following criteria: the specialisation or proven prior experience in the sector of activity of the debtor, experience with the financial instruments used by the debtor for the purposes of its financing, or with proceedings giving rise to material modification of working conditions, or collective suspension or extinction of labour relations.

6. In the case of insolvency proceedings affecting a credit institution, the Court shall appoint the insolvency practitioner from among those proposed by the Fund for Orderly Bank Restructuring. It shall also appoint practitioners from among those proposed by the National Stock Exchange Commission in the case of entities respectively subject to its supervision, or that by the Insurance Compensation Consortium, in the case of insurance undertakings.

7. As an exception to the terms set forth in Section 1, in insolvency proceedings where there is a case of public interest to justify such, the Court hearing the insolvency proceedings, on its own motion or at the request of a creditor with public status, may appoint a creditor Public Administration or a creditor Public Law entity, linked to or dependent on it, as a second insolvency practitioner. In that case, the representation of the practitioner must befall a public officer who has graduate university

qualifications, a diploma or degree, to perform its duties in the legal or financial field, and his liability regime shall be that specified in the administrative legislation. In such cases, representation of the insolvency practitioners before third parties shall be assigned to the first insolvency practitioner.

The creditor Public Administration or entity related to it may renounce such an appointment.

8. In cases of related insolvency proceedings, the competent Court to hear such may appoint, to the extent where possible, a sole insolvency practitioner, appointing delegate assistants.

In the case of accumulation of insolvency proceedings already declared, the appointment may befall one of the already existing insolvency practitioners.

Article 27 bis. *Insolvencies of special transcendence for the purposes of appointment of the insolvency practitioners.*[27]

(Deleted).

Article 28. *Incapacities, incompatibilities, and prohibitions.*[28]

1. The following persons may not be appointed insolvency practitioners:

a) Those who may not be directors of a public or private limited company.

b) Those who have provided any kind of professional services to the debtor, or persons especially related to him within the last three years, including those who have shared exercise of professional activities of the same or different nature during that term.

c) Those who, being registered in Section Four of the Public Insolvency Register, are to be found, whatever their condition or profession, in any of the situations referred to in Article 13 of Royal Legislative Decree 1/2011, dated 1st July, that approves the Consolidated Text of the

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[27] Deletion by Article 3 of Act 17/2014, dated 30th September.
Addition by Article 19 of Act 38/2011, dated 10th October.

[28] Amended by Article 4 of Act 17/2014, dated 30th September.
Amended by Article 2 of Royal Decree-Law 4/2014, dated 7th March.
Amendment of Sections 2 to 4 and 6 by Article 20 of Act 38/2011, dated 10th October
Aggregated by Paragraph 6 of Article 8.1 of Royal Decree-Law 3/2009, dated 27th March.

Accounts Auditing Act, in relation to the actual debtor, its directors or administrators, or with a creditor that represents more than 10 per cent of the aggregate liabilities of the insolvency proceedings.

d) Those who are especially related to any person who has provided any kind of professional services to the debtor, or to persons especially related to him in the last three years.

2. In the event of there being sufficient persons available on the relevant list, persons who have been appointed to such office by the same court in three insolvency proceedings in the previous two years may not be appointed to such office. To these ends, the appointments made in the insolvency proceedings of companies belonging to the same corporate group shall be calculated as one alone.

Nor may those who have been severed from such office within the previous three years be appointed as insolvency practitioner, nor appointed by the legal person when it has been appointed as insolvency practitioner, nor those who are disqualified pursuant to Article 181, by final ruling of disapproval of accounts in previous insolvency proceedings.

3. Except for legal persons registered in Section Four of the Public Insolvency Register, those who have personal or professional bonds between them may not be appointed as insolvency practitioners in the same insolvency proceedings. The rules established in Article 93 shall be applied to ascertain personal bonds.

It shall be understood that professional bonds exist between persons between whom there are, de facto or de jure, relations of provision of services, collaboration or dependence, during the two years prior to the petition to open insolvency proceedings, regardless of the legal title that may be attributed to such relations.

4. The rules set forth in this Article shall apply to the representatives of the National Stock Exchange Commission, of the Fund for Orderly Bank Restructuring, Insurance Compensation Consortium, and any other creditor Public Administrations, with the exception of the prohibitions due to office or public duty, of those set forth in Paragraph two of Section 3 of this Article and those established in Paragraph 2.2. of Article 93.

5. Those who have issued the report referred to in Article 71 bis.4 of this Act in relation to a refinancing effort reached by the debtor before his

insolvency was declared open may not be appointed insolvency practitioner.

Article 29. *Acceptance.*[29]

1. The appointment of the administrator shall be notified to the party appointed by the fastest means. Within the five days following receipt of the notice, the party notified shall appear before the Court to prove that he has taken civil liability insurance or an equivalent security in proportion to the nature and scope of the risk covered pursuant to the provisions contained in the implementing regulations, to respond for possible damages in exercise of his duties, and declare whether or not he accepts the commission. When the insolvency practitioner is a legal person, it shall be required to take out civil liability insurance or an equivalent security.

Should the insolvency practitioner be subject to any cause of barring, he shall be bound to declare such. After office is accepted, the Court Clerk shall issue and deliver the appointee a document proving his status as insolvency practitioner.

That document of proof shall be returned to the Court at the moment when severance of the insolvency practitioner takes place for any reason.

2. Should the appointee not appear, not have taken out a civil liability insurance policy or a sufficient security, or not accept the commission, the Court shall immediately proceed to a new appointment. Whoever does not appear for a due cause does not hold an insurance policy or does not accept the office, may not be appointed as a practitioner in insolvency proceedings that may be conducted in the same judicial district for a term of three years.

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

4. On accepting office, the insolvency practitioner shall provide the Court the postal and electronic addresses to which credit claims must be sent, as well as any other notification.

5. Acceptance shall not be necessary when, in application of Article 27, the appointment befalls technical personnel of the National Stock Exchange

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[29] Amended by Article 21 of Act 38/2011, dated 10th October.
Amendment of Paragraph one of Section 1 by Article 17.8 of Act 13/2009, dated 3rd November.

Commission, a fund guarantee fund or the Insurance Compensation Consortium. Notwithstanding this, within the term of five days following receipt of the appointment, they shall provide the Court the postal and electronic addresses to which they shall send credit claims, as well as any other notification.

6. The electronic address stated shall fulfil the technical conditions for security and electronic communications with regard to the record of transmission and reception, the dates and the full content of the communications.

Article 30. *Representation of insolvency practitioners that are legal persons.*[30]

1. When the appointment of an insolvency practitioner befalls a legal person, on accepting office, it shall notify the identity of the natural person who is to represent it to undertake management of the tasks to perform the duties of its office.

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 receiver, he shall 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 practitioners shall be applicable to the representative of the legal person appointed. Persons who have acted as insolvency practitioner or representative thereof 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.

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[30] Amendment of Paragraph 1 by Article 5 of Act 17/2014, dated 30th September.
Second Paragraph added to Section 1 by Article 22 of Act 38/2011, dated 10th October.

Article 31. *Delegate assistants.*[31]

1. When the complexity of the insolvency so requires, the insolvency practitioner 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 practitioner, except in the cases of the legal persons recorded in the final Section of Article 27.1, when the Court considers according to the specific circumstances, it may appoint, with prior hearing of the insolvency practitioner, a delegate assistant who holds the professional qualifications the insolvency practitioner does not have, and upon whom it may delegate its functions as set forth in the preceding Paragraph.

Appointment of at least one delegate assistants shall be mandatory:

1. For companies with dispersed establishments in the territory.
2. For large sized companies.
3. When an extension is requested to issue the report.
4. In related insolvency proceedings in which a sole insolvency practitioner has been appointed.

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 practitioners 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 practitioners and their representatives shall be applicable to the delegate assistants.

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[31] Renumbering by Article 7 of Act 17/2014, dated 30th September.
Its previous numbering was Article 32.
Amended by Article 23 of Act 38/2011, dated 10th October.

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

Article 32. *Objection.*[32]

1. Insolvency practitioners 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.

3. The disqualification shall 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 insolvency practitioner, without the resolution handed down affecting the validity of the proceedings.

CHAPTER II
FUNCTIONS OF THE INSOLVENCY PRACTITIONERS[33]

Article 33. *Functions of the insolvency practitioners.*[34]

1. The functions of the insolvency practitioners, under the terms foreseen in this Act, are as follows:

a) Of a procedural nature:

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[32] Renumbering by Article 7 of Act 17/2014, dated 30th September.
Its previous numbering was Article 33.
Addition of Paragraph two to Section 1 by Article 24 of Act 38/2011, dated 10th October.

[33] Addition by Article 8 of Act 17/2014, dated 30th September.
Addition of Paragraph two to Section 1 by Article 24 of Act 38/2011, dated 10th October.

[34] Amendment of Points 1 and 3 of Letter c) of Section 1 by Sole Article. One. 1 of Act 9/2015, dated 25th May.
Addition by Article 8 of Act 17/2014, dated 30th September.

1.To take action against the partner or partners personally responsible for debts prior to declaration of insolvency proceedings.

2.To take liability actions by the insolvent legal person against its directors, auditors or liquidators.

3.To apply, where appropriate, for seizure of assets and rights of the directors, liquidators, de facto or de jure, general proxies and those who have held that status within the two years prior to the date of declaring the insolvency proceedings, as well as the partner or partners personally responsible for the debts of the company prior to the declaration of insolvency proceedings under the terms foreseen in Article 48 ter.

4.To apply, if appropriate, to raise and cancel seizures imposed when their maintenance severely hinders continuity of the professional or corporate activity by the insolvent debtor, except for administrative seizures, with regard to which raising or cancellation cannot be decided, in any event, pursuant to Article 55.

5.To interrupt actions for eviction taken against the debtor prior to the declaration of the insolvency proceedings, as well as reinstating the currency of tenancy agreements up to the very moment of the effective eviction being performed.

6.Exercising actions to terminate and others to challenge.

7.To apply for enforcement of the ruling in the event of the Court having condemned the directors, proxies or partners to cover the deficit.

8.To apply for transformation of the abbreviated procedure to an ordinary one or an ordinary abbreviated procedure.

9.To substitute the debtor in the ongoing judicial procedures.

10.To exercise actions of a non- personal nature.

b) Inherent to the debtor or its governing bodies:

1.To perform, until judicial approval of the composition or opening the liquidation, the acts of disposal that are considered by the insolvency practitioner indispensable to secure the feasibility of the company or the treasury needs required by the continuity of the insolvency proceedings.

2.To attend the collegiate bodies of the insolvent legal person.

3.To perform the acts of disposal that are not necessary for continuity of the activity when offers are presented that materially coincide with the value they have been given on the inventory.

4.To apply to the Court of the insolvency proceedings to revoke the appointment of the accounts auditor and appointment of another to audit the annual accounts.

5.To undertake exercise of the voting rights to which the debtor is entitled in other companies, with prior judicial authorisation.

6.To claim disbursement of the corporate contributions that may have been deferred.

7.To reinstate the loan contracts and others of credit in favour of early maturity of which due to default on the repayment instalments or interest accrued, may have taken place within the three months preceding the declaration of insolvency proceedings, as long as the conditions of Article 68 are met.

8.Reinstatement of agreements to acquire moveable assets or real estate aggregate assets, with instalment consideration or price, the resolution whereof has taken place within the three months preceding the declaration of insolvency proceedings, pursuant to the terms set forth in Article 69.

9.To apply for authorisation for the barred director to remain in charge of the company.

10.Calling the meeting or assembly of shareholders to appoint those who are to cover the vacancies left by those barred.

11.To grant the debtor approval to file suits or appeals, to withdraw, compromise or desist when the matter of litigation may affect the assets thereof, except in the case of non- personal actions.

12.In mandatory insolvency proceedings, to substitute the rights of administration and disposal of the assets of the debtor pursuant to the terms set forth in Article 40.2 and, in particular:

i) To adopt the necessary measures to continue the professional or business activity.

ii) To draw up and submit the annual accounts to audit.

iii) To apply to the Court for termination of contracts with reciprocal obligations pending fulfilment, if it is deemed convenient to the interest of the insolvency proceedings.

IV) Presentation of tax returns and self-settlements.

13.In voluntary insolvency proceedings, to intervene the rights of administration and disposal of the assets of the debtor pursuant to the terms provided by Article 40.1 and in particular:

I) To supervise drawing up of accounts.

II) To determine the acts or operations inherent to transfers or trade that, due to being necessary for the continuity of the activity, are authorised in general terms.

III) To authorise or confirm acts of administration or disposal of the governing body.

IV) To grant the debtor the authorisation to desist, fully or partially withdraw and to compromise on lawsuits when the litigious matter may affect the assets thereof.

V) To authorise filing suits.

VI) To present tax returns and self-settlements.

c) In labour matters:

1.To enforce judicial rulings handed down on the date of declaration opening the insolvency proceedings on material modification of collective labour conditions, on collective transfer, collective termination dismissal, and suspension of contracts and reduction of the working day.

2.To apply to the Court hearing the insolvency proceedings for material modification of labour conditions and collective termination or suspension of labour contracts in which the insolvent debtor is the employer.

3.To intervene in proceedings on material modification of collective labour conditions, on collective transfer, collective dismissal, and suspension of contracts and reduction of the working day stated during the insolvency proceedings and, where appropriate, to agree to these with the workers representatives.

4.To extinguish or suspend the contracts held by the insolvent debtor with top management personnel.

5.To petition the Court for compensations arising from top management contracts to be offset until the classification ruling is final.

d) Related to the rights of the creditors:

1.To amend the payment order of the credits against the aggregate assets when the insolvency practitioner considers it convenient under the terms foreseen in Article 84.3.

2.To prepare the list of creditors, to determine the inclusion or exclusion from the list of creditors credits declared in the proceedings, resolving inclusion of the new credits on the definitive list of creditors and reporting on inclusion of new credits on the final list of creditors prior to approval of the proposed composition.

3. To apply for opening of the liquidation phase in the event of cessation of the professional or business activity.

4.To notify holders of especially preferential credits opting to cover payment thereof against the aggregate assets and without disposing of the assets and rights affected.

5.To petition the Court for subsistence of the encumbrance in the case of sale of assets assigned a special preference.

6.To apply to the Court to make payments of ordinary credits in advance when payment of the credits against the aggregate assets and preferential credits are deemed to be sufficiently covered.

e) Report and evaluation functions:

1. To submit the report foreseen in Article 75 to the Court.

2. To perform the inventory of the aggregate assets with the content set forth in Article 82.

3. To propose appointment of independent experts to the Court.

4. Evaluation of the content of the early composition content.

5. Drawing up the definitive list of creditors and inventory as foreseen in Article 96.5.

6. Evaluating the content of the composition, in relation to the payment plan and, where appropriate, the feasibility plan accompanying it.

7. Reporting on the sale of the debtor's company as a whole.

8. Submitting quarterly reports to the Court hearing the insolvency proceedings on the state of the winding-up operations and a final report to justify the winding-up operations performed.

9. Submitting a reasoned, documented report to the Court on relevant facts for classification of the insolvency proceedings, with a proposal for a culpable or fortuitous finding regarding the insolvency proceedings.

10.Reporting before the Court resolves conclusion of the insolvency proceedings by payment of the total amounts of credits, or by renunciation by all the recognised creditors.

11. Updating the inventory and list of creditors drawn up in the proceedings in the event of reopening.

f) Functions to obtain value of assets and for winding-up.

1. Replacing the directors or liquidators when the winding-up phase is opened.

2.Submitting a winding-up plan to the Court to dispose of the assets and rights forming the aggregate assets of the insolvency proceedings.

3.To apply to the Court for direct sale of assets assigned to credits with special preference.

g) Secretariat functions:

1.Electronic communication of the declaration of insolvency proceedings to the State Tax Administration Agency and the General Treasury of the Social Security.

2. Notifying the creditors of the declaration of insolvency proceedings and the obligation to notify their credits.

3. Notifying the creditors of the provisional list of creditors foreseen in Article 95.

4. Receiving the notification of credits by the creditors.

5. Aiding the Court Clerk at the Creditors' Meeting, or chairing it when so resolved by the Court.

6. Attending the Creditors´ Meeting.

7. Notifying the known creditors who have their usual residence, domicile or seat abroad of the declaration of insolvency proceedings.

8. Requesting registry advertising abroad of the order of declaration and other procedural acts when this is convenient for the interest of the insolvency proceedings.

9. Demanding a translation into Spanish of the letters of notification of credits by foreign creditors.

10. Performing the telematic notifications foreseen by the Act.

h) Any others that this or other Laws attribute them.

2. The functions foreseen in this Article shall be exercised pursuant to the specific provisions of the different classes of insolvency proceedings and phases of the insolvency proceedings.

CHAPTER III
LEGAL STATUS OF THE INSOLVENCY PRACTITIONERS[35]

Article 34. *Remuneration.*[36]

1. Insolvency practitioners shall be entitled to remuneration from the aggregate assets, except when they belong to the staff of the entities referred to in Article 27.6.

2. Remuneration of the insolvency practitioners shall be determined pursuant to a tariff that shall be approved by the enacting regulations that shall take into account the number of creditors, the accumulation of the insolvency proceedings and the scale of the insolvency proceedings according to the classification considered for the purpose of appointing the insolvency practitioners.

The tariff must necessarily fulfil the following rules:

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

b) Limitation. The insolvency practitioners may not be remunerated above the maximum amount set in the implementing regulations for the overall insolvency proceedings.

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[35] Renumbering by Article 9 of Act 17/2014, dated 30th September.

[36] Amended by Article 10 of Act 17/2014, dated 30th September.
Please bear in mind that this amendment shall come into force on approval of the implementing regulations, as established in Transitional Provision 2 of said Act.
Deletion of 2.b) and renumbering of Letters c) and d) as b) and c) by Article 25 of Act 38/2011, dated 10th October.
Amendment of Paragraph 2 by Article 7.2 of Royal Decree-Law 3/2009, dated 27th March.
Please refer to Additional Provision 2 and Transitional Provision 3 of Royal Decree-Law 3/2009, dated 27th March.

c) Effectiveness. In insolvency proceedings in which the aggregate assets is insufficient, payment of a minimum remuneration established in the implementing regulations shall be secured by means of a tariff security account that shall be covered by mandatory provisions by insolvency practitioners. These provisions shall be deducted from the remunerations effectively obtained by the insolvency practitioners in insolvency proceedings in which they act, using the percentage determined by the implementing regulations.

d) Efficiency. Remuneration of the insolvency practitioners shall be accrued as they complete their duties foreseen in Article 33. The remuneration initially set may be reduced by the Court for reasoned cause due to failure to fulfil the obligations of the insolvency practitioners or due to delay caused by the insolvency practitioners in fulfilment of their obligations, or due to deficient quality of their work.

In all cases, the quality of the work shall be considered deficient and that the remuneration shall be reduced, except if the Court, according to the objective circumstances or the diligent conduct of the practitioner, rules to the contrary, when the insolvency practitioners breach any obligation of information to the creditors, when they exceed any term that must be observed by more than fifty per cent, or when motions to challenge regarding the inventory or the list of creditors in favour of the claimants are carried in a proportion equal to or exceeding ten percent of the value of the assets of the aggregate assets, or the aggregate liabilities submitted by the insolvency practitioners in their report. In the latter case, the remuneration shall be reduced by at least the same proportion.

3. 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 shall 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 concurs, applying the tariff referred to in Paragraph 2 of this Article.

5. The order that sets or amends the remuneration of the insolvency practitioners shall be published on the Public Insolvency Register and may be appealed by the insolvency practitioner and by the persons legitimated to apply for declaration of insolvency proceedings.

Article 35. *Exercise of the office.*[37]

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

2. When the insolvency practitioner is formed by two members, the duties of the insolvency body shall be exercised jointly. The decisions shall be adopted collegiately, except for exercise of the competences the Court may assign to them individually. In the event of disagreement, the Court shall decide.

3. The decisions and resolutions by the insolvency practitioners that are not of the ordinary course of business or administration shall be set down in writing and signed, as appropriate, by all their members.

4. The insolvency practitioners shall be subject to supervision by the insolvency Court. At any time, the Court may require all or any of the insolvency practitioners to provide specific information or a report on the current state of the insolvency proceedings.

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.*[38]

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

2. The insolvency practitioners 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.

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[37] Deletion of Paragraph 6 and amendment of Sections 2 to 4 by Article 26 of Act 38/2011, dated 10th October.

[38] Deletion of Paragraph 2 and renumbering of the following by Article 27 of Act 38/2011, dated 10th October.

3. The liability action shall be substantiated by the relevant procedure of a 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 practitioners 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 aggregate assets 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 practitioners and delegate assistants that are directly detrimental to their interests.

Article 37. *Severance.*[39]

1. When a just cause concurs, 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 practitioners, may sever the insolvency practitioners from office or revoke the appointment of the delegate assistants.

In all cases, severe breach of the duties as practitioner and ruling to challenge the inventory or list of creditors in favour of claimants for an amount equal to or above twenty per cent of the aggregate assets, or the list of creditors presented by the insolvency practitioners in their report, shall be a cause of severance of the practitioners, except if the Court rules to the contrary according to the circumstances.

2. Severance of the representative of a legal person shall imply the immediate severance as insolvency practitioner of the latter.

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.

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[39] Amended by Article .11 of Act 17/2014, dated 30th September.
Amendment of Paragraph 4 by Article 17.9 of Act 13/2009, dated 3rd November.

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.

Article 38. *New appointment.*[40]

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

2. If the person severed was the representative of a corporate director, 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 practitioner substituted.

4. Should the insolvency practitioner be severed before conclusion of the insolvency proceedings, the Court shall order him to provide accounts of his activity. Such giving of accounts shall be submitted by the insolvency practitioner within the term of one month, from notification of the Court order, and it shall be subject to the same procedure, resolutions and effects foreseen in Article 181 for giving of accounts on conclusion of the insolvency proceedings.

Article 39. *Appeals.*[41]

A remedy of appeal may be filed against rulings on appointment, disqualification and severance of the insolvency practitioners and delegate assistants and, against the ruling resolving such, one of appeal to the Higher Court, which shall not have suspension effect.

Those legitimated to appeal are the debtor, the insolvency practitioners, the insolvency practitioners affected and those who prove legitimate interest, even though they may not have previously appeared.

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[40] Amendment of Paragraph 4 by Article 28 of Act 38/2011, dated 10th October.

[41] Amended by Article 29 of Act 38/2011, dated 10th October.

TITLE III

ON THE EFFECTS OF DECLARING THE INSOLVENCY PROCEEDINGS OPEN

CHAPTER I
ON THE EFFECTS ON THE DEBTOR

Article 40. *Debtor's economic rights.*[42]

1. In the event of voluntary insolvency, the debtor shall conserve the rights of management and disposal of his aggregate assets, the exercise whereof shall be subject to intervention by the insolvency practitioners, via their authorisation or approval.

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

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 shall be justified, stating the risks it intends to avoid and the advantages sought.

4. On petition by the insolvency practitioners and having heard the insolvent debtor, the Court may resolve at any time by order to impose a change in the situations of intervention or suspension of rights of the debtor over his aggregate assets.

The change in the situations of intervention or suspension and subsequent amendment of the powers of the insolvency practitioner shall be subject to the publicity regime of Articles 23 and 24.

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[42] Amendment of the second Paragraph of Article 40.4 by Article 6.7 of Royal Decree-Law 3/2009, dated 27th March.

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

6. Intervention and suspension are related to the rights 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 with regard to the company or the marital property regime.

The debtor shall retain the right 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 practitioners and provided the latter have not been endorsed or confirmed them. Any creditor and those who were parties to the contractual relation affected by the infringement may require the insolvency practitioners to decide on the exercise of the relevant action or the endorsement or confirmation of the act. The annulment action shall be resolved through an insolvency procedural plea when appropriate, and shall expire, if the demand has been made, 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.

Article 42. *Collaboration and information by the debtor.*

1. The debtor is bound to appear personally before the Mercantile Court and before the insolvency practitioners 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 aggregate assets.*[43]

1. When performing the duties of management and disposal of the aggregate assets, their conservation shall be looked after in the most convenient way to the interests of the insolvency proceedings. To that end, the insolvency practitioners may petition the Court for the assistance they consider necessary.

2. Until judicial approval of the composition is secured or the winding-up is commenced, the properties, goods and rights forming the aggregate assets may not be disposed of or encumbered without approval by the Court.

3. What is set forth in the preceding Section does not include:

1. Acts of disposal that the insolvency practitioners consider indispensable to secure the feasibility of the business or the cash flow needs required for the continuity of the insolvency proceedings. The Court hearing the insolvency proceedings shall immediately be informed of the acts performed, attaching justification of the need thereof.

2. Acts of disposal of assets that are not necessary for continuity of the activity when offers are presented that materially coincide with the value they have been given on the inventory. That coincidence shall be construed to be material if, in the case of real estate, the difference is lower than ten per cent and in the case of moveable assets, twenty per cent, and if there is no record of a higher offer. The insolvency practitioners shall immediately inform the Court hearing the insolvency

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[43] The last Paragraph of Section 3 is suppressed and Section 4 is added by Sole Article. Two. 1 of Act 9/2015, dated 25th May.
A last Paragraph is added to Section 3 by Article 2.1 of Royal Decree-Law 11/2014, dated 5th September.
Please refer, with regard to the transitory regime, Transitional Provision 1.2 of said Royal Decree-Law.
Amendment of Sections 2 and 3 by Article 30 of Act 38/2011, dated 10th October.

proceedings of the offer received and the justification of the non-necessary nature of the assets. The offer presented shall be approved if a higher offer is not presented within the term of ten days.

3. Acts of disposal inherent to continuation of the professional or business activity by the debtor, under the terms established in the following Article.

4. In the case of conveyance of productive units of assets or services belonging to the insolvent debtor, the terms set forth in Article 146 bis and 149 shall apply.

Article 44. *Continuation of exercise of the professional or business activity.*[44]

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 practitioners 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 practitioners, 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 rights of management and disposal of the debtor, the insolvency practitioners shall 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 practitioners 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

[44] Amendment of Paragraph 4 by Article 31 of Act 38/2011, dated 10th October.

operations held by the debtor, as well as, when he performs a business activity, the total or partial cessation or suspension thereof.

When these measures involve collective extinction, suspension or amendment of employment contracts, including collective transfers, the Court shall act pursuant to the provisions established in 8.2. and the proceedings of Article 64 shall simultaneously be initiated. In their petition, the insolvency practitioners shall fulfil the terms set forth in Article 64.4.

Article 45. *Debtor's books and documents.*

1. The debtor shall provide the insolvency practitioners 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 practitioners, the Court shall resolve the measures it may deem necessary for the effectiveness of the provisions of the preceding Paragraph.

Article 46. *Debtor's annual accounts.*[45]

1. In the case of intervention, the legal obligation shall subsist for the directors to draw up and submit their annual accounts to audit, under supervision by the insolvency practitioners.

The insolvency practitioners may authorise the directors of the insolvent debtor to comply with the legal obligation to draw up the relevant annual accounts for the previous financial year prior to the judicial declaration opening insolvency proceedings, delaying it to the month following presentation of the inventory and the list of creditors. Approval of the accounts shall be performed within the three months following expiry of that extension. This shall be reported to the Court hearing the insolvency proceedings and, if the legal person is bound to deposit the annual accounts, the Business Registry where registered. Once that notice has been served, the delay in depositing the accounts shall not give rise to closure of the registry sheet, provided the terms to deposit from expiry of that extended term to approve the accounts are complied with. Each one of the documents that form the annual accounts shall mention the legitimate cause of the delay.

[45] Amended by Article .32 of Act 38/2011, dated 10th October.

2. On due request by the insolvency practitioners, the Court hearing the insolvency proceedings may resolve to revoke the appointment of the accounts auditor of the debtor legal person and appointment of another to audit the annual accounts.

3. In the case of suspension, the legal obligation shall subsist to draw up and submit the annual accounts for auditing, those powers being the remit of the insolvency practitioners.

Article 47. *Right to maintenance.*[46]

1. The insolvent natural person who is in a state of need shall be entitled to receive maintenance during processing the insolvency proceedings, against the aggregate assets, as long as there are sufficient assets to cover his needs and those of his spouse, registered civil partner when any of the circumstances foreseen in Article 25.3 concurs, and descendents under his care.

In the case of intervention, the amount and frequency thereof shall be those decided by the insolvency practitioners and, in the case of suspension, those authorised by the Court, having heard the insolvent debtor and the insolvency practitioners. In the latter case, the Court, hearing the insolvent debtor or the insolvency practitioners, and with prior petition by either of them, may amend the amount and frequency of the maintenance.

2. The persons regarding whom the insolvent debtor has the legal obligation to provide maintenance, except the spouse, registered civil partner when any of the circumstances foreseen in Article 25.3 concurs and descendents under his care, may only obtain them from the aggregate assets if they cannot obtain them from other persons legally bound to provide such and as long as they have brought action to claim such within the term of one year from the moment when they were due to receive such, with prior authorisation by the Court hearing the insolvency proceedings, that shall rule regarding their appropriateness and amount. The maintenance obligation imposed on the insolvent debtor by judicial ruling handed down prior to the declaration opening the insolvency proceedings shall be paid against the aggregate assets up to the amount set by the Court hearing the insolvency proceedings, this being considered an ordinary insolvency credit with regard to the excess.

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[46] Amended by Article 33 of Act 38/2011, dated 10th October.

Article 48. *Effects of the declaration opening insolvency proceedings on the bodies of debtor legal persons.*[47]

1. During the insolvency proceedings, the bodies of the debtor that is a legal person shall be maintained, notwithstanding the effects on their operation arising from the intervention or suspension of their rights of management or disposal.

2. The insolvency practitioners shall be entitled to attend and vote at the meetings of the collegiate bodies of the insolvent legal person. To these ends, they shall be summoned in the same way and the same advance notice as the members of the body that must meet.

Constitution of the meeting or assembly, or other collegiate body as a universal session, shall not be valid without the insolvency practitioners attending. The resolutions by the meeting or assembly that may have an asset based content or direct relevance to the insolvency proceedings shall require authorisation or confirmation by the insolvency practitioners to be effective.

3. The directors or liquidators of the legal person debtor shall continue to represent the company within the insolvency proceedings. In the event of suspension, the rights of administration and disposal inherent to the governing body or liquidators shall correspond to the insolvency practitioners. In the case of intervention, such powers shall continue to be exercised by the directors or liquidators under supervision by the insolvency practitioners, who shall have the remit of authorising or confirming acts of administration and disposal.

Empowerments that may exist at the time of declaring opening of insolvency proceedings shall be affected by suspension or intervention of asset related rights.

4. Should the office of director of the legal person be remunerated, the Court hearing the insolvency proceedings may resolve to put an end to such remuneration or to reduce it, considering the content and complexity of the management functions and the assets of the insolvent debtor.

5. At the request of the insolvency practitioners, the Court may assign him exercise of the political rights it may hold in other companies, as long as the asset interests of the legal person subject to insolvency proceedings are not affected.

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[47] Amended by Article 34 of Act 38/2011, dated 10th October.

Article 48 bis. *Effects of declaration of insolvency proceedings on actions against the shareholders.*[48]

1. During processing of the insolvency proceedings of the company, it shall be the exclusive remit of the insolvency practitioners to take action against the shareholder or shareholders personally liable for its debts prior to declaration of insolvency proceedings.

2. During processing of the insolvency proceedings of the company, it shall be the exclusive remit of the insolvency practitioners to claim, at the moment and up to the amount deemed convenient, the payment of the corporate contributions that have been deferred, whatever the term set in the deed or in the Articles of Association, and the accessory provisions pending fulfilment.

Article 48 ter. *Seizure of assets.*[49]

1. From the declaration of insolvency proceedings of the legal person, the Court, at its own motion, or on a reasoned request by the insolvency practitioners, may rule, as a preventive measure, seizure of assets and rights of its de facto and de jure directors and liquidators, of general proxies and of those who have had such status in the two years prior to the date of that declaration, when in view of the evidence gathered there are grounds to believe that there is a possibility that in the ruling classifying the insolvency the persons affected by the seizure shall be condemned to cover the deficit resulting from liquidation under the terms foreseen in this Act.

The seizure shall be decided according to the amount estimated by the Court and may be substituted, at the request of the party concerned, by a bank bond.

2. Likewise, during processing the insolvency proceedings of the company, the Court, on its own motion, or on the basis of a reasoned petition by the insolvency practitioners, may order the seizure of assets and rights of the shareholder or shareholders personally liable for the debts of the company prior to the declaration of insolvency proceedings, in the amount deemed sufficient, when the proceedings show there is a grounded possibility that the aggregate assets would be insufficient to cover all the debts, being empowered, at the request of the party concerned, to decide substitution of the seizure with a bank bond.

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[48] Addition by Article 35 of Act 38/2011, dated 10th October.

[49] Addition by Article 36 of Act 38/2011, dated 10th October.

3. A remedy of appeal to the Higher Court may be filed against the order on the preventive measures.

Article 48 quater. *Effects of declaration of insolvency proceedings on actions against the directors of the debtor company.*[50]

Once insolvency proceedings have been declared, it shall be exclusively the remit of the insolvency practitioners to exercise liability actions of the insolvent legal persons against their directors, auditors or liquidators.

CHAPTER II
ON THE EFFECTS ON CREDITORS

Section 1. On integration of creditors in the aggregate liabilities

Article 49. *Integration of the aggregate liabilities.*[51]

1. Once the insolvency proceedings are declared open, all the creditors to the debtor, ordinary or otherwise, whatever their nationality and domicile, shall be integrated, de jure, in the aggregate liabilities of the insolvency proceedings, with no other exceptions than those established in the laws.

2. In the case of insolvency proceedings involving a person married under joint property regime, or any other of joint ownership, the aggregate liabilities shall include the credits against the spouse of the insolvent debtor, that are also credits for which the marital partnership or joint assets are liable.

Section 2. On the effects on individual actions

Article 50. *New declaratory trials.*[52]

1. The Courts of Law of the civil jurisdictional order and those of the labour order before which petitions 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 rights before the insolvency Court. If the petitions were admitted to

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50 Addition by Article 36 of Act 38/2011, dated 10th October.

51 Amended by Article 38 of Act 38/2011, dated 10th October.

52 Addition of Sections 2 and 3 and the former 2 is renumbered as 4 by Article 39 of Act 38/2011, dated 10th October.

consideration the setting aside of all proceedings shall be ordered and the proceedings carried out shall be null and void.

2. The mercantile Courts shall not admit suits to consideration that are lodged after declaration of the insolvency proceedings and until their conclusion, in which action is brought to claim corporate obligations against the directors of insolvent capital companies who may have breached their duties in the event of a cause of dissolution arising. If admitted, what is set forth in the last Section of the preceding Paragraph shall apply.

3. The Courts of First Instance shall not admit suits to consideration that are presented after insolvency proceedings are declared open and until their conclusion, in which action is taken to recognise those who provide their work and materials for works, adjusted by lump sum, against the owner of the works under the terms set forth in Article 1,597 of the Civil Code. If admitted, the terms set forth in the last part of the first Paragraph of this Article 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 practitioners and admit them as a party to defend the aggregate assets, if they appear.

Article 51. *Continuation and accumulation of declaratory trials pending.*[53]

1. The declaratory trials to which the debtor is a party, that are in process at the moment of the insolvency proceedings being declared open, shall continue to be substantiated before the same court as that hearing such until the ruling is final.

Notwithstanding this, these shall be accumulated in the insolvency proceedings on its own motion, as long as they are at first instance and the trial or hearing has not ended, for all trials to claim damages and losses, by the insolvent legal person against its de facto or de jure directors or liquidators and against the auditors.

The accumulated trials shall continue their processing before the Court hearing the insolvency proceedings, in the formalities of the proceedings

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[53] Amendment of Paragraph 1 by Article 40 of Act 38/2011, dated 10th October.
Amendment of Paragraph one of Section 2 by Article 17.10 of Act 13/2009, dated 3rd November.

by which the claim is being substantiated, including the appropriate appeals against the judgment.

2. In the case of suspension of the debtor's rights of management and disposal, the insolvency practitioners, 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 practitioners 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 aggregate assets; in the case of a compromise, the terms decided 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 secured 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 authorised to carry out the procedural actions, in any case, that pursuant to the preceding Paragraph, are the remit of the insolvency practitioners 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 practitioners to fully or partially desist or withdraw from a lawsuit or reach a compromise thereon when the matter of litigation may affect his aggregate assets. With regard to costs, the provisions contained in the first Subparagraph of the preceding Paragraph shall apply.

Article 51 bis. *Suspension of declaratory trials pending.*[54]

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

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[54] Addition by Article 41 of Act 38/2011, dated 10th October.

2. Once the insolvency proceedings are declared open and until their conclusion, proceedings initiated prior to those in which the action recognising those who provided their work and materials to a work adjusted by lump sum against the owner of the works under the terms set forth in Article 1,597 of the Civil Code shall be suspended.

Article 52. *Arbitration proceedings.*[55]

1. The declaration of insolvency proceedings alone does not affect mediation clauses or arbitration agreements signed by the insolvent debtor. When the jurisdictional body understands such clauses or agreements may cause harm to the process of the insolvency proceedings, it may rule suspension of their effects, all without prejudice to the provisions set forth in the international treaties.

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 practitioners to 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 rights of management and disposal, the insolvency practitioners shall be entitled to exercise 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 practitioners to file petitions or appeals, to withdraw, compromise or desist when the matters in litigation may affect his aggregate assets.

2. In the case of intervention, the debtor shall retain the capacity to act in court, but shall require the approval of the insolvency practitioners to file

[55] Amendment of Paragraph 1 by Final Provision 3.2 of Act 11/2011, dated 20th May.

lawsuits or appeals that may affect his aggregate assets. If the insolvency practitioners 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 practitioners. The costs imposed on the debtor acting separately shall not be considered debts of the aggregate assets.

4. Creditors who have applied in writing to the insolvency practitioners 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 practitioners, 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 aggregate assets. Should the lawsuit be fully or partially accepted, they shall be entitled to reimbursement of the expenses and costs they have incurred from the aggregate assets, 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 practitioners.

Article 55. *Enforcement and coercive collection.*[56]

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 against the debtor's assets be continued.

Until approval of the winding-up plan, administrative enforcement proceedings in which payment orders have been handed down and labour enforcements in which insolvent debtor's aggregate assets has been seized may continue, if prior to the date of the declaration opening the insolvency proceedings, but as long as the assets subject to seizure are not necessary to continue the debtor's professional or business activity.

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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[56] Amendment of Sections 1 and 3 by Article 42 of Act 38/2011, dated 10th October.

3. When the foreclosure actions have been suspended according to the terms set forth in the previous Sections, the Court, at the request of the insolvency practitioners and after hearing of the creditors affected, may resolve to raise and cancel the seizures imposed, when their maintenance severely hinders continuity of the professional or business activity of the insolvent debtor. Raising and cancellation may not be ordered with regard to administrative seizures.

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

Article 56. *Stoppage of foreclosure of an in rem security and related recovery actions.*[57]

1. Creditors with an in rem security against the insolvent debtor's assets that are required for continuity of his professional or business activity may not foreclose or forcibly execute the security until a composition is reached whose content does not affect exercise of that right, or until one year elapses from declaring the insolvency proceedings open without the winding-up having commenced. In particular, shares or stakes in companies intended exclusively for holding assets and liabilities necessary for its financing shall not be considered necessary to continue the activity, as long as enforcement of the security constituted on these does not give rise to a cause of resolution or amendment of the contractual relations that allow the insolvent debtor to maintain operation of the asset.

Nor may the following be performed during that time:

a) Actions aimed at recovering assets sold by instalments or financed under reserve of ownership by contracts registered at the Register of Moveable Assets.

b) Actions to terminate the sale of real estate aggregate assets due to failure to pay the instalment price, although arising from explicit conditions registered at the Land Register.

c) Actions tending to recover assets assigned under financial lease by contracts registered at the Land or Moveable Assets Registers, or formalised in a document that involves enforcement.

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[57] Amended by Article 12 of Act 17/2014, dated 30th September.
Amended by Article 3 of Royal Decree-Law 4/2014, dated 7th March.
Amendment of Sections 1, 2 and 5 by Article 43 of Act 38/2011, dated 10th October.

2. The steps already taken in the exercise of the actions referred to in the preceding Section shall be suspended, if they have not been suspended by virtue of the terms set forth in Article 5 bis, from the declaration opening the insolvency proceedings, whether final or not, being recorded in the relevant proceedings, although the announcements of auction of the asset or right may have already been published. Suspension of the foreclosure shall only be raised and an order given to continue when an attestation of the ruling by the Court hearing the insolvency proceedings is attached that declares that the assets or rights are not necessary for the 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 practitioners may exercise the option foreseen in Paragraph 2 of Article 155.

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

5. For the purposes of what is set forth in this Article and in the previous one, it shall be remit of the Court hearing the insolvency proceedings to determine whether an asset of the insolvent debtor is necessary for the continuity of the professional or business activity of the debtor.

Article 57. *Commencement or resumption of foreclosure of an in rem security.*

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.

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, accumulated with the collective foreclosure proceedings as a separate procedure.

Section 3. On the specific effects on the credits

Article 58. *Prohibition of set-off.*[58]

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 court ruling or administrative act declaring it may have been handed down thereafter.

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 an in rem security, which 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. 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 write-down 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 decided. 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 conventional rate.

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

1. Once the insolvency proceedings are declared open, exercise of withholding rights on assets and rights integrated in the aggregate assets shall be suspended.

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[58] Amended by Article 44 of Act 38/2011, dated 10th October.

[59] Addition by Article 45 of Act 38/2011, dated 10th October.

2. If, at the moment of conclusion of the insolvency proceedings, such assets or rights have not been disposed of, they shall immediately be returned to the holder of the withholding right whose claim has not been fully settled.

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

Article 60. *Interruption of prescription.*[60]

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

2. Interruption of the prescription shall not damage the joint debtors, nor the guarantors and providers of bank guarantees.

3. Since the declaration until the conclusion of the insolvency proceedings, prescription of actions against shareholders and against directors, liquidators and auditors of the debtor legal person shall be interrupted.

Prescription of actions whose exercise is suspended by virtue of the terms set forth in this law 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 moment of conclusion of the insolvency proceedings.

CHAPTER III
ON THE EFFECTS ON CONTRACTS

Article 61. *Permanence of contracts with reciprocal obligations.*[61]

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

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[60] Amended by Article 46 of Act 38/2011, dated 10th October.

[61] Amendment of Paragraph 2 by Article 47 of Act 38/2011, dated 10th October.
Amendment of the second Paragraph of Section 2 by Article 17.11 of Act 13/2009, dated 3rd November.

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 aggregate assets.

Notwithstanding what is set forth in the preceding Paragraph, the insolvency practitioners, 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 practitioner 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, the Court shall hand down an order declaring the contract rescinded pursuant to the terms agreed. Otherwise, the dispute shall be substantiated as an insolvency procedural plea, the Court shall decide on the termination, ordering, when appropriate, the appropriate restitutions, and set-off that shall be paid from the aggregate assets. In the case of termination of financial lease agreements, and should an agreement between the parties not be reached, the incidental suit shall be accompanied by an independent expert appraisal of the assets granted, that the Court may take into account on setting the compensation.

3. Clauses that establish the right to rescind or terminate the contract due solely to a declaration opening insolvency proceedings 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 right 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 right to terminate may also be exercised when the infringement has been prior to the insolvency proceedings being declared open.

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

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 aggregate assets.

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 aggregate assets. 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 right to denounce a 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 decided in cases of insolvency situations or of administrative winding-up of any of the parties.

Article 64. *Work contracts.*[62]

1. Proceedings for material amendment of collective working conditions, including collective relocations, collective suspension, collective dismissal or suspension of contracts or reduction of the working day, once the insolvency proceedings are declared open, shall be dealt by the insolvency Court pursuant to the rules established in this Article.

If collective redundancy or collective contract suspension or reduction of working day proceedings are being processed on the date of the declaration opening the insolvency proceedings is handed down, the labour authority shall send the a written record thereof to the Court hearing the insolvency proceedings. Within the three days following reception of the proceedings,

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[62] Amended by Sole Article. One.2 of Act 9/2015, of 25th May.
Amendment of Sections 2 and 6 by Article 10 of Act 1/2014, dated 28th February.
For its application, please refer to Transitional Provision 2 of said Act.
Amendment of Sections 2 and 6 by Article 10 of Royal Decree-Law 11/2013, dated 2nd August.
Amendment of Sections 1, 2, 4 to 8 and 10 by Article 48 of Act 38/2011, dated 10th October
Amendment of Paragraphs two and three of Section 6 by Article 17.12 of Act 13/2009, dated 3rd November.
Amendment of Sections 1 and 3 by Article 12.1 and 2 of Royal Decree-Law 3/2009, dated 27th March.

the Court Clerk shall summon the parties legitimated foreseen in the following Paragraph to state and justify, if appropriate, the appropriateness of continuing to process the collective measures, pursuant to the terms foreseen in this Article. The actions performed in the preceding proceedings up to the date of declaration opening the insolvency proceedings is handed down shall remain in force in the proceedings conducted before the Court.

If, on the date of the insolvency proceedings are declared open, the employer has already notified the labour authority of the decision adopted under the scope of the provisions of Articles 51 or 47 of the Workers' Statute or, where appropriate, an administrative ruling has already been handed down that authorises termination measures or suspension or reduction of working hours, it shall be the remit of the insolvency practitioners to enforce such ruling. In any event, the declaration opening the insolvency proceedings shall be notified to the labour authority to the appropriate ends.

2. The insolvency practitioners, the debtor, or the employees of the insolvent firm through their legal representatives, may petition the insolvency Court for material amendment of the working conditions and collective extinction or suspension of employment contracts when the insolvent debtor is an employer.

The workers' representatives in the proceedings shall be the individuals stated in Article 41.4 of the Workers' Statute, in the order and according to the conditions stated therein. Once the terms indicated in said Article have elapsed without the workers having appointed representatives, the Court may order intervention by a commission with a maximum of three members, formed by the most representative Trade Unions and the representatives of the business sector to which the firm belongs.

3. A request for adoption of the measures foreseen in the preceding Paragraph may only be brought before the insolvency Court once the insolvency practitioners 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.

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

The insolvency practitioners may request collaboration by the insolvent debtor or assistance from the Court if deemed necessary for such verification.

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

In the case of intervention of the rights of administration and disposal of the debtor, the Court may authorise participation by the insolvent debtor during the consultation period.

The representatives of the workers or the insolvency practitioners may petition the Court to participate in the consultation period of other natural and legal persons with regard to whom there are signs that they might form a corporate unit with the insolvent debtor. To these ends, they may request the assistance from the Court deemed necessary to verify this. Likewise, in the case of a business conglomerate, and for the purposes of appraising the financial reality of the corporate group, the consolidated financial documentation, or that of other companies 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 on the maintenance of employment.

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

At the request of the insolvency practitioners or the representatives of the workers, the Court may rule at any time to substitute the consultation period with the mediation or arbitration procedure that is applicable within

the scope of the business, which shall be carried out within the maximum term stated for that period.

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

The agreement shall require approval by the majority of the legal representatives of the workers or, if appropriate, the majority of the members of the commission representing the workers, as long as, in both cases, they represent the majority of the workers from the work centre or centres affected.

The agreement signed by the insolvency practitioners and representatives of the workers may be accompanied by the petition, in which case the opening the consultation period shall not be necessary.

The resolution shall record the identity of the workers affected and shall set the compensations, which shall comply with the terms set forth in Labour Law, except if, weighting the interests affected by the insolvency proceedings other, higher ones are expressly agreed.

Once the term stated has elapsed or at the time an agreement is reached, the insolvency practitioners and the representatives of the employees shall inform the insolvency Court of the result of the consultation period.

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

Once the report is received by the insolvency Court, or if the term for to issue it has elapsed, the course of the actions shall resume. Nevertheless, if the report is issued after the term it may be taken into account by the insolvency Court when issuing the relevant ruling.

7. Once the measures ordered in the preceding Paragraphs 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 an agreement is not reached, the Court hearing the insolvency proceedings shall grant a hearing to those who have intervened during the consultation period, for which the Court Clerk shall call them to a hearing at which they may formulate allegations and provide documentary evidence. The Court may substitute that hearing with supplying written allegations within three days.

If suspension or collective extinction of the employment contracts is resolved, the order shall take effect from the date on which it is handed down, except if the order provides for a later date, and it shall have same consequences as a termination or suspension decision adopted by the employer under the terms established in Articles 51 or 47 of the Workers' Statute or, if appropriate, of an administrative resolution by the labour authority handed down in redundancy proceedings, in order for the workers to secure the legal status of unemployed.

8. An appeal to the same Court may be filed against the order stated in the preceding Section by the insolvency practitioners, the insolvent debtor, the employees through their representatives and the Salary Guarantee Fund (hereinafter FOGASA), as well as the rest of the appeals foreseen in Act 36/2011, of 10th October, regulating the Labour Jurisdiction, without any of them having suspension effects on the insolvency proceedings or the insolvency procedural pleas.

The actions that the employees or FOGASA may take against the order concerned refer strictly to the individual legal relation that shall be substantiated by the procedure of the insolvency procedural plea in labour matters. The term to file the suit for an insolvency procedural plea is one month from when the worker knew or was able to know the order by the Court hearing the insolvency proceedings. The ruling may be appealed to the Higher Court.

9. In the case of a material modification of a collective nature being resolved, among those foreseen in Article 41 of the Workers' Statute, the right to terminate the contract with the compensation that said legal regulation recognises in that case, shall be suspended during the processing of the insolvency proceedings but with the maximum limit of one year, as from the handing down in the judicial order that authorised that modification.

The suspension foreseen in the preceding Paragraph shall also be applicable when a collective relocation is resolved that involves geographic mobility, whenever the new work centre is in the same province as the work centre of origin and less than 60 kilometres from it, except if the minimum return commuting travel time is proven to exceed twenty- five per cent of the term of the daily working day.

Both in this case as well as in the other cases of material modification of the working conditions, the inappropriateness to exercise the termination action arising from the collective modification of the work conditions cannot be extended for a term exceeding twelve months, from the date when the court order authorising that modification is handed down.

10. The individual termination actions filed pursuant to the provisions contained in Article 50 of the Workers' Statute due to the financial situation or insolvency of the insolvent debtor shall be considered extinctions of a collective nature, from ordering commencement of the file foreseen in this Article, for termination of the contracts. After commencement of the proceedings foreseen in this Article commences, all the individual processes conducted with regard to the insolvent debtor after the petition to open insolvency proceedings pending final resolution shall be suspended until the order to put an end to the collective redundancy becomes final. Notice of the resolution that orders termination of the suspension shall be served on the insolvency practitioners for the purposes of recognition of the credit that may arise from the ruling handed down in due time as contingent, once the suspension is raised. The Courts before which the individual procedures are also be notified thereof. The order ruling collective redundancy shall take the effect of res iudicata regarding the individual processes suspended.

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

Article 65. *Top management staff contracts.*[63]

1. During the insolvency proceedings, the insolvency practitioners, at their own initiative or at the debtor's request, may extinguish or suspend contracts of the latter with top management staff. The decision by the insolvency practitioners may be challenged before the Court hearing the

[63] Amendment of Paragraph 1 by Article 49 of Act 38/2011, dated 10th October.

insolvency proceedings through the insolvency procedural plea in labour matters. The judgment handed down may be appealed at supplication.

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.

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

Article 66. *Collective bargaining agreements.*

Amendment of the conditions established in the agreements regulated under Title III of the Workers' Statute 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 the special legislation thereof.

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 practitioners, 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 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 aggregate assets.

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 or against any joint and several co-debtor or against any guarantor.

Article 69. *Rehabilitation of contracts to acquire assets by instalments.*

1. The insolvency practitioners, 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 aggregate assets. 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 practitioners 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 shall be paid by the aggregate assets, 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 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.*[64]

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 there may not have had a fraudulent intention.

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 opening the insolvency proceedings, except if they had an in rem security, in which case the terms set forth in the following Section shall apply.

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

1. Those of conveyance for a consideration performed in favour of any of the persons specially related to the insolvent debtor.

2. Constitution of a security in rem as collateral of pre-existing obligations, or new ones contracted to substitute these.

3. Payments or other acts of termination of obligations that have an in rem security and whose maturity is after the declaration of the insolvency proceedings.

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

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

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[64] Amendment of Paragraph 6 by Sole Article. Four. 2 of Act 9/2015, of 25th May.
Deletion of Paragraph 6 and renumbering of 7 as 6 by Article 13 of Act 17/2014, dated 30th September.
Deletion of Paragraph 6 and renumbering of 7 as 6 by Article 4 of Royal Decree-Law 4/2014, dated 7th March.
Amendment of Paragraph 6.2 by Article 21.4 of Act 14/2013, dated 27th September.
Amended by Article 50 of Act 38/2011, dated 10th October.
Sections 6 and 7 come into force on 12th October 2011, as established in Final Provision 3.2
Amendment of Paragraph 5 by Article 8.2 of Royal Decree-Law 3/2009, dated 27th March.

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 liquidation systems for securities and derivative instruments.

3. The security constituted as collateral of claims under Public Law and in favour of FOGASA in the recovery agreements or conventions foreseen in their specific regulations.

6. Exercise of actions to rescind shall not prevent other actions to contest acts by the debtor that are appropriate pursuant to the Law, which may be exercised before the Court hearing the insolvency proceedings, pursuant to the rules of legitimacy and procedure set forth in Article 72**.**

Article 71 bis. *Special regime of certain refinancing agreements.*[65]

1. Refinancing compositions reached by the debtor may not be revoked, nor the businesses, acts and payments, whatever their nature and the way in which they have been performed, and the guarantees constituted to execute them, when:

a) By virtue thereof, at least, a significant extension of the credit available or the amendment or extinction of its obligations, either by extension of their term of expiry, or the establishment of others contracted to substitute these are secured, as long as these respond to a feasibility plan that permits continuity of the professional or business activity in the short and medium term; and

b) Prior to the declaration opening the insolvency proceedings:

1. An agreement has been signed by creditors whose claims represent at least three fifths of the liabilities of the debtor on the date of adopting the refinancing agreement. For the purposes of calculating of that majority of liabilities, it shall be deemed that, in agreements subject to a syndication regime all the creditors subject to that agreement have signed the refinancing agreement when a vote in favour thereof is issued by those representing at least 75

[65] Amendment of number 1 of Section 1.b) by Sole Article. Four.3 of Act 9/2015, of 25th May. *Please refer to, with regard to the transitory regime, Transitional Provision 1.1 thereof*.
Amended by Article 14 of Act 17/2014, dated 30th September.
Amended by Article 5 of Royal Decree-Law 4/2014, dated 7th March.
Addition of Article 31.1 of Act 14/2013, dated 27th September.

per cent of the liabilities affected by the syndication agreement, except if the rules regulating the syndication establish a lower majority, in which case the latter shall be applicable.

In the case of group agreements, the percentage stated shall be calculated both on an individual basis, in relation to each and every one of the companies affected, and in relation to the credits of each group or subgroup affected, and in both cases excluding from the calculation the liabilities deriving from loans and credits granted by companies in the group.

2. A certification by the accounts auditor to the debtor has been issued regarding the sufficiency of the liabilities established to adopt the composition. If one does not exist, the auditor shall be the one appointed for that purpose by the Business Registrar of the domicile of the debtor and, if a group or subgroup of companies, that of the parent company.

3. The composition has been formalised in a public instrument that shall be attached with all the documents that justify its content and compliance with the preceding requisites.

2. Acts that, having been performed prior to the declaration opening insolvency proceedings, not included in the previous Paragraph, but that fulfil all the following conditions, either individually or jointly with others that have been performed in execution of the same refinancing composition may not be revoked:

a) That increase the prior proportion of assets over liabilities;

b) That the resulting current assets are greater than or equal to the current liabilities;

c) That the value of the collateral resulting in favour of the creditors acting does not exceed nine tenths of the value of the debt pending in favour thereof, nor the proportion of collateral on debt pending that existed prior to the resolution. The value of the collateral is understood to be that defined in Paragraph 2 of Additional Provision four.

d) That the interest rate applicable to the subsisting debt, or resulting from the refinancing composition in favour of the creditor or creditors intervening does not exceed the figure applicable to the prior debt by more than one third.

e) That the composition has been formalised in a public instrument signed by all the parties intervening therein, and with a specific record of the reasons that justify, from the financial point of view, the diverse

acts and transactions performed between the debtor and the creditors intervening, with special mention of the conditions foreseen in the preceding Letters.

In order to verify fulfilment of conditions a) and b) above, due consideration shall be given to all the consequences of an asset or financial based nature, including fiscal ones, the advanced maturity clauses, or other similar ones, arising from the acts carried out, even when these concur with regard to creditors who are not intervening.

The aforesaid conditions must concur at the moment of executing the public deed that records the compositions.

3. The resolutions regulated in this Article shall only be liable to be challenged pursuant to the terms set forth in Paragraph two of the following Article.

4. Both the debtor as well as the creditors may request appointment of an independent expert to report on the fair and achievable nature of the feasibility plan, on the proportionality of the collateral according to normal market conditions at the moment of signing the composition, as well as the other mentions that, when appropriate, are foreseen by the applicable rules. When the report contains reserves or limitations of any kind, their importance shall be specifically evaluated by the parties signing the composition.

Appointment of an independent expert shall be the remit of the Business Registrar of the domicile of the debtor. If the refinancing composition affects several companies in the same group, the report may be a sole one and prepared by a sole expert appointed by the registrar of the domicile of the dominant company, if it is affected by the resolution or, failing that, to the domicile of any of the companies in the group.

The appointment shall take place between professionals who are appropriate for the function. Those experts shall be subject to the conditions of Article 28 and the causes of incompatibility established for the auditors in the accounts auditing legislation.

Article 72. *Legitimacy and procedure*[66].

1. Active legitimacy to exercise actions to revoke and others of contestation shall be the remit of the insolvency practitioners. 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 practitioners 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 practitioners shall be legitimated to exercise the action to revoke that may be brought against the refinancing resolutions of Article 71 bis. The action to revoke may only be based on breach of the conditions foreseen in that Article, the burden of the proof of such infringement lying with the party that brings the action. The subsidiary legitimacy foreseen in the preceding Section shall not be applicable to exercise these actions.

3. Petitions to the Court for revocation shall 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 shall 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. Actions to revoke and others to contest shall be dealt as an insolvency procedural plea. The insolvency practitioners shall be notified of petitions 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.

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[66] Amendment of Paragraph 2 by Article 15 of Act 17/2014, dated 30th September.
Amendment of Paragraph 2 by Article 6 of Royal Decree-Law 4/2014, dated 7th March.
Addition of Paragraph 2 and renumbering of the former 2 and 3 as 3 and 4 by Article 51 of Act 38/2011, dated 10th October.

2. If the assets and rights removed from the debtor's aggregate assets 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 against whom a claim cannot be made or who enjoys 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 aggregate assets, 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 aggregate assets, that shall 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.

TITLE IV

THE REPORT BY THE INSOLVENCY PRACTITIONERS AND DETERMINATION OF THE INSOLVENT DEBTOR'S ASSETS AND LIABILITIES

CHAPTER I

ON SUBMISSION OF THE REPORT BY THE INSOLVENCY PRACTITIONERS

Article 74. *Term for submission.*[67]

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

2. This term may be extended by the Court:

1. In the event of exceptional circumstances arising, at the request of the insolvency practitioners, submitted before the legal term expires, for a term not exceeding a further two months. Notwithstanding this, the administrator who has been appointed in at least three ongoing insolvency proceedings may not request a postponement to issue his report, except if he justifies that causes beyond his professional practice exist.

2. If, on expiry of the term of two months, the term to notify claims has not concluded, at the request of the insolvency practitioners, up to five days following conclusion of the term.

3. When the number of creditors exceeds two thousand, the insolvency practitioners may apply for an extension for a term not exceeding a further four months.

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[67] Amended by Article 52 of Act 38/2011, dated 10th October.

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

Article 75. *Structure of the report.*[68]

1. The insolvency practitioners' report shall contain:

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

2. State of the debtor's accounts and, when appropriate, opinion on 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 financial year prior to declaration opening the insolvency proceedings, these shall be drawn up by the insolvency practitioners, using the data they can obtain from the debtor's books and documents, 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 practitioners.

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

1. Inventory of the aggregate assets;

2. List of creditors;

3. When appropriate, the writ of appraisal of the compositions proposed;

4. When appropriate, the winding-up plan;

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[68] The Number 5 is added to Section 2 by Sole Article Two.2 of Act 9/2015, dated 25th May.
Please bear in mind that this amendment shall be applicable to pending insolvency proceedings, in which the definitive text of the report by the insolvency practitioners has not been submitted yet, pursuant to Transitional Provision 1.2 thereof.
Please bear in mind that this Number had already been added by Sole Article 2.2 of Royal Decree-Law 11/2014, of 5th September.
Addition of Number 5. to Section 2 by Article 2.2 of Royal Decree-Law 11/2014, dated 5th September.
Please refer to, with regard to the transitory regime, Transitional Provision 1.1 of said Royal Decree-Law.
Amendment of Paragraph 2 by Article 53 of Act 38/2011, dated 10th October.
Amendment of Paragraph 2.3 by Article 11.2 of Royal Decree-Law 3/2009, dated 27th March.

5. Evaluation of the business overall and of the production units that form it, under the hypothesis of continuity of the operations and winding-up.

3. The report shall conclude with the reasoned explanation by the insolvency practitioners 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.*[69]

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.

3. The holders of credits with preferences 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.

Should separate enforcement not have commenced within the term of one year from the date of the insolvency proceedings being declared open, it may no longer be performed and the classification and graduation of claims shall be governed by the terms set forth in this Act.

[69] Addition of one Paragraph to Section 3 by Article 55 of Act 38/2011, dated 10th October.

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.

Article 78. *Presumption of donations and pact on the matrimonial dwelling. Ordinary matrimonial home.*

1. Once the insolvency proceedings of a person married under separate matrimonial property regime are declared open, it shall be presumed to 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 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.

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 practitioners 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 dwelling 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.

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 practitioners.

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

Article 80. *Separation.*

1. The assets belonging to others that are in the possession of the insolvent debtor and in respect whereof he has does not have rights of use, security or retention, shall be delivered by the insolvency practitioners to their legitimate owners, at their request.

2. An insolvency procedural plea may be lodged against refusal by the insolvency practitioners 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 practitioners, 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.

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 practitioners, 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.*[70]

1. The insolvency practitioners 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 secure debts not included in the aggregate liabilities.

4. A list of all petitions 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 practitioners, to reintegrate the aggregate assets. Both lists shall report on the feasibility, risks, costs and possibilities of financing the relevant judicial actions.

5. Assets owned by third parties in the possession of the insolvent debtor and over which it has the right of use, shall not be included in the inventory, nor shall it be necessary to appraise them, and only the right to use such by the financial lessee or insolvent debtor shall be recorded.

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[70] Addition of Paragraph 5 by Article 57 of Act 38/2011, dated 10th October.

Article 83. *Advice by independent experts.*[71]

1. If the insolvency practitioners 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 lodged against the decision by the Court.

2. The regime of incapacities, incompatibilities, prohibitions, rejection and liability established for insolvency practitioners and their representatives shall apply to independent experts.

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

CHAPTER III
ON DETERMINATION OF THE AGGREGATE LIABILITIES

Section 1. On the composition of the aggregate liabilities[72]

Article 84. *Insolvency claims and claims against the estate.*[73]

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

2. The following are 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.

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[71] Amendment of Paragraph 2 and addition of 3 by Article 7.3 of Royal Decree-Law 3/2009, dated 27th March.

[72] Amendment of the heading by Article 56 of Act 38/2011, dated 10th October.

[73] Amendment of Paragraph 2.11 by Article 16 of Act 17/2014, dated 30th September.
Please bear in mind that this amendment shall not be applicable until 2nd October 2016 and until then the applicable legal content shall be that set forth in Additional Provision 2 of said Act.
Amendment of Paragraph 2.11 by Article 7 of Royal Decree-Law 4/2014, dated 7th March
Amended by Article .57 of Act 38/2011, dated 10th October.
Section 2.11 comes into force on 12th October 2011, as established in Final Provision 3.2.

2. The judicial costs and expenses caused by the petition and declaration opening the insolvency proceedings, adopting preservation measures, publication of the judicial resolutions foreseen in this Act and attendance and representation of the insolvent debtor and of the insolvency practitioners during all the insolvency proceedings and the procedural pleas thereof, 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 a specific order to pay court costs.

3. Those court costs and expenses arising from assisting and representing the debtor, the insolvency practitioners 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 after 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 Procedure Act.

That status shall also apply to such claims accrued after declaring the insolvency proceedings open when they have their origin in a court ruling previously handed down.

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 moment.

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 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 disposal 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 practitioners during the proceedings, or with their authorisation or approval, by the insolvent debtor subject to intervention.

10. These arising from legal obligations or tortious liability of the insolvent debtor after the insolvency proceedings are declared open and until their conclusion.

11. Fifty per cent of the credits that amount to new cash flow revenue and that have been granted within the framework of refinancing composition, under the conditions foreseen in Article 71 bis or Additional Provision four.

In the event of wind-up, the claims granted to the insolvent debtor within the framework of the composition according to the terms set forth in Article 100.5.

This classification does not apply to cash flow revenue secured by the debtor itself, or by persons especially related through a capital increase operation, loans or acts for a similar purpose.

12. Any other claims to which this Act specifically attributes such status.

3. The claims of Number 1. of the preceding Section shall be paid immediately. The remaining claims against the estate, whatever their nature and the state of the insolvency proceedings, shall be paid on their respective maturity dates. The insolvency practitioners may alter that rule when they consider it convenient to the interest of the insolvency proceedings and whenever it is assumed that the aggregate assets are

sufficient to settle all the claims against the estate. That postponement may not affect claims by the employees, claims for maintenance, nor tax and Social Security claims.

4. Actions related to classification or payment of claims against the estate shall be exercised before the Court hearing the insolvency proceedings by the procedure of the insolvency procedural plea, but judicial or administrative enforcement may not be initiated to obtain their value until the composition is approved or until winding-up is opened or one year has elapsed from declaration of the insolvency proceedings without any of these having taken place. That paralysis shall not prevent accrual of interest, charges and other obligations, linked to failure to pay the claim at maturity.

5. Once the services are completed according to the specific regulations, the FOGASA shall subrogate itself in the claims of the workers with their same classification, 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.*[74]

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 practitioners their claims.

2. The lodging shall be drawn up in writing, signed by the creditor, by any other person concerned in the loan, or by whoever proves sufficient representation thereof, and this shall be submitted to the insolvency practitioners. The notification shall be lodged at the domicile designated for the purpose, which must be in the place where the court has its seat, or be sent to that address. The notification may also be made by electronic means. The address and electronic address stated for the purposes of notifications shall be unique and must be notified to the Court by the insolvency practitioners at the time of accepting office or, where appropriate, at the time of acceptance by the second of the practitioners appointed.

3. The notification shall state the name, address and other identifying the identity of the creditor, as well as those related to the claim, its item,

[74] Amendment of Sections 2 to 4 by Article 58 of Act 38/2011, dated 10th October.

amount, dates of acquisition and maturity, characteristics and classification intended. If a special preference is invoked, they shall also state the assets or rights affected and, if appropriate, the registry data. An address or an electronic address shall also be provided for the insolvency practitioners to issue as many notifications as necessary or convenient, producing full effects that shall be sent to the address or electronic mail address stated.

4. A copy shall be attached in electronic format in the event of having opted for that form of communication, the title or documents related to credit. Except if the titles or documents are registered in a public register, the insolvency practitioners may request the original or authorised copies of the titles or documents produced, as well as any other justification that is considered necessary to recognise the claim.

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 practitioners 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.

Article 86. *Recognition of claims.*[75]

1. The insolvency practitioners 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 list of creditors 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 by administrative certification, those secured with an in rem security 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

[75] Amendment of Sections 2 to 4 by Article 59 of Act 38/2011, dated 10th October.

in the insolvency proceedings for any other reason. The aforesaid notwithstanding, the insolvency practitioners may contest arbitration bonds or awards in the event of fraud, by ordinary trial and within the term to issue their report, pursuant to the provisions established in Paragraph 2 of Article 53, 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 self-liquidation has been lodged as required to determine a Public Law claim or one by the employees, this shall be filled in by the insolvent debtor in the case of intervention or, if appropriate, by the insolvency practitioners when not performed by the insolvent debtor or in the case of suspension of the rights of administration and disposal. In the event of it not being possible to determine the amount due to absence of data, it shall be reported 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 practitioners 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.

Article 87. *Special cases of recognition.*[76]

1. Credits with a termination clause 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 termination ensues, 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 be governed by the provisions contained in the preceding Paragraph.

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[76] Addition of Paragraph 8 by Article 60 of Act 38/2011, dated 10th October.
Amendment of Sections 2 and 6 by Articles 9.1 and 9.2 of Royal Decree-Law 3/2009, dated 27th March.

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

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 the 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 collateral 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 insolvency practitioner 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 security 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.

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 list of creditors, even though the latter may not have lodged his claim or has pardoned the debt.

8. If, before presenting the definitive texts, the contingency, condition or special case recorded in this Article has been fulfilled, the insolvency practitioners shall proceed, of their own motion, or at the request of the party concerned, to include the appropriate amendments according to the preceding Sections.

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 is a non- monetary consideration or a monetary consideration determined by reference to an asset other than money shall be calculated at the value of the consideration or the asset on the date of the insolvency being declared open.

4. Claims with a future monetary consideration 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 at 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.*[77]

1. Claims with special preference include:

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 manufactured, 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 leases or purchase by instalment contracts of moveable or immoveable assets, in favour of the lessors or sellers and, when appropriate, the financers, on assets leased with reservation of ownership, with prohibition on disposal or with a termination condition in the event of failure to pay.

5. Claims guaranteed with securities represented by account entries, on the encumbered securities.

6. Claims guaranteed with a pledge constituted in a public document, 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 them to be recorded in a document with an undisputable date to enjoy security over pledged claims. The pledge to guarantee future claims shall only provide special preference to claims arising prior to the declaration opening the insolvency proceedings, as well as claims

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[77] Amendment of Section 1.4. and addition of a Section 3 by Sole Article. One.3 of Act 9/2015, dated 25th May.
Please bear in mind that this amendment shall be applicable to pending insolvency proceedings, in which the definitive text of the report by the insolvency practitioners has not been submitted yet, pursuant to Transitional Provision 1.2 thereof.
Addition of Paragraph 3 by Article 1.1 of Royal Decree-Law 11/2014, dated 5th September.
Please refer to, with regard to the transitory regime, Transitional Provision 1.1 of said Royal Decree-Law.
Amendment of Sections 1. 1, 4 and 6 by Article 60 of Act 38/2011, dated 10th October.

arising after it, when by virtue of Article 68, their reinstatement is effected, or when the pledge is registered on a public register prior to the declaration opening the insolvency proceedings.

2. In order for the claims mentioned in Sub-Paragraphs 1) to 5) of the preceding Paragraph to be classified as having special preference, the respective security must have been constituted with the requisites and formalities foreseen in the specific legislation thereof to be opposable to third parties, except in the case of tacit legal mortgage or those referring to the goods manufactured by employees.

3. The special preference shall only affect the part of the claim that does not exceed the value of the respective security that is recorded on the list of creditors, calculated according to the terms set forth in Section 5 of Article 94. The amount of the credit that exceeds that recognised as especially preferential shall be classified according to its nature.

Article 91. *Claims with general preference.*[78]

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 accidents or diseases, accrued prior to the insolvency being declared open. The same preference shall be held by the cost capital of the Social Security for which the insolvent debtor is legally responsible, the surcharges on services due to breach of obligations in matters of health in the workplace, as long as these are accrued prior to the declaration of the insolvency proceedings.

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[78] Suspension of application of the regime contained in Section 6. until 2nd October 2016 and during that term the applicable legal regime shall be that set forth in Additional Provision 2 of Act 17/2014, dated 30th September.
Suspension of application of the regime contained in Section 6. until 9th March 2016 and during that term the applicable legal regime shall be that set forth in Additional Provision 2 of Royal Decree-Law 4/2014, dated 7th March.
Amendment of Sections 1, 3, 5 to 7, by Article 62 of Act 38/2011, dated 10th October.
Section 6 comes into force on 12th October 2011, as established in Final Provision 3.2

2. The relevant amounts for tax and Social Security withholdings owed by the insolvent debtor in fulfilment of a legal obligation.

3. Claims by natural persons arising from free-lance work and those due to the author himself for 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. Claims for tortious civil liability. Notwithstanding this, uninsured personal damage shall be processed in keeping with the claims collected in Number 4 of this Article.

Claims for tortious liability due to a criminal offence against the Public Treasury or against the Social Security.

6. Claims that amount to new cash revenue being granted within the framework of a refinancing composition that fulfils the conditions foreseen in Article 71.6 and in the amount not recognised as a claim against the estate.

7. The claims held by the creditor that has applied for the insolvency to be declared and that are not subordinated, up to fifty per cent of their amount.

Article 92. *Subordinated claims.*[79]

The following are subordinated claims:

1. Claims that, having been lodged late, are included in the list of creditors by the insolvency practitioners or that, not having been duly lodged, or having been lodged late, are included on that list by subsequent notifications, or by the Court when resolving the motion to

[79] Amendment of Paragraph 5 by Article 1.3.1 of Royal Decree-Law 1/2015, dated 27th February. *Please bear in mind that this amendment shall be applicable to insolvency proceedings in process in which the definitive text of the insolvency practitioners report has not been lodged, as established in Transitional Provision 1.1 of said Royal Decree-Law.*
Amendment of Paragraph 5 by Article 17 of Act 17/2014, dated 30th September.
Amendment of Paragraph 5 by Article 8 of Royal Decree-Law 4/2014, dated 7th March.
Amendment of Sections 1, 3 and 5 by Article 63 of Act 38/2011, dated 10th October.
Addition of Paragraph 7 by Article 9.3 of Royal Decree-Law 3/2009, dated 27th March.

challenge it. Claims of Article 86.3 shall not be subordinated due to this and shall be classified as appropriate and also claims whose existence were to be obtained from the documentation of the debtor or that are recorded in a document with executive force, the credits assured with in rem security registered on a public register or that are in any way recorded in the insolvency proceedings or in any other judicial proceedings, or the others for determination whereof verification by the Public Administrations is necessary.

2. Claims that, under a contractual arrangement, are subordinated in nature with regard to all the other claims against the debtor.

3. Interest claims of any kind, including those for late payment, except for those claims with a security in rem, up to the sum of the respective guarantee.

4. Claims for fines and other monetary penalties.

5. The claims held by any of the persons especially related to the debtor that are referred to in the following Article, except those included in Article 91.1. when the debtor is a natural person and the claims differ from the loans or acts with the same purpose held by the shareholders referred to in Article 93.2.1. and 3. that fulfil the conditions to hold a stake in the capital stated therein.

Claims for maintenance arising and maturing prior to the declaration of insolvency proceedings are excepted and shall be considered an ordinary claim.

6. Claims in favour of whom the ruling has declared be 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 practitioners, that the creditor has repeatedly hindered fulfilment of the contract to the detriment of the insolvency interests.

Article 93. *Persons specially related to the insolvent debtor.*[80]

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 him 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 Number.

3. The spouses of the ascendants, of the descendants and of the siblings of the insolvent debtor.

4. Legal persons controlled by the insolvent debtor or the persons stated in the preceding Numbers or their de facto or de jure directors. There shall be presumed to be control when any of the situations foreseen in Article 42.1 of the Code of Commerce concurs.

5. Legal persons who form part of the same group of companies as those foreseen in the same number.

6. Legal persons who are *de facto* or *de jure* directors of the persons described in the previous Numbers.

2. The following are considered persons specially related to the insolvent debtor if the latter is a legal person:

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[80] Sections 1 and 2 are amended by Sole Article One.4 of Act 9/2015, dated 25th May.
Please bear in mind that this amendment shall be applicable to pending insolvency proceedings in which the definitive text of the report by the insolvency practitioners has not been submitted yet, pursuant to Transitional Provision 1.2 thereof.
Amendment of Paragraph 2.2 by Article 1.3.2 of Royal Decree-Law 1/2015, dated 27th February.
Please bear in mind that this amendment shall be applicable to insolvency proceedings in process in which the definitive text of the insolvency practitioners report has not been lodged, as established in Transitional Provision 1.1 of said Royal Decree-Law.
Amendment of Paragraph 2.2 by Article 18 of Act 17/2014, dated 30th September.
Amendment of Sections 1 y 2 by Article 1.2 of Royal Decree-Law 11/2014, dated 5th September.
Please refer to, with regard to the transitory regime, Transitional Provision 1.1 of said Royal Decree-Law.
Amendment of Paragraph 2.2 by Article 9 of Royal Decree-Law 4/2014, dated 7th March.
Amendment of Sections 1.1 and 2.3 by Article 64 of Act 38/2011, dated 10th October.
Amendment of Sections 2.1 and 2.3 by Articles 9.4 and 9.5 of Royal Decree-Law 3/2009, dated 27th March.

1. Partners who, pursuant to the Law, have unlimited personal liability for corporate debts and all others who, at the moment of the credit right arising, are direct or indirect holders of at least 5 per cent of the share capital, if the company in insolvency proceedings has securities traded on an official secondary market, or 10 per cent, if it does not have them. If the partner of a legal person subject to insolvency proceedings is a natural person, persons especially related to such a natural person shall also be deemed to be especially related to the legal person subject to insolvency proceedings.

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.

Creditors who have directly or indirectly capitalised all or part of their claims in fulfilment of a refinancing agreement, adopted pursuant to Article 71 bis or to Additional Provision Four, or of an out of court agreement on payments or of an insolvency composition, even if they may have taken on a post involving receivership of the debtor due to the capitalisation, shall not be deemed persons especially related to the insolvent debtor for the purposes of classification of the claims held against the debtor as a consequence of the refinancing they may have granted him by virtue of said agreement or composition Nor shall the consideration of de facto receivers encompass creditors who have signed a refinancing agreement, an insolvency composition or an extrajudicial agreement to pay obligations undertaken by the debtor in relation to a feasibility plan, except if the existence of any circumstance that might justify that condition were to be proven.

3. Companies forming part of the same group as the company declared insolvent and its shareholders or partners, as long as these fulfil the same conditions as in Number 1 of this Paragraph.

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 especially related to the insolvent debtor, as long as the acquisition has taken place within the two years prior to the insolvency proceedings being declared open.

Section 4. On the list of creditors

Article 94. *Structure and content.*[81]

1. The list of creditors shall be attached to the report by the insolvency practitioners, 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, securities 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. Creditors with general or special preference, respectively, shall be included in the following classes:

1. Labour, such being construed as creditors under Labour Law. This excludes those bound under a labour relation of a special nature as top management personnel in that which exceeds the amount foreseen in Article 91.1.

2. Public, Public Law creditors being construed as such.

3. Financial, such being construed as the holders of any financial credit, regardless of whether or not they are subject to financial supervision.

4. Rest of creditors, that shall include creditors in commercial operations and the rest of creditors not included in the preceding categories.

A separate record shall be drawn up of the differences between the notification and recognition, if any, and the consequences of failure to notify such in due time.

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[81] Amendment of Sections 2 and 5 by Sole Article One.5 of Act 9/2015, of 25th May.
Please bear in mind that this amendment shall be applicable to pending insolvency proceedings in which the definitive text of the insolvency practitioners report has not been submitted yet, pursuant to Transitional Provision 1.2 thereof.
Amendment of Paragraph 5 by Article 1.3.3 of Royal Decree-Law 1/2015, dated 27th February.
Please bear in mind that this amendment shall be applicable to insolvency proceedings in process in which the definitive text of the insolvency practitioners report has not been lodged, as established in Transitional Provision 1.1 of said Royal Decree-Law.
Amendment of Paragraph 2 and addition of Paragraph 5 by Article 1.3 of Royal Decree-Law 11/2014, dated 5th September.
Please refer, with regard to the transitory regime, to Transitional Provision 1.1 of said Royal Decree-Law.
Amendment of Paragraph 4 by Article 65 of Act 38/2011, dated 10th October.

When the insolvent debtor is a person married under joint marital property regime, or any other kind of joint property, the claims shall be listed separately, dividing those that may only be enforced against his private assets, and those that may also be enforced against his common property.

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.

5. For the purposes of Article 90.3, the value of the collateral constituted to assure the claims that have special preference shall be stated. To determine these, the debts pending that have a preferential security on the same asset shall be deducted from the nine tenths of the fair value of the asset or right on which the security encumbers, without the value of the security being lower than zero in any case, nor exceeding the value of the preferential credit or the value of the maximum mortgage or pledge liability that has been agreed.

For these exclusive purposes, fair value is construed as:

a) In the case of securities listed on an official secondary market, or on another regulated market, or money market instruments, the average weighted price at which they have been negotiated on one or several regulated markets in the last quarter prior to the date of declaration opening the insolvency proceedings, pursuant to the certification issued by the company governing the official secondary market or the regulated market concerned.

b) In the case of real estate, that resulting from the report issued by a recognised appraisal company registered with the Special Register of the Bank of Spain.

c) In the case of assets or rights other than those stated in the preceding Paragraphs, that resulting from a report issued by an independent expert pursuant to the generally accepted principles and rules of valuation recognised for such assets.

The reports foreseen in Paragraphs b) and c) shall not be necessary when that value has been determined for real estate by a recognised appraisal company registered with the Special Register at the Bank of Spain within the twelve months prior to the date of declaration opening the insolvency proceedings or, for assets other than real estate, by an independent

expert, within the six months prior to the date of declaration opening the insolvency proceedings. Nor shall such reports be necessary in the case of cash, current accounts, electronic money or fixed term deposits.

The assets or rights on which the collateral is constituted, which are denominated in a currency other than the euro, shall be converted to euros applying the exchange rate on the date of appraisal, construed as the average spot exchange rate.

Should new circumstances arise that might significantly change the fair value of the assets, a new report shall be produced by a recognised appraisal company registered with the Special Register at the Bank of Spain, or by an independent expert, as appropriate.

The report foreseen in Paragraph b), when it refers to finished dwellings, may be substituted by an updated valuation, as long as no more than six years have elapsed between the date of the last valuation available and the date of the updated valuation. The updated valuation shall be obtained as a result of applying to the last appraisal value available, prepared by a recognised appraisal company registered with the Special Register at the Bank of Spain, the accumulated variation observed in the fair value of real estate located in the same area and with similar characteristics as from the issue of the last appraisal to the valuation date.

In the event of information not being available on the variation in the fair value provided by an appraisal company, or if it is not considered representative, the last available value may be updated using the accumulated variation in the price of dwellings established by the National Statistics Institute for the Autonomous Community in which the property is located, distinguishing whether it is a new or second hand dwelling, and as long as not more than three years have elapsed between the date of the last valuation available and the date of the updated valuation.

The cost of the reports or valuations shall be charged against the estate and deducted from the remuneration for the insolvency practitioners, except if the creditor affected were to request a contradictory valuation report, which shall be issued at his cost. The report shall also be issued at the creditor's cost is the latter invokes concurrence of circumstances that make a new valuation necessary.

In the event of the collateral established in favour of a same creditor befalling several assets, the resulting amount to be applied to each one of the assets shall be added according to the rule set forth in Paragraph one

of this Section, but the aggregate value of the collateral shall not exceed the value of the relevant credit.

In the case of collateral constituted indivisibly in favour of two or more creditors, the value of the relevant security for each creditor shall be that resulting from applying to the total value of the special preference the proportion therein due to each one of them, according to the rules and covenants that govern the indivisible amount.

CHAPTER IV
ON PUBLICITY AND CHALLENGE OF THE REPORT

Article 95. *Publicity of the report and complementary documentation.*[82]

1. At least ten days prior to submission of the report to the Court, the insolvency practitioners shall address an electronic notification to those creditors who have notified their claims and whose electronic address is known, informing them of the draft inventory and list of creditors, whether or not they are included therein, The same notice shall be published on the Public Insolvency Register. Creditors may apply to the insolvency practitioners, also by electronic means, up to three days prior to the report being submitted to the Court, for any error to be corrected or for the data notified to be completed. The insolvency practitioners shall also distribute a list of the applications for correction or completion submitted to the debtor and creditors by electronic means, which shall also be published on the Public Insolvency Register.

2. Submission of the insolvency practitioners' 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. The insolvency practitioners shall also serve telematic notice of the report to the creditors whose electronic address is known.

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 official or private media.

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[82] Amendment of Sections 1 and 2 by Sole Article One.6 of Act 9/2015, dated 25th May .
Addition of Paragraph 1 by Article 66 of Act 38/2011, dated 10th October.
Section 1 is left without content and 2 and 3 are amended by Articles 12.3, 12.4 and 12.5 of Royal Decree-Law 3/2009, dated 27th March.

Article 96. *Challenging the inventory and list of creditors.*[83]

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. For the other parties concerned, the term of ten days shall be calculated from the last publication of those foreseen in the preceding Article.

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 assets or liabilities of the insolvency proceedings, the Court may order conclusion of the common phase and opening of the composition or winding-up phase, without prejudice to the reflection that the challenges may have in the definitive texts and in the preventive measures that may be adopted to make these effective.

5. Challenges shall be dealt with as an 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 practitioners shall include the appropriate amendments in the inventory, in the list of creditors, and in the justified explanation of their report, and shall deliver to the Court the relevant definitive texts. A specific record shall be provided of the differences between the inventory and the list of creditors initially submitted and the definitive texts, as well as the list of subsequent notifications submitted and the amendments included and another updated one of the claims against the aggregate assets accrued, whether paid or pending payment, stating the respective due dates, all of which shall be made available at the Court Office. At the moment of submitting the report to the Court on the

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[83] Section 5 is amended and Section 6 is added for Sole Article One.7 of Act 9/2015, dated 25th May. *Bear in mind that this amendment shall be applicable to insolvency proceedings in the process of which the term has not commenced to contest the inventory and the list of creditors, pursuant to Transitional Provision 1.3 of said law*.
Amended by Article 67 of Act 38/2011, dated 10th October.
Amendment of Paragraph 4 by Article 17.13 of Act 13/2009, dated 3rd November.
Amendment of Paragraph 1 by Article 12.6 of Royal Decree-Law 3/2009, dated 27th March.

amendments and list of claims against the aggregate assets, the insolvency practitioners shall serve telematic notice of those documents to the creditors whose electronic address is known to them.

6. All motions to contest must be recorded on the Public Insolvency Register immediately after they are lodged. Likewise, within five days after that when the term to contest has elapsed, that Register shall publish a list of the motions to impugn filed and the claims arising from each of these.

Article 96 bis. *Subsequent notifications of claims.*[84]

1. Once the term to challenge has concluded and until the definitive texts are submitted, notification of new claims may be submitted. Such claims shall be recognised according to the general rules and their classification shall be as set forth in Article 92.1. except if the creditor justifies not previously having had news of their existence, in which case they shall be classified according to their nature.

2. The insolvency practitioners shall resolve on these in the definitive list of creditors to be submitted.

3. If, within the term of ten days following declaration of the definitive texts, opposition is raised to the decision by the insolvency practitioners on subsequent notifications submitted, an insolvency procedural plea shall be conducted. Such a challenge shall not prevent continuing with the composition or winding-up phase, the terms set forth in Article 97 ter. being applicable.

Article 97. *Consequences of failure to challenge and subsequent amendments.*[85]

1. Outside the cases of 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 contest the amendments made by the Court on resolving other challenges.

2. If the creditor classified as specially related to the debtor on the list of creditors does not challenge that status in a timely and correct manner, the insolvency Court, on expiry of the term to challenge and with no further ado, shall hand down an order declaring the collateral of any kind

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84 Addition by Article 67 of Act 38/2011, dated 10th October.

85 Amended by Article 69 of Act 38/2011, dated 10th October.

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 by this Act, may be amended in the following cases:

1. When deciding on the challenges the amendments foreseen in Article 96 bis.

2. When, after having submitted the initial report referred to in Article 74 or the definitive text of the list of creditors, an administrative procedure is initiated to check or inspect from which Public Law claims by the Public Administrations and their public bodies may arise.

3. When, after submitting the initial report referred to in Article 74 or the definitive text of the list of creditors, criminal or labour proceedings are commenced that may give rise to recognition of an insolvency claim.

4. When, after the definitive texts are submitted, the condition or contingency foreseen has been fulfilled, or the claims have been recognised or confirmed by administrative act, by an arbitration award or final court ruling, or liable to provisional enforcement pursuant to their nature or amount.

If recognised, they shall have the relevant classification according to their nature, without their subordination under the scope of Article 92.1. being possible.

4. When it is appropriate to amend or substitute the initial creditor on the list of creditors, the following rules shall be taken into account for classification of the claim.

1. With regard to salary claims or those for compensation arising from termination of labour relations, 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, backer or joint debtor, the terms set forth in Article 87.6 shall apply.

4. In the event of the subsequent creditor being a person especially related to the insolvent debtor pursuant to the provisions contained in Article 93, the classification of the credit shall be the one that is less burdensome to the insolvency proceedings considering those corresponding to the initial creditor and the subsequent one.

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.*[86]

1. Amendment of the definitive text of the list of creditors may only be requested before the resolution is handed down that approves the proposed composition, or before the reports foreseen under Paragraphs two of Articles 152 and 176 bis are submitted to the Court.

To that end, the creditors shall address a petition to the insolvency practitioners justifying the amendment claimed, as well as the concurrence of the circumstances foreseen in this Article. Within the term of five days, the insolvency practitioners shall issue a report to the Court on the petition.

2. Once the report is submitted, if it is contrary to recognition of such, the petition shall be rejected, except if the applicant files an insolvency procedural plea within the term of ten days, in which case what is decided thereon shall apply. If the report is favourable to the amendment claimed, the parties appearing shall be informed within ten days. If no allegations are made, or if these are not contrary to the claim filed, the Court shall order the amended by court order without an appeal being possible. Otherwise, the Court shall resolve by order against which a remedy of appeal to the Higher Court may be filed.

Article 97 ter. *Effects of the amendment.*[87]

1. The processing of the petition shall not prevent continuation of the composition or winding-up phase. At the request of the applicant, should the Court hearing the insolvency proceedings deem recognition to be probable, it may adopt the preventive measures it may decide in each case to assure their effectiveness.

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[86] Addition by Article 70 of Act 38/2011, dated 10th October.

[87] Addition by Article 71 of Act 38/2011, dated 10th October.

2. The amendment decided shall not affect the validity of the composition that may have been reached, or the liquidation or payment operations performed before presenting the petition or after it, until its recognition by final resolution. Notwithstanding this, at the request of the party, the Court may resolve provisional enforcement of the order for the purposes of:

1. Provisional admission of the amendment claimed, fully or partially, for the purposes of calculating the vote of Article 124.

2. The operations to pay the winding-up or composition to include the amendments claimed. Notwithstanding this, such amounts shall be deposited in the aggregate assets until the ruling deciding the amendment claimed is final, except if reimbursement thereof is guaranteed by a sufficient bank guarantee or deposit.

TITLE V

ON THE PHASES OF COMPOSITION OR WINDING-UP

CHAPTER I
ON THE COMPOSITION PHASE

Section 1. On conclusion of the common phase of the insolvency proceedings

Article 98. *Judicial resolution.*[88]

(Repealed)

Section 2. On the composition proposal and adhesions thereto

Article 99. *Formal requisites of the proposed composition.*[89]

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.

When the proposal contains payment commitments borne by third parties to provide collateral or financing, to make payments or undertake any other obligation, it shall also be signed by those making the commitment or their representatives with sufficient power of attorney.

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[88] Repealed by the Sole Repealing Provision of Act 38/2011, dated 10th October.
Amended by Additional Provision 2 of Act 4/2010, dated 10th March.
Amended by Article 17.14 of Act 13/2009, dated 3rd November.
Addition of Paragraph 2 by Article 12.7 of Royal Decree-Law 3/2009, dated 27th March.

[89] Amendment of Paragraph one of Section 1 by Article 17.15 of Act 13/2009, dated 3rd November.

2. The signatures on the proposal and, if appropriate, the justification of their representative nature, must be attested.

Article 100. *Content of the composition proposal.*[90]

1. The proposed composition shall contain propositions for write-down of debts or moratorium of payment, or both may be accumulated.

2. The proposed composition may also contain alternative proposals for all or some of the creditors, except for public creditors. The alternative proposals may include offers to convert the claims into shares, stakes or corporate participations, convertible bonds, subordinate loans, to participation loans, to loans whose interest may be capitalised, or any other financial instrument with different rank, maturity and characteristics to the original debt.

In the event of conversion of the credit to shares or stakes, the agreement to increase the capital of the debtor required to capitalise the claims must be signed by the majority foreseen, respectively, for private limited companies and public limited companies under Articles 198 and 201.1 of the consolidated text of the Capital Companies Act approved by Royal Legislative Decree 1/2010, dated 2nd July. For the purposes of Article 301.1 of said consolidated text of the Capital Companies Act, it shall be construed that the liabilities are liquid, mature and callable.

The composition proposal may also include proposals for disposal, either of the set of assets and rights of the insolvent debtor assigned to their corporate or professional activity, or certain production units, to a specific natural or legal person, that shall be governed by the terms set forth in Article 146 bis.

The proposals shall necessarily include the acquirer undertaking continuity of the business or professional activity inherent to the production units concerned. In such cases, the legal representatives of the workers shall be heard.

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[90] Amendment of Sections 1, 2 and 3 by Sole Article.8 of Act 9/2015, of 25th May.
Please bear in mind that this amendment shall be applicable to pending insolvency proceedings in which the definitive text of the report by the insolvency practitioners has not been submitted yet, pursuant to Transitional Provision 1.2 thereof.
Amendment of Sections 1, 2 and 3 by Article 1.4 of Royal Decree-Law 11/2014, dated 5th September.
Please refer to, with regard to the transitory regime, Transitional Provision 1.1 of said Royal Decree-Law.
Amendment of Sections 2 and 3 by Article 73 of Act 38/2011, dated 10th October.
Amendment of the second Paragraph of Section 1 by Article 10.4 of Royal Decree-Law 3/2009, dated 27th March.

3. Under no circumstance may the proposal consist of overall winding-up of the assets of the insolvent debtor to settle his debts, nor alteration of the classification of claims established by the law, nor the amount of such set in the proceedings, without prejudice to the moratoriums that may be agreed and the possibility of merger, split or global assignment of the assets and liabilities of the insolvent legal person.

Assignment in payment of assets or rights to the creditors may only be included when such assets or rights assigned are not necessary to continue the professional or business activity and as long as their fair value, calculated according to the terms set forth in Article 94, is equal to or lower than the claim extinguished. If it is higher, the difference shall be included in the aggregate assets. If they are assets assigned as collateral, the terms set forth in Article 155.4 shall apply.

In no case may assignment in payment be imposed on public creditors.

4. The proposals shall be submitted accompanied by a payment scheme that details the resources foreseen for fulfilment, including, where appropriate, those from disposal of certain assets or rights of the insolvent debtor.

5. When, in order to ensure fulfilment of the composition, it is foreseen to resort to resources generated by the total or partial continuation of the professional or business activity, the proposal shall also be accompanied by a feasibility plan that specifies the necessary resources, the means and conditions to obtain such and, where appropriate, the commitments to these being provided by third parties.

The claims granted to the insolvent debtor to finance the feasibility plan shall be settled under the terms established in the composition.

Article 101. *Conditioned proposals.*[91]

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 provided in the preceding Paragraph, in the case of insolvency proceedings that have been declared jointly, the proposal submitted by one of the insolvent parties may be conditional on judicial approval of another or other proposed compositions.

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[91] Amendment of Paragraph 2 by Article 74 of Act 38/2011, dated 10th October.

Article 102. *Proposals with alternative contents.*[92]

1. If the proposed composition offers all the creditors or those of any class the right to choose between diverse alternatives, it shall determine what is applicable in the event of failure to exercise the right to choose.

2. The term to exercise the right to choose may not exceed one month from the date of the final court ruling approving the composition.

Article 103. *Adhesions to the composition proposal.*[93]

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 shall be made by appearance before the Court Clerk or in a public deed.

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.*[94]

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 composition proposal to the Court.

(Repealed)

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92 Amended by Article 75 of Act 38/2011, dated 10th October.

93 Amendment of Paragraph 3 by Article 17.16 of Act 13/2009, dated 3rd November.

94 Suppression of Section 2 by Sole Article One.9 of Act 9/2015, of 25th May.
Please bear in mind that this amendment shall be applicable to pending insolvency proceedings in which the definitive text of the report by the insolvency practitioners has not been submitted yet, pursuant to Transitional Provision 1.2 thereof.

Article 105. *Prohibitions.*[95]

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 financial years.

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 at the request of the insolvency practitioners 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.*[96]

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.

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.

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[95] Amendment of Paragraph 1 by Article 10.5 of Royal Decree-Law 3/2009, dated 27th March.

[96] Amendment of Paragraph three of Section 2 by Article 17.17 of Act 13/2009, dated 3rd November. Amendment of Paragraph 1 of Article 10.6 by Royal Decree-Law 3/2009, dated 27th March.

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 practitioners.*[97]

1. Once the early composition proposal has been admitted to consideration, the Court Clerk shall serve notice thereof on the insolvency practitioners so that, within a term not exceeding ten days, they may proceed to the evaluation thereof.

2. The insolvency practitioners 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 practitioners' report. If it is unfavourable, or contains reservations, it shall be submitted to the Court in the shortest possible time. The Court may leave admission of the early proposal without effect or continue to process the early proposal along, with the writ of evaluation of that report. The insolvency practitioners shall notify by telematic means the report that is unfavourable or with reservations to the creditors whose electronic address is known. No appeal whatsoever may be lodged against the order resolving these matters.

[97] Amendment of Section 2 by Sole Article One.10 of Act 9/2015 dated 25th May. Amendment of Paragraph 1 by Article 17.18 of Act 13/2009, dated 3rd November.

Article 108. *Adhesions by creditors.*[98]

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.

Article 109. *Judicial approval of the composition.*[99]

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 revoke the adhesions ended, the Court Clerk shall verify whether the adhesions presented reach the legally required majority. The Court Clerk, by decree, 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.

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 insolvency practitioner 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.

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98 Amendment of Paragraph 2 by Article 17.19 of Act 13/2009, dated 3rd November.

99 Amendment of Paragraph 1 by Article 17.20 of Act 13/2009, dated 3rd November.

Article 110. *Maintenance of unapproved proposals.*[100]

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. In the composition phase, the debtor may maintain or amend the early composition proposal or formulate a new one.

2. If the early composition proposal is maintained, the creditors who have adhered 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.

Section 4. On opening the composition phase and opening Section Five

Article 111. *Order opening composition phase and calling the Creditors' Meeting.*[101]

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 if 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 Procedure Act. The notice of the

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[100] Amended by Sole Article One.11 of Act 9/2015, dated 25th May.

[101] Amendment of Sections 1 and 3 and Paragraph one of 2 by Article 17.21 of Act 13/2009, dated 3rd November.
Amendment of Paragraph one of Section 2 by Article 10.7 of Royal Decree-Law 3/2009, dated 27th March.

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.

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.

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 practitioners, shall hand down an order calling the creditors' meeting.

3. The insolvent debtor, insolvency practitioners and all parties appearing in the proceedings, shall be served notice of the order.

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.*[102]

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.

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[102] Amendment of Paragraph 1 by Article 17.22 of Act 13/2009, dated 3rd November.

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 jointly or 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.

Article 114. *Admission to consideration of the proposal.*[103]

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.

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.*[104]

1. The same order admitting to consideration shall resolve to serve notice of the proposal of composition to the insolvency practitioners so that, within the non-extendable term of ten days, they shall issue in writing an evaluation of the contents thereof, in relation to the payments plan and, when appropriate, the feasibility plan attached thereto.

2. The evaluation documents issued before the insolvency practitioners' 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 and shall be notified by the

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[103] Amendment of Paragraph 1 by Article 17.23 of Act 13/2009, dated 3rd November.

[104] Amendment of Section 2 by Sole Article One.12 of Act 9/2015, dated 25th May.
Amendment of Sections 2 and 3 by Article 17.24 of Act 13/2009, dated 3rd November.

insolvency practitioners to the creditors whose electronic address is known.

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 do attend such a meeting.

Article 115 bis. *Written processing of the composition.*[105]

The following rules shall be taken into account for the written processing foreseen in Paragraph Two of Article 111:

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. Such term shall be of two months from the date of the order.

2. Once the written processing has been resolved, composition proposals may only be submitted pursuant to Paragraph Two of Article 113, up to one month prior to expiry of the term foreseen in the preceding rule. 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 Office, until conclusion of the term foreseen in rule one.

3. The adhesions, revocations thereof, or votes against the proposals of composition shall be made in the manner foreseen in Article 103. For valid revocation of the adhesions or votes against made, such revocation shall 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.

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[105] Amendment of Sections 1, 2 and 5 by Article 76 of Act 38/2011, dated 10th October. Amendment of Sections 2 and 5 by Article 17.25 of Act 13/2009, dated 3rd November. Added by Article 10.8 of Royal Decree-Law 3/2009, dated 27th March.

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 order.

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.

Section 5. On the Creditors' Meeting

Article 116. *Constitution of the Meeting.*[106]

1. The meeting shall be held at the place, on the day and at the time set in the summoning notice.

The Chairperson may decide to extend the sessions over one or more consecutive working days.

2. The meeting shall be chaired by the Judge or, exceptionally, by the member of the insolvency practitioners appointed by him;

3. The acting secretary shall be the Court's Clerk. He shall be assisted in his functions by the insolvency practitioners.

4. The meeting shall be deemed to be validly constituted with the attendance by creditors holding claims aggregating at least half the ordinary liabilities of the insolvency proceedings or, failing that, when attended by creditors representing at least half the insolvency liabilities that might be affected by the composition, excluding the subordinated creditors.

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[106] Amended by Section 4 of Sole Article One.13 of Act 9/2015, of 25th May.
Please bear in mind that this amendment shall be applicable to pending insolvency proceedings in which a proposed composition has not been voted on, pursuant to Transitional Provision 1.4 thereof.
Amendment of Paragraph 3 by Article 17.26 of Act 13/2009, dated 3rd November.

Article 117. *Duty to attend.*[107]

1. The insolvency practitioners shall be bound to attend the meeting. Their failure to do so shall give rise to loss of the remuneration set, returning the sums received to the estate. A remedy of appeal to the Higher Court may be lodged against the judicial resolution imposing that penalty.

2. The insolvent debtor shall 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 practitioners 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.

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 shall 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

[107] Amendment of Paragraph 3 by Article 17.27 of Act 13/2009, dated 3rd November.

taken as present for the purposes of forming the necessary quorum for the meeting to be duly constituted.

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.

Article 120. *Right to information.*

The creditors attending the meeting or their representatives may request clarifications on the report by the insolvency practitioners and on their activities, as well as on the proposed compositions and the evaluation reports issued.

Article 121. *Discussion and voting.*[108]

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.

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[108] A last Paragraph is added to Section 4 by Sole Article One.14 of Act 9/2015, dated 25th May.
Please bear in mind that this amendment shall be applicable to pending insolvency proceedings in which a proposed composition has not been voted on yet, pursuant to Transitional Provision 1.4 thereof.
Addition of a third Paragraph Section 4 by Article 1.5 of Royal Decree-Law 11/2014, dated 5th September.
Please refer to, with regard to the transitory regime, Transitional Provision 1.3 of said Royal Decree-Law.

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.

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. 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.

In the case of agreements that, after the declaration opening the insolvency proceedings, remain subject to a syndication regime or clause, it shall be construed that the creditors vote in favour of the composition when creditors representing at least 75 per cent of the liabilities affected by the composition under the syndication regime vote in favour, except if the rules that regulate the syndication establish a lower majority, in which case the latter shall apply. This provision shall be applied to calculate the necessary majorities to approve the composition and to extend its effects to creditors not present or opposed thereto.

5. Once a proposal has been accepted, it shall not be appropriate to discuss the remaining ones.

Article 122. *Creditors without the right to vote.*[109]

1. The right to vote at the meeting shall not be held by holders of subordinate credits including, in particular, persons who are especially related who have acquired their claim through inter vivos acts after the declaration opening the insolvency proceedings.

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.*[110]

1. 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, to the effects arising from the content thereof concerning their claims and preferences.

2. 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.

Article 124. *Compulsory majorities for acceptance of proposed compositions.*[111]

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[109] Amendment of Section 1 by Sole Article One.15 of Act 9/2015, dated 25th May .
Please bear in mind that this amendment shall be applicable to pending insolvency proceedings in which the definitive text of the insolvency practitioners report has not been submitted yet, pursuant to Transitional Provision 1.2 thereof.
Amendment of Paragraph 1 by Article 1.6 of Royal Decree-Law 11/2014, dated 5th September.
Please refer to, with regard to the transitory regime, Transitional Provision 1.1 of said Royal Decree-Law.
Amendment of Paragraph 1.2 by Article 77 of Act 38/2011, dated 10th October.

[110] Section 1 is suppressed and the remaining Sections are renumbered by Sole Article One.16 of Act *9/2015, dated 25th May.*
Please bear in mind that this amendment shall be applicable to pending insolvency proceedings in which the definitive text of the insolvency practitioners report has not been submitted yet, pursuant to Transitional Provision 1.2 thereof.

[111] Amended by Sole Article One.17 of Act 9/2015, of 25th May.
Please bear in mind that this amendment shall be applicable to pending insolvency proceedings in which the definitive text of the insolvency practitioners report has not been submitted yet, pursuant to Transitional Provision 1.2 thereof.
Amended by Article .1.7 of Royal Decree-Law 11/2014, dated 5th September.
Please refer to, with regard to the transitory regime, Transitional Provision 1.1 of said Royal Decree-Law.
Amendment of the second Paragraph by Article 78 of Act 38/2011, dated 10th October.
Amendment of Article 10.9 by Royal Decree-Law 3/2009, dated 27th March.

1. In order for the meeting to accept a proposal of composition, the following majorities shall be required:

a) Fifty per cent of the ordinary liabilities, when the proposal of composition contains write-downs that are equal to or less than half the amount of the credits; whether of principal, interest or any other sum owed, with a term not exceeding five years; or, in the case of creditors other than the public or labour ones, the conversion of debt into participation loans during that same term.

Notwithstanding the terms set forth in the preceding Paragraph, when the proposal consists of full payment of the ordinary credits within a term not exceeding three years, or of immediate payment of mature ordinary credits with a write-down lower than twenty per cent, it shall be sufficient for a vote in favour to be issued by a portion of the liabilities higher than that voting against. To these ends, in cases of an early proposal and of written procedure, where appropriate, the creditors shall state their vote against under the same requisites as foreseen for adherence under Article 103 and the terms, as appropriate, of Articles 108 and 115 bis.

b) If a vote in favour has been issued by 65 per cent of the ordinary liabilities, when a moratorium for a term of more than five years, but under no case exceeding ten years, is involved; or write-offs exceeding half the amount of the claim and, in the case of creditors other than the public or labour ones, in the case of conversion of debt to participation loans for the same term, and the other measures foreseen in Article 100.

2. For the purposes of calculation of the majorities foreseen in the preceding Section, preferential creditors who vote in favour of the proposal shall be deemed to be included in the ordinary liabilities of the insolvency proceeding.

3. Approval of the composition shall involve extension of its effects to the ordinary and subordinated creditors who have not voted in favour, without prejudice to the terms set forth in Article 134. If the requisite majorities are not reached, it shall be deemed that the composition submitted to the vote is rejected.ww

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 write-down of debts, moratorium 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.*[112]

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 Procedure Act.

4. The insolvent debtor, the insolvency practitioners 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 Procedure Act.

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[112] Amendment of Sections 4 and 5 by Article 17.28 of Act 13/2009, dated 3rd November.

In any case, the presence of the Court Clerk shall be indispensable at the meeting as a member thereof.

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.*[113]

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 practitioners, 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.

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[113] Amendment of Paragraph 3 by Article 79 of Act 38/2011, dated 10th October.
Amendment of Paragraph one of Section 1 by Article 17.29 of Act 13/2009, dated 3rd November.
Amended by Article 10.10 of Royal Decree-Law 3/2009, dated 27th March.

2. The insolvency practitioners and creditors mentioned in the preceding Paragraph who, individually or in aggregate, are the holders of at least five per cent of the ordinary claims 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 Article 1, or apply for opening of the winding-up phase. Otherwise, he shall be subject to the composition eventually approved.

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.

Article 129. *Opposition proceedings.*[114]

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 the Court being authorised 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.

2. If the ruling accepts opposition due to legal breach in the constitution or in the holding of 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.

At this meeting the proposed composition that had secured the majority in the previous meeting shall be submitted for discussion and voting thereon and, if rejected, all the other proposals admitted to consideration shall be successively submitted, in the order established in Paragraph 2 of Article 121.

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[114] Amendment of Paragraph three of Section 2 by Article 80 of Act 38/2011, dated 10th October. Amendment of Paragraph one of Section 2 by Article 17.30 of Act 13/2009, dated 3rd November. Amended by Article 10.11 of Royal Decree-Law 3/2009, dated 27th March.

If the ruling accepts the opposition due to legal infringement in the written proceedings, the Judge may decide for the Court Clerk to call a meeting under the preceding provisions or resolve on new written proceedings for a term not exceeding thirty days from the date of the ruling.

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 to the Higher Court 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.

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, unless the following Article is applicable.

Article 131. *Rejection by the Court on its own motion of the composition accepted.*[115]

1. Whether or not opposition has been raised, on its own motion, the Court shall reject the composition accepted by the meeting, if the Court were to appreciate 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, the written processing or on constituting the meeting or the holding thereof.

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.

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[115] Amendment of Sections 1, 3 and 4 by Article 81 of Act 38/2011, dated 10th October.

3. If the infringement appreciated were to affect constitution or holding of the meeting, the Court shall hand down an order resolving that a new meeting be held as established in Paragraph 2 of Article 129.

4. If the breach appreciated were to affect the rules on written processing of the composition, the Court shall resolve that the Court Clerk may call a meeting under the terms expressed in the preceding Section, or proceed to further written proceedings for a term not exceeding thirty days from the date of the proceedings.

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.

Section 7. On the effectiveness of the composition

Article 133. *Commencement and scope of the effectiveness of the composition.*[116]

1. The composition shall take full effects from the date of the ruling approving it, except if the Court, in view of the content of the composition, were to rule, on its own motion or at the request of the party, to delay the effectiveness to the date on which the approval becomes final.

When ruling on delaying the effectiveness of the composition, the Court may resolve its partial implementation.

2. From the effectiveness of the composition, all the effects of the declaration opening the insolvency proceedings shall cease, being substituted by those that, where appropriate, are established in the actual composition, except for the duties of collaboration and information established in Article 42, which shall subsist until conclusion of the proceedings.

The insolvency practitioners shall account of their actions before the Court hearing the insolvency proceedings, within the term the Court shall establish. The report rendering accounts shall be submitted by the insolvency practitioners by telematic communication to the creditors whose electronic mail address is known.

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[116] Amendment of Section 2 by Sole Article One.18 of Act 9/2015, dated 25th May. Amended by Article .82 of Act 38/2011, dated 10th October.

3. Notwithstanding its severance, the insolvency practitioners shall retain full legitimacy to continue with the procedural pleas in progress, being authorised to request execution of judgments and rulings handed down in these, until they are final, as well as acting in Section Six until a final ruling is handed down.

4. With prior consent by the parties concerned, the composition may entrust all or some of the insolvency practitioners performance of any function, setting the remuneration deemed appropriate.

Article 134. *Subjective extension.*[117]

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 write-downs of debts and moratorium of payment periods established in the composition for the ordinary ones, but the moratorium of payment terms shall be calculated as of the complete fulfilment of the composition with regard to the latter. This is notwithstanding their entitlement 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.

3. Without prejudice to the terms set forth in the preceding Paragraph, preferential creditors shall also be bound to the composition when the

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[117] Addition of Section 3 by Sole Article One.19 of Act 9/2015, dated 25th May.
Please bear in mind that this amendment shall be applicable to pending insolvency proceedings in which the definitive text of the insolvency practitioners report has not been submitted yet, pursuant to Transitional Provision 1.2 thereof and also to administrative contracts that have not been terminated in insolvency proceedings in which the winding-up phase has not been opened, pursuant to Transitional Provision 1.8 thereof.
Addition of Paragraph 3 by Article 1.8 of Royal Decree-Law 11/2014, dated 5th September.
Please refer to, with regard to the transitory regime, Transitional Provisions 1.1 and 1.4 of said Royal Decree-Law.

following creditor majorities of the same class concur, as defined in Article 94.2:

a) Of 60 per cent, in the case of the measures established in Article 124.1.a);

b) Of 75 per cent, in the case of the measures established in Article 124.1.b).

In the case of creditors with a special preference, calculation of the majorities shall be performed in proportion to the accepting collateral compared with the total value of the collateral established within each class.

In the case of creditors with a general preference, the calculation shall be made using accepting liabilities out of the total liabilities benefited by a general preference within each class.

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. The liability of 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 had contracted or by the arrangements that may have been established on that particular.

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 as to the part covered by the write-down of debts and postponed by the moratorium of payment and, in general, shall be affected by the content of the composition.

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 rights of management and disposal of the debtor. Their infringement shall amount to breach of the composition, declaration whereof 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.*[118]

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.

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.*[119]

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.

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[118] Amendment of Paragraph 1 by Article 17.31 of Act 13/2009, dated 3rd November.

[119] Amendment of Section 4 by Sole Article One.20 of Act 9/2015, dated 25th May.
Please bear in mind that this amendment shall be applicable to pending insolvency proceedings in which the definitive text of the insolvency practitioners report has not been submitted yet, pursuant to Transitional Provision 1.2 thereof.
Amendment of Paragraph 4 by Article 1.9 of Royal Decree-Law 11/2014, dated 5th September.
Please refer to, with regard to the transitory regime, Transitional Provision 1.1 of said Royal Decree-Law.
Amendment of Paragraph 2 by Article 17.32 of Act 13/2009, dated 3rd November.
Amendment of Paragraph 1 by Article 6.8 of Royal Decree-Law 3/2009, dated 27th March.

2. The petition shall be processed as an insolvency procedural plea.

3. A remedy of appeal to the Higher Court 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.

Notwithstanding the foregoing, if the breach affects creditors with a special preference who may have been bound by the composition by application of the terms set forth in Article 134.3, or who may have adhered voluntarily thereto, they may initiate or recommence separate foreclosure of the security from declaration of the breach and notwithstanding eventual commencement of the winding-up phase. In this case, the creditor foreclosing shall take charge of the amount resulting from foreclosure of the sum that does not exceed the original debt; the rest, if any, corresponding to the aggregate assets of the insolvency proceedings.

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 a 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 or creditor or the insolvency practitioners.*[120]

1. The debtor may petition for winding-up at any moment.

The Court shall hand down an order opening the winding-up phase within the ten days following the petition.

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[120] Amended by Article 83 of Act 38/2011, dated 10th October.
Amendment of Sections 1.2, 2, and 4 by Article 17.33 of Act 13/2009, dated 3rd November.

2. The debtor must apply for winding-up when, during the term of the composition, he knows it is impossible to honour the payments undertaken and the obligations contracted after the approval thereof. Once the petition is lodged, the Court shall hand down a ruling opening the winding-up phase.

Should the debtor not apply for winding-up during the term of the composition; it may be requested by any creditor who proves the existence of any of the facts that may be the grounds to declare insolvency proceedings open as set forth in Article 2.4. The procedure foreseen in Articles 15 and 19 shall be carried out and the Court shall issue an order ruling whether or not to proceed to perform the winding-up.

3. In the case of the professional or business activity ceasing, the insolvency practitioners may apply for the winding-up phase to be opened. The debtor shall be notified of the petition within the term of three days. The Court shall rule on the petition by order within the following five days.

Article 142 bis. *Early winding-up.*[121]

(Repealed)

Article 143. *Opening of winding-up proceedings by the Court's own motion.*[122]

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 within the legal term referred to in Article 113, or non-admission to consideration of those that have been submitted.

2. Non-acceptance of any proposal of composition by the creditors' meeting or in the written composition proceedings.

3. Rejection by final judicial order of the composition accepted at the creditors' meeting, without a new summoning thereof being appropriate or in the case of compositions using the written procedure if neither summoning a new meeting nor a new written procedure is appropriate.

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[121] Repealed by the Sole Repealing Provision of Act 38/2011, dated 10th October.
Amendment of Paragraph 1 by Article 17.34 of Act 13/2009, dated 3rd November.
Added by Article 11.1 of Royal Decree-Law 3/2009, dated 27th March.

[122] Amendment of Paragraph 1.3 by Article 84 of Act 38/2011, dated 10th October.
Amendment of Paragraph 1.2 by Article 10.12 of Royal Decree-Law 3/2009, dated 27th March.

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 ado, at the appropriate moment, by an order that shall be notified to the insolvent debtor, to the insolvency practitioners 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.

Article 144. *Publicity of opening the winding-up.*[123]

The judicial resolution declaring opening of the winding-up phase shall be given the publicity foreseen in Articles 23 and 24.

Section 2. On the effects of winding-up

Article 145. *Effects on the insolvent debtor.*[124]

1. The status of the insolvent debtor during the winding-up phase shall be that of suspension of exercise of the rights of management and disposal of his estate, with all the effects established for this situation pursuant to Title III of this Act.

When, by virtue of the effectiveness of the composition, and pursuant to the provisions established in Paragraph 2 of Article 133, the insolvency practitioners 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, opening winding-up shall extinguish his right to draw a maintenance from the aggregate assets, except when it is indispensable to cover the minimal needs of the insolvent debtor and those of his spouse, registered civil partner, or when any of the circumstances foreseen in Article 25.3 concurs, and descendents under his care.

3. If the insolvent debtor is a legal person, the judicial resolution that opens the winding-up phase shall contain the declaration of dissolution if this has

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[123] Amended by Article 85 of Act 38/2011, dated 10th October.

[124] Amendment of Sections 2 and 3 by Article 86 of Act 38/2011, dated 10th October.

not been resolved and, in all cases, severance of the directors or liquidators, who shall be replaced by the insolvency practitioners, 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 Chapter II of Title III of this Act, opening the winding-up shall give rise to early maturity of the insolvency credits postponed and conversion to money of those consisting of other services.

Article 146 bis. *Specialities of the conveyance of production units.*[125]

1. In the case of conveyance of production units, the acquirer shall be assigned all the rights and obligations arising from contracts assigned to the continuity of the professional or business activity whose termination has not been requested. The acquirer shall subrogate himself in the contractual position of the insolvent debtor without the need for consent by the other party. Assignment of administrative contracts shall take place pursuant to the terms set forth in Article 226 of the consolidated text of the Public Sector Contracts Act, approved by Royal Legislative Decree 3/2011, dated 14th November.

2. The licences or administrative authorisations assigned to the continuity of the business or professional activity and included as part of the production unit shall also be assigned, as long as the acquirer continues the activity on the same premises.

3. The terms set forth in the preceding two Sections shall not be applicable to licences, authorisations or contracts in which the acquirer has specifically declared his intention not to subrogate himself. The aforesaid is without prejudice to, for labour effects, application of the provisions set forth in Article 44 of the Workers' Statute, in cases of corporate succession.

4. The conveyance shall not involve the obligation to pay claims not paid by the insolvent debtor prior to the conveyance, whether from the insolvency proceedings or against the estate, except if the acquirer has

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[125] Added by Sole Article Two.3 of Act 9/2015, dated 25th May.
Please bear in mind that this amendment shall be applicable to pending insolvency proceedings in which the winding-up phase has not been commenced yet, pursuant to Transitional Provision 1.6 thereof.
Added by Article 2.3 of Royal Decree-Law 11/2014, dated 5th September.
Please refer to, with regard to the transitory regime, Transitional Provision 1.2 of said Royal Decree-Law.

undertaken this specifically or if there is a legal provision to the contrary, and without prejudice to the terms set forth in Article 149.2.

The exclusion described in the preceding Paragraph shall not apply when the acquirers of the production units are persons who are especially related to the insolvent debtor.

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.*[126]

1. In the report referred to in Article 75, or in a writ that shall be produced within fifteen days following serving notice on the insolvency practitioners of the resolution to open the winding-up phase, the insolvency practitioners shall provide the Court a plan to dispose of the properties, goods and rights forming the aggregate assets of the insolvency proceedings that, whenever feasible, shall consider disposal as a unit of the set of the establishments, exploitations and any other goods and services forming production units of the insolvent debtor, or any of them. If the complexity of the insolvency proceedings so warrants, the Court, at the request of the insolvency practitioners, may agree to extend that term 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 has been made available at the Court Office, the debtor and the insolvency practitioners may make remarks or proposals of amendment. Once that

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[126] Addition of Sections 5, 6 and 7 by Sole Article Two.4 of Act 9/2015, dated 25th May.
Please bear in mind that this amendment shall be applicable to pending insolvency proceedings in which the winding-up phase has not been commenced yet, pursuant to Transitional Provision 1.6 thereof.
Addition of Sections 5 and 6 by Article 2.4 of Royal Decree-Law 11/2014, dated 5th September.
Please refer to, with regard to the transitory regime, Transitional Provision 1.2 of said Royal Decree-Law.
Amendment of Sections 1, 2 and 4 by Article 87 of Act 38/2011, dated 10th October.
Amendment of Paragraph two of Section 1 and 2 by Article 17.35 of Act 13/2009, dated 3rd November.

term has elapsed, the Court, if it deems this to be in the interest of the insolvency proceedings, shall resolve by order approval of the plan on the terms of submission thereof or may make amendments thereto or to order liquidation 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 or not.

4. In case the operations foreseen in the winding-up plan give rise to material amendment of the working conditions of a collective nature, including collective relocations, or to collective extinction or suspension of work relations, prior to approval of the plan, the provisions contained in Article 64 hereof shall be applied.

5. Except for public creditors, the winding-up plan may foresee assignment of assets or rights in payment or for payment of the insolvency claims, with the limitations and scope foreseen, with regard to the assets assigned to a security, in Section 4 of Article 155.

6. The Court, on its own motion or at the request of a party, may resolve to withhold up to 15 per cent of the amount obtained from the disposal of assets and rights forming part of the aggregate assets of the insolvency proceedings or from payments in cash made thereto in an account at the Court's disposal. That amount, that shall be used to cover the sums owed to certain creditors, pursuant to the judicial rulings that may be issued in the remedies of appeal to the Higher Court that may be filed against the winding-up acts. That sum shall be released when the remedies of appeal to the Higher Court have been resolved, or when the term to file them has expired. The part of the remainder available after the appeals are decided or after expiry of the term to file the appeals, shall be assigned according to the legally established order of preference, taking into account the part of claims that may already have been settled.

7. In the case of legal persons, the insolvency practitioner, after approval of the winding-up plan, shall submit all information that is necessary to facilitate disposal, for publication on the insolvency winding-up web page of the Public Insolvency Register.

In particular, information shall be submitted on the legal form of the company, the sector to which it belongs, scope of activity, time during

which it has been in operation, turnover, balance sheet size, number of employees, inventory of most relevant assets of the company, contracts in force with third parties, licences and administrative authorisations in force, liabilities of the company, judicial, administrative, arbitration or mediation proceedings in which it is involved and significant labour aspects.

Article 149. *Supplementary legal rules.*[127]

1. If a winding-up plan is not approved or, if appropriate, in matters not covered by the one approved, the winding-up operations shall comply with the following supplementary 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 practitioners, the Court deems it more convenient to the interests of the insolvency proceedings to divide them up first, or to dispose of 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. However, the Court may order proceeding to direct disposal or through a specialised person or firm when the auction is declared void or when, considering the report by the insolvency practitioners, it is considered the appropriate way to safeguard the interests of the insolvency proceedings. Conveyance through a specialised firm shall be charged to the remuneration of the insolvency practitioners.

The resolutions handed down by the Court in these cases shall be adopted after hearing the representatives of the employees, for a term of fifteen days, and fulfilling, when appropriate, the provisions contained in Paragraph 4 of Article 148. These resolutions shall be handed down as court orders and no appeal whatsoever may be lodged against them.

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[127] Amendment by Sole Article Two.5 of Act 9/2015, dated 25th May.
Please bear in mind that this amendment shall be applicable to pending insolvency proceedings in which the definitive text of the report by the insolvency practitioners has not been submitted yet, pursuant to Transitional Provision 1.2 thereof.
Amended by Article 1.5 of Royal Decree-Law 11/2014, dated 5th September.
Please refer to, with regard to the transitory regime, Transitional Provision 1.1 of said Royal Decree-Law.
Amendment of Paragraph 1.2 and addition of 3 by Article 88 of Act 38/2011, dated 10th October.

2 In the event of winding-up operations involving a material amendment of the collective working conditions, including collective relocations, or the collective extinction or suspension of employment contracts, the provisions contained in Article 64 of this Act shall apply.

3 Notwithstanding the terms foreseen in rule 1, among offers whose price does not differ by more than 15 per cent of the lower amount, the Court may rule to award to the lower offer when it considers it ensures continuity of the business to a greater extent or, in the event, of production units, and of the jobs, as well as involving a better settlement of creditors' claims.

2. The assets referred to in rule 1) of the preceding Section, 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 winding-up plan and, failing that, in line with the provisions established in the Civil Procedure Act for compulsory collection proceedings.

For properties, goods and rights vested in favour of claims with special preference, the provisions contained in Paragraph 4 of Article 155 shall apply. Should such assets include the establishments, exploitations and any other productive units of goods or services belonging to the debtor that are disposed of together, the following rules shall apply:

a) If they are conveyed without subsistence of the security, preferential creditors shall be entitled to the proportional part of the price obtained equivalent to the value of the asset or right on which the security had been constituted with regard to the aggregate value of the company or production unit conveyed.

If the price to be received does not cover the value of the security, calculated pursuant to the provisions set forth in Article 94, it shall be necessary for creditors with a special preference who have the right to separate foreclosure, who represent at least 75 per cent of the liabilities of that nature affected by the conveyance and who belong to the same class, as determined under Article 94.2, to state their approval of the conveyance. In that case, the part of the value of the security that is not settled shall have the claim classification due to it according to the nature thereof.

Should the price to be received be equal to or greater than the value of the security, it shall not be necessary for consent to be granted by the preferential creditors affected.

b) If they are conveyed with the security subsisting, with the acquirer subrogating himself in the obligation of the debtor, it shall not be necessary for consent to be secured from the preferential creditor, the claim being excluded from the aggregate liabilities. The Court shall ensure that the acquirer has the necessary financial solvency and means to take on the obligation conveyed.

As an exception, subrogation by the acquirer shall not take in spite of the guarantee subsisting, in the case of tax and Social Security claims.

3. In the event of disposal of the whole company or of certain production units thereof by auction, a term shall be set to submit purchase offers for the business, which shall include a heading on the expenses made by the business subject to insolvency proceedings to conserve operation of the activity until the definitive award, as well as the following information:

a) Identification of the bidder, information on his financial solvency and on the human and technical resources available to him;

b) Precise assignment of assets, rights, contracts and licences or authorisations included in the bid;

c) Price offered, means of payment and collateral provided. In the case of conveyance of assets or rights assigned to credits with a special preference, the offer must distinguish between the price that would be offered with subsistence or without subsistence of the collateral;

d) Effect of the offer on the workers.

Should the conveyance be performed by means of direct disposal, the acquirer must include the content described in this Paragraph.

4. When, as a consequence of the disposal referred to in rule 1 of the preceding Paragraph, an economic entity maintains its identity, this being construed as the set of means organised in order to carry out an essential or accessory business, it shall be deemed, for labour purposes and Social Security purpose, that a corporate succession is involved. In such cases, the Court may decide that the acquirer shall 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 Workers' Statute. 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 collective work conditions.

5. In the order approving the final bid or conveyance of the assets or rights disposed of, either separately or by batches or forming part of a business or production unit, the Court shall order cancellation of all the charges prior to the insolvency proceedings constituted in favour of insolvency claims, except for those that have a special preference pursuant to Article 90 and that have been conveyed to the acquirer with the encumbrance subsisting.

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 practitioners shall inform the court of law hearing the litigation of the disposal. Such notice shall effect ipso iure the procedural succession, without the other party being authorised 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 practitioners 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 aggregate assets of the insolvency proceedings.

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 creditor who is also an insolvency administrator who holds claims in the insolvency proceedings 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.*[128]

1. Every three months, as of opening the winding-up phase, the insolvency practitioners shall submit to the insolvency Court a report on the status of the operations, which shall detail and quantify the claims against the estate

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[128] Amendment of Sections 1 and 2 by Sole Article Two.6 of Act 9/2015, dated 25th May.
Please bear in mind that this amendment shall be applicable to pending insolvency proceedings in which the winding-up phase has not been commenced yet, pursuant to Transitional Provision 1.6 thereof.
Amended by Article 89 of Act 38/2011, dated 10th October.
Amendment of Paragraph 1 by Article 17.36 of Act 13/2009, dated 3rd November.

which have become due and are pending payment, indicating the maturity dates thereof. This report shall be made available at the Court Office and shall be notified by the insolvency practitioners by telematic means to the creditors whose electronic address is known. Breach of this obligation may give rise to the liability foreseen in Articles 36 and 37.

2. Within the month following conclusion of liquidation of the aggregate assets and, if Section Six is in process, within the month following notification of the classification judgement, the insolvency practitioners shall submit a final report to the Court hearing the insolvency proceedings to justify the operations performed and that shall inexcusably reason that there are no viable actions to recover the aggregate assets, nor liabilities of third parties pending foreclosure, nor other assets or rights of the insolvent debtor. The conclusion shall not be prevented by that the debtor holding assets that may not be legally seized, or that have no market value, or whose cost of disposal would be manifestly disproportionate in view of their foreseeable market value.

It shall also include a full rendering of accounts pursuant to the terms set forth in this Act. The insolvency practitioners shall attach that report by telematic communication to the creditors whose electronic address is known.

3. If within the term of the hearing granted to their parties, an opposition is raised to conclusion of the insolvency proceedings, an insolvency procedural plea shall be conducted. Otherwise, the Court shall hand down an order declaring conclusion of the insolvency proceedings due to the end of the winding-up phase.

Article 153. *Severance of the insolvency practitioners 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 practitioners and appointment of new ones.

2. The Court, having heard the insolvency practitioners, 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 practitioners severed due to undue prolongation of the winding-up shall lose their entitlement to receive the remunerations

accrued, and they shall 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 to the creditors

Article 154. *Payment of claims against the estate.*[129]

Before proceeding to pay the insolvency claims, the insolvency practitioners shall deduct the properties, goods and rights required from the aggregate assets to pay claims against the latter.

The deductions to cover payment of claims against the estate shall be made against the assets and rights not assigned to pay credits with a special preference.

Article 155. *Payment of claims with special preference.*[130]

1. Payment of claims with special preference shall be performed against the assets and rights vested, whether subject to separate or to collective foreclosure.

2. Notwithstanding the provisions contained in the preceding Paragraph, while the terms stated in Paragraph 1 of Article 56 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 practitioners may serve notice on the holders of those claims with special preference that such payment shall be settled from the aggregate assets and without foreclosing on the properties, goods and rights secured. Once that option has been notified, the insolvency practitioners shall without delay settle all the repayment of principal and interest payments that have matured and shall undertake the obligation to

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[129] Amended by Article 90 of Act 38/2011, dated 10th October.

[130] Amended by Sole Article Two.7 of Act 9/2015, dated 25th May.
Please bear in mind that this amendment shall be applicable to pending insolvency proceedings, pursuant to Transitional Provision 1.7 thereof.
Amendment of Paragraph 2 by Article 2.6 of Royal Decree-Law 11/2014, dated 5th September.
Please refer to, with regard to the transitory regime, Transitional Provision 1.1 of said Royal Decree-Law.
Amendment of Paragraph 4 by Article 91 of Act 38/2011, dated 10th October.

honour the following ones as claims against the aggregate assets and in the amount that does not exceed the value of the security, calculated pursuant to the provisions set forth in Article 94. In the event of infringement, the properties, goods and rights vested shall be disposed of to settle the claims with special preference as set forth in Paragraph 5.

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 practitioners, and after hearing the parties concerned, may authorise this with subsistence of the encumbrance and subrogation in the obligation of the debtor by the acquirer, with exclusion from the aggregate liabilities. If this is not authorised under these terms, the price obtained from the disposal shall be used to pay the claim with special preference pursuant to the terms set forth in Paragraph 5 and, if there is a remainder, to payment of the other claims.

If a same property, asset or right is the collateral 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 procedure foreseen in the specific legislation on their effects vis-à-vis third parties. The priority to pay claims with a tacit legal mortgage shall be that arising from their regulation.

4. The disposal of 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 the insolvency practitioners or the specially preferential creditor under the composition, the Court authorises direct sale or assignment for payment or to pay the preferential creditor or the person he may appoint, as long as that fully honours the special preference or, where appropriate, a remainder of the claim is left within the insolvency proceedings with the relevant classification.

Should disposal be performed outside the composition, the bidder must pay a price higher than the minimum that may have been agreed and pay cash, except if the insolvent debtor and the creditor with special preference were to specifically express acceptance of a lower price, as long as such disposals are performed at market value according to an updated official appraisal by a recognised firm in the case of real estate and an appraisal by a specialised firm in the case of moveable assets.

The judicial authorisation and its conditions shall be announced with the same publicity as that due for auction of the properties, goods and rights

which stand as collateral. If, within the ten days following the last of the announcements, a better bidder were to appear, the Court shall open the bidding to all bidders and set the security that must be provided.

5. In cases of realisation of assets and rights assigned to credits with special preference foreseen in this Article, the preferential creditor shall take possession of the amount arising from realisation up to a sum that does not exceed the original debt, the remainder, if any, being assigned to the aggregate assets of the insolvency proceedings

Article 156. *Payment of claims with a general preference.*[131]

1. After deduction from the aggregate assets of the goods and assets required to settle the claims against such assets and against the assets not standing as collateral in favour of special preference claims, or to the remainder thereof once these claims are paid, payment of those enjoying general preference shall be honoured, in the order established in Article 91 and, when appropriate, in proportion within each number.

2. The Court may authorise payment of such claims without awaiting the conclusion of the challenges filed, adopting the preventive measures it considers appropriate in each case to assure their effectiveness and that of the claims against the estate that may foreseeably be generated.

Article 157. *Payment of ordinary claims.*[132]

1. Payment of the ordinary claims shall be performed against the aggregate assets that remain once the claims against the estate and the preferential ones have been paid.

In exceptional cases, the Court, at the request of the insolvency practitioners may authorise settlement of ordinary claims in advance when it deems payment of the claims against the aggregate assets and the preferential ones to be sufficiently covered.

The Court may also authorise payment of ordinary claims without awaiting the conclusion of the challenges filed, adopting the preventive measures it considers appropriate in each case to assure their effectiveness and that of the claims against the estate that may foreseeably be generated.

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131 Amended by Article 92 of Act 38/2011, dated 10th October.

132 Amendment of Paragraph 1 by Article 93 of Act 38/2011, dated 10th October.

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 were secured.

3. The insolvency practitioners shall settle payment of these claims in line with the liquidity of the aggregate assets and may arrange repayment instalments for 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 an 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 practitioners 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 practitioners 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.

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 PROCEEDINGS

CHAPTER I
GENERAL PROVISIONS

Article 163. *Classification of the insolvency proceedings.*[133]

1. The insolvency proceedings shall be classified as fortuitous or tortious.

2. The classification shall not be binding on the Courts of Law of the criminal jurisdictional order that, when appropriate, may examine actions by the debtor that may constitute a criminal offence.

Article 164. *Tortious insolvency.*[134]

1. The insolvency shall be classified as tortious when the generation or aggravation of the state of insolvency has involved malicious intent or gross negligence by the debtor or his legal representatives, if he has any, or, in the case of a legal person, its de jure or de facto directors or liquidators, or its general proxies, and those who have had any such status during the two years preceding the date of the declaration opening the insolvency proceedings, as well as the partners thereof pursuant to the terms set forth in Article 165.2.

2. In any case, the insolvency shall be classified as tortious when any of the following cases concurs:

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[133] Amended by Article 94 of Act 38/2011, dated 10th October.

[134] Amendment of Section 1 by Sole Article. Three. 1 of Act 9/2015, dated 25th May.
Please bear in mind that this amendment shall be applicable to pending insolvency proceedings in which Section Six has not been formed yet, pursuant to Transitional Provision 1.5 thereof.
Amendment of Paragraph 1 by Article 95 of Act 38/2011, dated 10th October.

1. When the debtor legally obliged to keep accounts materially 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 attributable 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 foreclosure commenced or whose commencement is foreseeable;

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 ruling classifying the insolvency as tortious.

Article 165. *Presumptions of tortious intent.*[135]

1. The insolvency proceedings are presumed to be tortious, unless proved otherwise, when the debtor or, where appropriate, his legal representatives, directors or liquidators:

1. Have breached the duty to petition for a declaration opening the insolvency proceedings.

[135] Amendment by Sole Article. Three. 2 of Act 9/2015, dated 25th May.
Please bear in mind that this amendment shall be applicable to insolvency proceedings in process in which Section Six has not been formed yet, pursuant to Transitional Provision 1.5 thereof.

2. Have breached the duty to collaborate with the insolvency Court and the insolvency practitioners; 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, if this was absolutely necessary to adopt the composition.

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 or at the relevant Register in any of the three financial years preceding insolvency being declared open.

2. The insolvency proceedings are presumed to be tortious, unless proved otherwise, when the shareholders or directors have refused, without due cause, to capitalise loans or an issue of convertible securities or instruments, and this has thwarted achievement of a refinancing agreement of those foreseen in Article 71 bis.1, or in Additional Provision Four, or an extrajudicial agreement on payments. To these ends, it shall be presumed that the capitalisation is due to a reasonable cause when thus declared by means of report issued prior to refusal by the debtor, by an independent expert appointed pursuant to the terms set forth in Article 71 bis.4. If there is more than one report, the majority of the reports issued must coincide in such an opinion.

In all cases, in order for the refusal to approve such to determine the tortious nature of the insolvency proceedings, the composition proposed shall recognise the partners of the debtor a pre-emptive acquisition right to the shares, stakes, securities or convertible instruments underwritten by the creditors, subject to the capitalisation or issue proposed, in the case of subsequent disposal thereof. Notwithstanding this, the composition proposed may exclude the pre-emptive acquisition right of the conveyances made by the creditor to a company in its same group, or to any company that has the object of holding and administering stakes in the capital of other companies. In any case, disposal shall be construed as that performed in favour of a third party by the creditor himself, or by the companies or entities referred to in the preceding Section.

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, 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 tortious shall be deemed accomplices.

CHAPTER II
ON THE CLASSIFICATION SECTION

Section 1. On formation and proceedings

Article 167. *Formation of Section Six.*[136]

1. Formation of Section Six shall be ordered in the same judicial resolution by which the composition or winding-up plan is approved, or the winding-up is ordered according to the supplementary legal provisions.

As an exception to what is established in the preceding Section, it shall not be appropriate to form the classification Section of the insolvency proceedings when a judicial approval of a composition ensues that establishes, for all the creditors or for those of one or several classes, deeming as such also those established in Article 94.2, a write-down of less than one third of the credits, or a moratorium of under three years, except if not fulfilled.

The Section shall be headed with an attestation of the judicial resolution and this shall include attestations of the petition to declare the opening of insolvency proceedings, the documentation provided by the debtor, the order declaring insolvency proceedings open and the report by the insolvency practitioners.

2. In the case of reopening of the classification Section due to breach of the composition, the Court shall proceed in the following manner, for the purposes of determining the causes of breach and the responsibilities that may be appropriate:

1. If an order has been handed down to set aside or rule on the classification, the same Court ruling that orders opening of the winding-up due to breach of the composition shall order the Section to be reopened, including the previous actions and its own resolution therein.

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[136] Amended by Sole Article. Three.3. of Act 9/2015, dated 25th May.
Amended by Article 3.1 of Royal Decree-Law 11/2014, dated 5th September.
Please refer to, with regard to the transitory regime, Transitional Provision 1.3 of said Royal Decree-Law.
Amended by Article 96 of Act 38/2011, dated 10th October.

2. Otherwise, said judicial resolution shall order formation of a separate procedure within the classification Section that is already open, for autonomous processing, according to the provisions established in this Chapter, that are applicable thereto.

Article 168. *Appearance and status as party.*[137]

1. Within the ten days following the last publication that has been made of the judicial resolution resolving on the formation of Section Six, any creditor or person who provides evidence of a legitimate interest may appear and be a party in the Section, alleging in writing whatever he considers relevant for classification of the insolvency as tortious.

2. In the cases referred to in Paragraph 2 of the preceding Article, the parties concerned may appear and be party in the Section or separate procedure within the same term counted from the last publication that has been made of the judicial resolution resolving to reopen the classification section, although their writs must be limited to determining whether the insolvency must be classified as tortious due to breach of the composition for causes attributable to the insolvent debtor.

Article 169. *Report by the insolvency practitioners and learned opinion by the Public Prosecutor.*[138]

1. Within the fifteen days following the expiry of the terms aforesaid for the parties concerned to appear, the insolvency practitioners 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 determining the damages and losses that, if appropriate, have been caused by those persons.

2. Once the report by the insolvency practitioners 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

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[137] Amended by Article 97 of Act 38/2011, dated 10th October.
Amendment of the heading and of Sections 1 and 2 by Articles 12.8 and 12.9 of Royal Decree-Law 3/2009, dated 27th March.

[138] Amendment of Paragraph 2 by Article 17.37 of Act 13/2009, dated 3rd November.

within such term, the proceedings shall follow their course and it shall be understood that he does not oppose the classification proposed.

3. In the cases referred to in Paragraph 2 of Article 167, the report by the insolvency practitioners 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.*[139]

1. If the report by the insolvency practitioners and the learned opinion that, in the event, has been issued by the Public Prosecutor, coincides in classifying the insolvency as fortuitous, the Court, with no further ado, 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 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.

Article 171. *Opposition to the classification.*[140]

1. If the debtor or any of the parties who have appeared were to raise an objection, such an objection shall be dealt with as an insolvency procedural plea. If several oppositions are raised, they shall be substantiated jointly in the same procedural plea.

2. If no opposition is made, the Court shall hand down the ruling within the term of five days.

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[139] Amendment of Paragraph 3 by Article 17.38 of Act 13/2009, dated 3rd November.

[140] Amendment of Paragraph 1 by Article 17.39 of Act 13/2009, dated 3rd November.

Article 172. *Classification ruling.*[141]

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 ruling classifying the insolvency as tortious shall also contain the following pronouncements:

1. Determination of the persons affected by the classification, as well as, when appropriate, those who are declared accomplices. In the case of a legal person, the classification may be considered to concern the de facto or de jure directors or liquidators, general proxies, and those of the parties who have had such a status during the two years prior to the declaration opening the insolvency proceedings, as well as the partners who have refused to capitalise the claims or to issue convertible stock or instruments under the terms foreseen in Article 165.2 without a reasonable cause, according to their degree of contribution to formation of the majority required to reject the composition. If any of the persons affected was acting as a de facto director or liquidator, the ruling must reason the attribution of that condition.

The presumption contained in Article 165.2 shall not be applicable to directors who have recommended recapitalisation based on a fair cause, even when this has subsequently been rejected by the partners.

2. Barring of persons affected by the classification to administer the assets of others for a period of two to fifteen years, as well as to represent any person during the same period, bearing in mind, in all cases, to the severity of the events and the scope of the damage, as well as having been declared tortious in other insolvency proceedings.

In the case of a composition, if so requested by the insolvency practitioners, exceptionally, the classifying ruling may authorise the party barred to continue to manage the business, or to be a director of the insolvent company.

In the event of a same party being barred in two or more insolvency proceedings, the barring period shall be the sum of each one of them.

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[141] Amendment of Section 2.1 by Sole Article. Three. 4 of Act 9/2015, dated 25th May.
Please bear in mind that this amendment shall be applicable to pending insolvency proceedings in which Section Six has not been formed yet, pursuant to Transitional Provision 1.5 thereof.
Amendment of Paragraph 2.1 by Article 20 of Act 17/2014, dated 30th September.
Amendment of Paragraph 2.1 by Article 11 of Royal Decree-Law 4/2014, dated 7th March.
Amendment of Sections 2 and 3 by Article 98 of Act 38/2011, dated 10th October.

3. The loss of any right that the persons affected by the classification, or declared accomplices had as insolvency creditors or to the estate, and the order to return the assets or rights that may have been unduly obtained from the assets of the debtor, or that may have received from the aggregate assets, as well as compensating the damages and losses caused.

3. The ruling that classifies the insolvency as tortious 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 to the Higher Court against the ruling.

Article 172 bis. *Insolvency liability.*[142]

1. When the classification Section has been formed, or reopened, as a consequence of opening the winding-up phase, the Court shall condemn all or some of the de jure or de facto directors, liquidators or general proxies of the insolvent legal person, as well as the shareholders who have refused to capitalise the claims or issue securities or convertible instruments under the terms foreseen in Number 4 of Article 165 without just cause, who have been declared persons affected by the classification to the total or partial coverage of the deficit, to the extent that the conduct has given rise to the tortious classification being generated, or that has aggravated the insolvency.

If the insolvency proceedings have already been classified as tortious, in the case of reopening Section Six due to breach of the composition, the Court shall consider, to establish the condemnation regarding the deficit in the insolvency proceedings, both the facts declared proven in the classification ruling, as well as those giving rise to reopening.

In the case of multiple parties condemned, the ruling shall individualise the amount to be paid by each one of them, according to the participation in the facts that had caused the classification of the insolvency proceedings.

2. The legitimation to request execution of the ruling shall lie with the insolvency practitioners. The creditors who have applied in writing to the

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[142] Amendment of Paragraph 1 by Article 21 of Act 17/2014, dated 30th September. Amendment of Paragraph 1 by Article 12 of Royal Decree-Law 4/2014, dated 7th March. Addition by Article 99 of Act 38/2011, dated 10th October.

insolvency practitioners to request enforcement shall be legitimated to request such if the insolvency practitioners do not do so within the month following that demand.

3. All the quantities that are obtained in the enforcement of the classification ruling shall be integrated in the aggregate assets of the insolvency proceedings.

4. Those who have been parties to the Classification Section may lodge an appeal to the Higher Court against the ruling.

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 practitioners 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 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 resolutions opening the winding-up phase.

Article 175. *Specialities of the proceedings.*[143]

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.

3. The report on the classification shall be issued by the supervisory body that has ordered the intervention measure.

[143] Amendment of Paragraph 2 by Article 6.9 of Royal Decree-Law 3/2009, dated 27th March.

TITLE VII

ON CONCLUSION AND REOPENING INSOLVENCY PROCEEDINGS

SOLE CHAPTER

Article 176. *Causes of conclusion.*[144]

1. It shall be appropriate to conclude and archive insolvency proceedings in the following cases:

1. Once the order by the Provincial High Court that revokes the order declaring insolvency proceedings open at appeal is final.

2. Once the order declaring fulfilment of the composition is final and, when appropriate, the actions to declare its infringement have expired or are rejected by final ruling or when the winding-up phase is declared closed.

3. At any stage of the proceedings, when the insufficiency of the aggregate assets to settle the claims against the estate is verified.

4. At any state of the proceedings, when it is verified that payment has been made, or all the claims recognised have been legally deposited, or that the creditors have been fully paid off by any other means, or that there is no longer a situation of insolvency.

5. Once the common phase of the insolvency proceedings has concluded, when the resolution accepting withdrawal or renunciation by all the recognised creditors has become final.

2. In the last two cases of the preceding Paragraph, the conclusion shall be resolved by order and upon prior report by the insolvency practitioners, which shall be made available to all the parties that have appeared for the term of fifteen days.

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[144] Amended by Article 100 of Act 38/2011, dated 10th October.
Amendment of Paragraph 5 by Article 17.40 of Act 13/2009, dated 3rd November.

If opposition to conclusion of the insolvency proceedings is raised within the term for hearing granted to the parties, an insolvency procedural plea shall be processed.

Article 176 bis. *Specialties of conclusion due to insufficient aggregate assets.*[145]

1. From the declaration of the insolvency proceedings, these shall be concluded due to insufficiency of the aggregate assets when action is not foreseeable for recovery, to challenge, or for liability against third parties, nor classification of the insolvency proceedings as tortious, the assets of the insolvent debtor are presumably not sufficient to settle the claims against the estate, except when the Court considers such sums are sufficiently guaranteed by a third party.

An order concluding the insolvency proceedings may not be handed down due to insufficiency of the aggregate assets, while the classification Section is being processed, or recovery suits of the aggregate assets are pending or demanding third party liability, except if the relevant actions have been subject to assignment, or it is declared apparent that what is to be obtained from them shall not be sufficient to settle the claims against the estate.

2. As soon as it is on record that the aggregate assets are insufficient to pay off the claims against the estate, the insolvency practitioners shall notify the Court of the insolvency proceedings, which shall make such notice available to the parties who have appeared at the Court's office.

From that moment on, the insolvency practitioners shall proceed to pay the claims against the estate in the following order and, where appropriate, in proportion within each number, except for the credits that are indispensable to conclude the winding-up:

1. The salary claims for the last thirty days of effective work and for an amount that does not exceed double the minimum interprofessional salary.

2. The salary and compensation claims in an amount that arises from multiplying three times the minimum interprofessional salary by the number of days of salary pending payment.

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[145] Amendment of Sections 3 and 4 by Article 1.1.3 of Royal Decree-Law 1/2015, dated 27th February.
For its application one must bear in mind Transitional Provision 1.3 of said Royal Decree-Law.
Added by Article 101 of Act 38/2011, dated 10th October.

3. Maintenance credits subject to Article 145.2, in the amount that does not exceed the minimum interprofessional salary.

4. Claims for the court costs and expenses of the insolvency proceedings.

5. Other claims against the estate.

3. Once the aggregate assets are distributed, the insolvency practitioners shall submit a justifying report to the Court hearing the insolvency proceedings to affirm and inexcusably reason that the insolvency proceedings should not be classified as tortious, and that there are no feasible actions to recover the aggregate assets, or for liability against third parties pending exercise, or that what could be obtained from the relevant actions would not be sufficient to pay off the claims against the estate. The fact that the debtor owns assets that may not be legally seized, or that lack market value, or whose disposal cost would be manifestly disproportionate in view of their foreseeable market value, shall not prevent the declaration of insufficiency of the estate.

The report shall be made available to all the parties appearing at the Court's office for a term of fifteen days.

Conclusion due to insufficient estate shall be ruled by court order. If the parties were to file an opposition to conclusion of the insolvency proceedings within the term granted for hearing, an insolvency procedural plea shall be conducted. During that term, the natural person debtor may apply for exoneration of the unsettled liabilities. The processing of that petition, the requisites to benefit from exoneration and its effects shall be governed by the provisions set forth in Article 178 bis.

4. Conclusion due to insufficient assets may also be ordered in the same ruling declaring the insolvency proceedings when the Court considers it evident that the assets of the insolvent debtor shall presumably not be sufficient to settle the foreseeable claims against the estate in the proceedings, and that actions exercised for recovery, to challenge or of third party liability, are not foreseeable either.

If the insolvent debtor is a natural person, the Court shall appoint an insolvency practitioner who shall wind-up the existing assets and pay the claims against the estate following the order of Section 2. After the winding-up is concluded, the debtor may petition exoneration of the unsettled liabilities before the Court hearing the insolvency proceedings. In processing the petition, the requisites to benefit from exoneration thereof shall be governed by the provisions set forth in Article 178 bis.

An appeal to the Higher Court may be filed against the ruling.

5. Until the date when the order concluding the insolvency proceedings is handed down, the creditors and any other legitimated party may request recommencement of the insolvency proceedings as long as sufficient evidence is provided to consider that recovery actions may be taken, or providing written evidence that may give rise to the insolvency proceedings being classified as tortious and that justify deposit or consignment at the Court of a sufficient amount to settle the foreseeable claims against the estate. The deposit or consignment may also be made by a joint and several bank guarantee with an indefinite term and payable on first demand, issued by a lending institution or reciprocal guarantee company, or by any other means that, in the opinion of the Court, may guarantee immediate availability of the sum.

The Court Clerk shall admit the petition to consideration if the conditions of time and content established by this Act are fulfilled. If it is understood that the conditions are not met, or that these have not been corrected, the Court Clerk shall report to the Court in order for it to hand down an order accepting or refusing the petition. Once the insolvency proceedings have recommenced, the petitioner shall be legitimated to take restoration or challenge actions, the costs and expenses whereof shall be borne as set forth in Article 54.4.

Article 177. *Resources and publicity.*

1. No appeal whatsoever may be lodged against an 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.*[146]

1. In all cases of conclusion of the insolvency proceedings, the limitations on the rights of management and disposal of the debtor that subsist shall cease, except those contained in the final ruling of classification or foreseen in the following Chapters.

2. Outside the cases foreseen in the following Article, in cases of conclusion of insolvency proceedings due to winding-up or insufficient aggregate assets, the natural person debtor shall be held liable for payment of the remaining claims. Creditors may initiate singular executions while there is no ruling to reopen the insolvency proceedings or if new insolvency proceedings are not declared open. For such enforcements, inclusion of their claim on the definitive list of creditors shall be equivalent to a final condemnatory ruling.

3. The court ruling that declares conclusion of the insolvency proceedings due to winding-up or insufficiency of the aggregate assets of the natural person shall resolve their extinction and shall provide for cancellation of their inscription on the relevant public registers, to which end an order shall be issued containing an attestation of the final ruling.

Article 178 bis. *Benefit of exoneration of unsettled liabilities.*[147]

1. The natural person debtor may obtain the benefit of exoneration of the liabilities unpaid under the terms established in this Article once the insolvency proceedings are concluded by winding-up or insufficiency of the aggregate assets.

2. The debtor shall submit his petition for exoneration of the unsettled liabilities before the Court hearing the insolvency proceedings within the term for hearing granted to him pursuant to the terms established in Article 152.3.

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[146] Amendment of Paragraph 2 by Article 1.1.1 of Royal Decree-Law 1/2015, dated 27th February.
Please bear in mind that this amendment shall apply to insolvency proceedings in process, as established in Transitional Provision 1.3 of said Royal Decree-Law.
Amendment of Paragraph 2 by Article 21.5 of Act 14/2013, dated 27th September.
Amended by Article 102 of Act 38/2011, dated 10th October.
Amendment of Paragraph 3 by Article 17.41 of Act 13/2009, dated 3rd November.

[147] Added by Article 1.1.2 of Royal Decree-Law 1/2015, dated 27th February.
For its application, please bear in mind Transitional Provision 1.3 and 4 of said Royal Decree-Law.

3. Only the petition for exoneration of unsettled liabilities of debtors in good faith shall be admitted. The debtor shall be understood to be in good faith whenever the following requisites are fulfilled:

1. The insolvency proceedings have not been declared tortious.

2. The debtor has not been condemned in a final judgment for offences against property, against the social-economic order, for documentary forgery, against the Public Treasury or the Social Security, or against the rights of the workers, in the 10 years prior to declaration of insolvency proceedings. If there were to be criminal proceedings pending, the Court hearing the insolvency proceedings shall suspend its decision regarding exoneration of the liabilities until there is a final judgment.

3. That, complying with the requisites established in Article 231, he has entered into, or at least has attempted to enter into, an out of court composition on payments.

4. That he has fully settled the claims against the estate, and the preferential insolvency claims and, if a prior out of court payment composition has not been attempted, at least 25 per cent of the ordinary insolvency compositions.

5. That, as an alternative to the preceding Number:

i) He agrees to submit to the payment plan foreseen in Section 6.

ii) He has not breached the collaboration obligations established in Article 42.

iii) He has not obtained the same benefit within the last ten years.

iv) In the previous four years to the declaration of insolvency proceedings he has not rejected an offer of employment in keeping with his capacity.

v) Specifically, in the petition for exoneration of unsettled liabilities, he accepts that obtaining that benefit shall be recorded on the special Section of the Public Insolvency Register with the possibility of public access, for a term of five years.

4. The Court Clerk shall notify the insolvency practitioners and the creditors who are parties in the proceedings of the petition by the debtor, for a term of five days, in order for them to allege what they may deem appropriate in relation to granting the benefit.

If the insolvency practitioners and the creditors who are parties in the proceedings grant their approval to the petition by the debtor or do not oppose it, the Court hearing the insolvency proceedings shall provisionally grant the benefit of exoneration of the unsettled liabilities in the ruling declaring conclusion of the insolvency proceedings due to the end of the winding-up phase.

Opposition may only be based on breach of any one or more of the requisites of Section 3 and an insolvency procedural plea shall be conducted thereon. An order ruling conclusion of the insolvency proceedings may not be handed down until the resolution handed down in the procedural plea becomes final, recognising or refusing the benefit.

5. The benefit of exoneration of the unsettled liabilities granted to the debtors foreseen in Number 5. of Section 3 shall be extended to cover the unsettled part of the following claims:

1. The ordinary and subordinate claims pending on the date of conclusion of the insolvency proceedings, although they may not have been notified, except for Public Law or maintenance claims.

2. With regard to the claims listed in Article 90.1, the exoneration shall cover the part thereof that it has not been possible to pay by enforcement of the security, except if it is included, according to its nature, in any category other than ordinary or subordinate claims.

Creditors whose claims are extinguished may not file any kind of action against the debtor to collect them.

This is notwithstanding the rights of creditors against those who are jointly and severally liable for the insolvent debtor and against its guarantors or backers, who may not invoke the benefit of exoneration of the unsettled liabilities obtained by the insolvent debtor.

If the insolvent debtor is married under joint property regime or any other partnership and has not proceeded to liquidation of the marital financial regime, the benefit of exoneration of unsettled liabilities shall cover the spouse of the insolvent debtor, even though that insolvency proceedings concerning that party have not opened, with regard to the debts prior to declaration of insolvency proceedings for which the common assets may be held liable.

6. Debts not covered by the exoneration according to the provisions set forth in the preceding Section shall be settled by the insolvent debtor within

five years following conclusion of the insolvency proceedings, except if they have a subsequent maturity. During the five years following conclusion of the insolvency proceedings, debts pending shall not accrue interest.

To that end, the debtor may submit a proposed payment scheme that, having heard the parties for the term of 10 days, shall be approved by the Court under the terms of presentation, or with the amendments deemed appropriate.

With regard to Public Law credits, processing applications for instalment or split payments shall be governed by the provisions set forth in the specific provisions thereof.

7. All insolvency creditors shall be entitled to petition the Court hearing the insolvency proceedings for revocation of the benefit of exoneration of the unsettled liabilities when the debtor, during the five years after granting:

a) Incurs any of the circumstances that, pursuant to the terms established in Paragraph 3, may have prevented granting of the benefit of exoneration of the unsettled liabilities;

b) Where appropriate, if he breaches the obligation to pay the debts not exonerated pursuant to the terms set forth in the payment scheme;

c) If the financial situation of the debtor materially improves, allowing him to pay all the debts pending, without detriment to his maintenance obligations; or

d) If the existence of concealed revenue, assets or rights were to be evidenced.

The application shall be processed according to the terms established in the Civil Procedure Act for verbal trials. In the event of the Court resolving revocation of the benefit, the creditors shall recover the fullness of their actions against the debtor to enforce the claims unsettled on conclusion of the insolvency proceedings.

8. Once the term foreseen in the preceding Section has elapsed without the benefit having been revoked, the Court hearing the insolvency proceedings, at the request of the insolvent debtor, shall hand down a ruling recognising the final nature of exoneration of the liabilities unsettled in the insolvency proceedings.

According to the circumstances of the case and prior hearing of the creditors, it may also declare definitive exoneration of the liabilities

unsettled by the debtor who has not fully honoured the payment scheme, but who has assigned at least half of the revenue received during that term that may not be legally seized.

For the purposes of this Article, income that may not be legally seized is that foreseen under Article 1 of Royal Decree-Law 8/2011, dated 1st July, on measures to support mortgage debtors, on control of public expenditure and cancellation of debts of companies and freelance workers contracted by local entities, to carry out business and to encourage reinstatement and for administrative simplification.

No appeal whatsoever may be filed against such resolution, which shall be published on the Public Insolvency Register.

Article 179. *Reopening the insolvency proceedings.*[148]

1. A declaration opening insolvency proceedings of a debtor who is a natural person within the five years following conclusion of a preceding one due to winding up or to insufficiency of the estate's assets 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 proceedings of the former proceedings.

2. Reopening insolvency proceedings against a debtor that is a legal person concluded due to winding up or to insufficiency of the estate's assets shall be declared by the same Court that heard these, 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 and the registry page shall also be reopened, pursuant to the Business Register Regulations.

3. In the year following the date of termination of the conclusion of insolvency proceedings due to insufficient estate, the creditors may apply for the insolvency proceedings to be reopened in order to take restoration actions, indicating the specific actions that must be commenced, or providing written evidence of the relevant facts that may lead to classification of the insolvency proceedings as tortious, except if a ruling on classification was handed down in the insolvency proceedings concluded.

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148 Amended by Article 103 of Act 38/2011, dated 10th October.

Article 180. *Inventory and list of creditors in the event of reopening.*

1. The definitive texts of the inventory and of the list of creditors formed in the previous proceedings must be updated by the insolvency practitioners within the term of two months from 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 list of creditors, 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.

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 practitioners 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. *Giving of accounts.*

1. A complete giving of accounts shall be included, which shall fully justify the use made of the powers of administration granted, in all the insolvency practitioners' 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 2.

4. Approval or disapproval of the accounts does not prejudge whether or not a liability action against the insolvency practitioners 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.

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 practitioners to exercise the economic rights 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.

TITLE VIII

ON THE GENERAL PROCEDURAL RULES, THE ABBREVIATED PROCEDURE AND THE APPEAL SYSTEM [149]

CHAPTER I
ON CARRYING OUT THE PROCEEDINGS

Article 183. *Sections.*[150]

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 of the insolvency, including the appointment and status of the insolvency practitioners, determination of their powers and their exercise, providing accounts and, when appropriate, the liability of the insolvency practitioners.

3. Section Three shall include matters of determining the aggregate assets of the estate, authorisations to dispose of assets and rights forming part of the aggregate assets, the carrying out, decision and execution of the reintegration and reduction actions, and the debts of the aggregate assets;

4. Section Four shall include matters related to the aggregate liabilities, lodging, recognition, graduation and ranking of claims of the insolvency and payment of creditors. A separate procedure in this Section shall

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[149] Amendment of the heading by Article 105 of Act 38/2011, dated 10th October.

[150] Amendment of Sections 3 to 5 by Article 104 of Act 38/2011, dated 10th October.

also include the declaratory trials against the debtor, which may have been accumulated to the insolvency proceedings, and the foreclosures commenced or resumed against the insolvent debtor;

5. Section Five shall include matters related to the composition and winding-up, including early composition and early winding-up.

6. Section Six shall include matters related to classification of the insolvency and its effects.

Article 184. *Procedural representation and defence. Summons and ascertaining the domicile of the debtor.*[151]

1. The debtor and the insolvency practitioners shall be recognised as parties in all the Sections without having to appear in the due manner. The Salary Guarantee Fund shall 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 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 practitioners shall always be heard, without the need for formal appearance, although when they appear in appeals or insolvency

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[151] Please refer to Additional Provision 3 of Royal Decree-Law 1/2015, dated 27th February, with regard to the fact that, as an exception to Section 2, representation by a Solicitor shall not be required for a debtor who is a natural person in the consecutive insolvency proceedings.
Amendment of Sections 5 and 6 by Article 106 of Act 38/2011, dated 10th October
Amendment of Paragraph 7 by Article 17.42 of Act 13/2009, dated 3rd November.
Amendment of Paragraph 5 by Article 7.4 of Royal Decree-Law 3/2009, dated 27th March.

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 practitioners.

6. The provisions contained in this Article are understood to be notwithstanding what is established for representation and defence of the employees in the Labour Procedure Act, including the powers attributed to social graduates and to the Trade Unions in order to exercise whatsoever actions and appeals as may be necessary within the insolvency proceedings to enforce labour credits and rights, as well as without prejudice to the rights of the Public Administrations pursuant to the specific procedural provisions thereof.

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 Procedure Act. If the debtor is a natural person and has deceased, the rules on succession foreseen in the Civil 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 an 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.

Article 185. *Right to examination of the written record of the proceedings.*[152]

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 a Solicitor or Barrister-at-Law representing them, not being obliged to formally appear as parties for this.

Article 186. *Court acting on its own motion.*[153]

1. Once the insolvency proceedings are declared open, the procedural driving force shall be the Court Clerk acting on his own motion.

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[152] Amended by Article 17.43 of Act 13/2009, dated 3rd November.

[153] Amended by Article 17.44 of Act 13/2009, dated 3rd November.

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. Whenever this Act does not set a term to issue a judicial resolution, this shall be handed down without delay.

Article 187. *Extension of the powers of the insolvency Court.*[154]

1. The Court may enable the days and hours required to perform the proceedings considered urgent to the benefit of the insolvency proceedings. Such enabling may also be effected by the Court Clerk when the object thereof is the carrying out of procedural actions ordered by it or when the object thereof is the implementation of resolutions adopted by the Court.

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.*[155]

1. In cases in which the law establishes the need to obtain authorisation from the Court or insolvency practitioners, 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.

Article 189. *Prejudicial nature of criminal proceedings.*

1. Inchoation of criminal proceedings related to the insolvency shall not cause suspension of the insolvency proceedings.

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[154] Amendment of Paragraph 1 by Article 17.45 of Act 13/2009, dated 3rd November.

[155] Amendment of Paragraph 3 of Article 12.10 of Royal Decree-Law 3/2009, dated 27th March.

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 to allow the insolvency proceedings to continue, provided that 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[156]

Article 190. *Scope of compulsory petition.*[157]

1. The Court may apply the abbreviated procedure when, considering the information available, it considers that the insolvency proceedings do not have special complexity, according to the following circumstances:

1. When the list submitted by the debtor includes less than fifty creditors;

2. When the initial estimation of liabilities does not exceed five million euros;

3. When the valuation of the assets and rights does not reach five million euros.

When the debtor is a natural person, the Court shall especially appraise whether he responds for or stands surety for the debts of a legal person, or is a director of any legal person.

2. The Court may also apply the abbreviated procedure when the debtor files a proposal for early composition, or a proposed composition that includes a structural modification that conveys all his assets and liabilities.

3. The Court shall necessarily apply the abbreviated procedure when the debtor submits, along with the petition for insolvency proceedings, a winding-up plan that contains a binding written proposal to purchase the production unit in operation, or if the debtor has fully ceased his activity and has no work contracts in force.

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[156] Amended by Article 107 of Act 38/2011, dated 10th October.

[157] Amended by Article 107 of Act 38/2011, dated 10th October.
Amendment of Article 12.11 of Royal Decree-Law 3/2009, dated 27th March.

4. The Court, on its own motion, at the request of the debtor or the insolvency practitioners, or any other creditor, may at any time, considering modification of the circumstances foreseen in the preceding Sections and according to the greater or lesser complexity of the insolvency proceedings, transform an abbreviated procedure into an ordinary one, or an ordinary procedure into an abbreviated one.

Article 191. *Content.*[158]

1. The insolvency practitioner shall submit the inventory of assets and rights of the aggregate assets within the 15 days following acceptance of the office.

2. The insolvency practitioner shall submit the report foreseen in Article 75 within the term of one month from acceptance of office and may reason a petition for the Court to grant an postponement that may not exceed 15 days in any event.

3. The insolvency practitioner shall serve the notification foreseen in Article 95.1 at least 5 days prior to submission of the list of creditors.

4. The Court Clerk shall draw up a separate procedure in which it shall process matters related to challenges to the inventory and the list of creditors, and, on the following day, without commencing an incidental plea, shall notify the insolvency practitioner thereof.

Within the term of 10 days, the insolvency practitioner shall notify the court whether he accepts the claim, including it in the definitive texts, or whether it formally opposes such, while proposing the evidence he considers appropriate.

After the suit has been responded to, or the term to do so has elapsed, the proceedings shall continue pursuant to the procedure of verbal trial of the Civil Procedure Act and Article 194.4 shall be applicable in everything that does not oppose the terms foreseen in this principle.

If there has been more than one challenge, these shall be accumulated so as to formalise and resolve them in a sole hearing.

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[158] Section 7 is added, by Sole Article Two.8 of Act 9/2015, dated 25th May.
Please bear in mind that this amendment shall be applicable to pending insolvency proceedings in which the winding-up phase has not commenced yet, pursuant to Transitional Provision 1.6 thereof.
Amended by Article 107 of Act 38/2011, dated 10th October.

The insolvency practitioner shall immediately inform the Court of the effect of the challenges on the quorums and majorities necessary to approve the composition.

Should the challenges affect more than 20 per cent of the assets or liabilities of the insolvency proceedings, the Court may order conclusion of the common phase and opening the composition or liquidation phase, without prejudice to the record that the challenges may have in the definitive texts.

Legal costs shall be imposed according to the criteria of objective maturity, except if the Court appreciates and so reasons, the existence of serious doubts of fact or law.

5. The term to submit ordinary proposals of composition shall end, in all cases, 5 days after the notification of the report by the insolvency practitioner.

Once the proposed composition is admitted to consideration, the Court Clerk shall state the date to hold the creditors' meeting within the following 30 working days.

6. If, within the term foreseen in the preceding Section, no proposed composition has been submitted, the Court Clerk shall immediately open the liquidation phase, requiring the insolvency practitioner to present the wind-up plan within the non-extendable term of ten days.

Once the plan has been approved, the liquidation operations may not last more than three months, which may be extendable for a further month at the request of the insolvency practitioners.

7. In the case of conveyance of production units, the specialities foreseen in Articles 146 bis and 149 shall be taken into account.

Article 191 bis. *Specialities of the abbreviated procedure in the case of petition for insolvency proceedings with presentation of a proposed composition.*[159]

1. In the order declaring the insolvency proceedings, the Court shall pronounce itself regarding admission to consideration of the composition submitted by the debtor in his petition.

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[159] Addition by Article 107 of Act 38/2011, dated 10th October.

The insolvency practitioner shall evaluate the proposed composition submitted by the debtor within the term of ten days from publication of the declaration of insolvency proceedings.

2. Acceptance of the proposed composition shall be performed in writing. Creditors who have not previously adhered to the proposed composition submitted by the debtor may do so until five days after the date of submission of the report by the insolvency practitioner.

3. Within the three days following that when the term to formulate adhesions has ended, the Court Clerk shall verify whether the proposed composition reaches the legally required majority and shall proclaim the result by decree.

If the majority is secured, immediately after expiry of the term to oppose the judicial approval of the composition, the Court shall hand down an approval ruling, except if opposition to that approval has been formulated or if it is appropriate to reject the composition, on the Court's own motion.

If opposition is raised, the Court Clerk shall admit the suit and the Court may require the party challenging to provide a bond for the damages and losses to the aggregate liabilities and estate of the insolvency proceedings that may arise from delay in approving the composition.

Article 191 ter. *Specialities in the abbreviated procedure in the case of petition for insolvency proceedings with submission of a winding-up plan.* [160]

1. Should the debtor have applied for winding-up according to the terms foreseen in Article 190.2, the Court shall immediately resolve to open the winding-up phase.

2. Once the winding-up phase is open, the Court Clerk shall notify the liquidation plan submitted by the debtor in order for this to be reported on within the term of ten days by the insolvency practitioner and for the creditors to be able to make allegations.

The report by the insolvency practitioner must necessarily include the inventory of the aggregate assets of the insolvency proceedings and an

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[160] Addition of Section 4 by Sole Article Two.9 of Act 9/2015, dated 25th May. 4
Please bear in mind that this amendment shall be applicable to pending insolvency proceedings in which the winding-up phase has not commenced yet, pursuant to Transitional Provision 1.6 thereof.
Addition by Article 107 of Act 38/2011, dated 10th October.

evaluation of the effects of termination of the contracts on the estate and aggregate liabilities of the insolvency proceedings.

In the order approving the winding-up plan, the Court may resolve to terminate the contracts pending fulfilment by both parties, with the exception of those that are linked to an effective offer to purchase the production unit or part thereof.

3. In the event of suspension of the winding-up operations due to challenges to the inventory or the list of creditors, the Court may require the parties challenging to provide a bond to guarantee possible damages and losses due to the delay.

4. In the event of conveyance of production units, the specialities foreseen in Articles 146 bis and 149 shall be taken into account.

Article 191 quater. *Supplementary application of the ordinary procedural rules.*[161]

In all matters not specifically regulated in this Chapter, the rules foreseen for 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 out 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.

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[161] Addition by Article 107 of Act 38/2011, dated 10th October.

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 petition 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 on the opposing side.

3. When petitions are accumulated in an insolvency procedural plea whose petitions do not coincide, all the parties intervening must reply to the petitions whose claims are opposed to each other, if allowed at the moment of their intervention, and clearly and precisely state the specific right 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.*[162]

1. Pleas shall be submitted in the manner foreseen in Article 399 of the Civil 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 to the Higher Court may be lodged against such order under the terms established in Paragraph 1 of Article 197.

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[162] Amendment of Paragraph 4 by Article 108 of Act 38/2011, dated 10th October.
Amendment of Sections 2 and 3 by Article 17.46 of Act 13/2009, dated 3rd November.
Amendment of Paragraph 4 by Article 12.12 of Royal Decree-Act 3/2009, dated 27th March.

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 petition or petitions, so that within the common term of ten days, they may reply in the manner foreseen under Article 405 of the Civil Procedure Act.

4. The parties shall only be summoned to a hearing when a writ of response to the suit has been submitted, when there is argument over the facts or these are considered to be relevant by the Court, and when means of evidence proposed in the writs of allegations, with prior declaration of their relevance and usefulness. Such hearing shall be carried out in the manner foreseen in Article 443 of the Civil Procedure Act for verbal trials.

Otherwise, the Court shall hand down its ruling with no further ado. It shall do likewise when the sole evidence admitted is that of the documents, and when these have already been produced in the proceedings without being challenged, or when only appraisal reports have been produced, and if neither the parties nor the Court request the presence of the appraisers at the hearing to ratify their report.

In any of the cases foreseen in the preceding Paragraph, if the writ of response raises procedural matters or these are raised by the claimant in view thereof within the term of five days from notification thereof, the Court shall rule thereon, handing down the appropriate order pursuant to the terms set forth in the Civil Procedure Act for written resolution of such matters pursuant to the terms set forth for the preliminary hearing of the ordinary trial. If it is decided to continue the proceedings, it shall issue its ruling within the term of ten days.

Article 195. *Insolvency procedural plea in labour matters.*[163]

1. If the insolvency procedural plea referred to in Article 64.8 of this Act is raised, the petition shall be formulated pursuant to the terms established in Article 437 of the Civil Procedure Act. When appropriate, the Court Clerk shall warn the party of the defects, omissions or imprecision he has committed when drafting the petition, 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.

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[163] Amended by Article 17.47 of Act 13/2009, dated 3rd November.

2. If the petition is admitted to consideration by the Court, the Court Clerk shall set the date and time, within the following ten days, for a hearing to be held, summoning the defendants with delivery of a copy of the petition 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 petition, 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 a composition has not been reached, continuing the proceedings pursuant to the verbal trial procedure of the Civil Procedure Act, although after providing the evidence, the parties shall be granted a turn for summing up.

Article 196. *Ruling.*

1. On conclusion of the hearing, 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 Procedure Act in matters of legal 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.

3. The ruling handed down in the insolvency procedural plea to which Article 195 refers shall be governed in matters of legal costs by the provisions contained in the Labour Procedure Act.

4. Once they are final, the rulings that put an end to the insolvency procedural pleas shall have the effects of res iuducata.

CHAPTER IV
ON APPEALS

Article 197. *Appropriate appeals and procedure thereof.*[164]

1. Appeals against resolutions handed down by the Court Clerk in insolvency proceedings shall be the same as those provided in the Civil 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 for in the Civil 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 shall be allowed against orders resolving remedies of appeal to the same Court and against rulings handed down on insolvency procedural pleas brought in the common phase, or in that of composition, but the parties may reproduce the matter in the next appeal to be lodged to the Higher Court as long as they have formulated a protest within the term of five days. To these ends, the nearest appeal shall be considered to be the relevant one against the one opening the composition phase or against the ruling opening of the winding-up phase or against that approving early proposal of composition. This does not include the rulings referred to in Article 72.4 and Article 80.2, which may be appealed directly. This appeal to the Higher Court shall have preferential status.

5. An appeal to the Higher Court may be lodged against the rulings that approve the composition, or those resolving insolvency procedural pleas raised thereafter, or during the winding-up phase that shall be dealt preferentially.

6. The insolvency Court, on its own motion or at the request of the party concerned, may justify and order suspension of actions that may be affected by its resolution when accepting the remedy of appeal to the Higher Court. Its decision may be reviewed by the Provincial High Court at the request of a party, to be formulated in the writ filing the appeal or of

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[164] Amendment of Sections 4 to 6 by Article 109 of Act 38/2011, dated 10th October. Amended by Article 17.48 of Act 13/2009, dated 3rd November.

opposition thereto, in which case that matter must be resolved prior to examination of the substantive matter of the appeal and within the ten days following receipt of the proceedings by the Court and no appeal whatsoever may be lodged against the order handed down.

If suspension of the composition is petitioned on appeal, the Court may resolve it 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 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 appeals and the other appeals foreseen in the Labour Procedure Act may be lodged against the ruling resolving insolvency procedural pleas concerning corporate 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.

CHAPTER V
PUBLIC INSOLVENCY REGISTER[165]

Article 198. *Public Insolvency Register.*[166]

1. The Public Insolvency Register shall be kept under the dependence of the Ministry of Justice and shall consist of four Sections:

a) Section one, of insolvency edicts, the resolutions shall be inserted by order of insolvent debtor and dates, that shall be published as set forth in Article 23 and by virtue of the order sent by the Court Clerk.

b) Section two, on registry publicity, shall record, by order of insolvent debtor and dates, the registry resolutions annotated or registered at all the public registries of persons related to Article 24.1, 2 and 3, including

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[165] Amendment of the heading by Article 6.10 of Royal Decree-Law 3/2009, dated 27th March.

[166] Amendment of Paragraph 1 by Article 22 of Act 17/2014, dated 30th September.
Please bear in mind that this amendment shall come into force on approval of its implementing regulations, as established in Transitional Provision 2 of said Act.
Amendment of Paragraph 1 by Article 21.6 of Act 14/2013, dated 27th September.
Amended by Article 110 of Act 38/2011, dated 10th October.
Amended by Article 6.11 of Royal Decree-Law 3/2009, dated 27th March.

those who are declared tortious insolvent debtors and by virtue of the certifications sent on his own motion by the registrar after the appropriate entry is performed.

c) Section three, on out of court settlements, shall record opening of negotiations to reach such resolutions and conclude them.

d) Section four, on insolvency practitioners and delegate assistants, shall register the natural and legal persons who fulfil the statutory requisites established to be appointed as an insolvency practitioner and who have expressed their will to act as an insolvency practitioner, stating the director whose sequential appointment is appropriate at each Mercantile Court and according to the size of each insolvency proceedings. The orders appointing, barring or severing the insolvency practitioners, as well as the orders setting or amending their remuneration, shall also be registered.

When an insolvency practitioner is severed pursuant to the provisions contained in Article 37, the insolvency practitioner severed shall be struck off as a preventive measure.

In the case of natural persons, the name, professional address, electronic mail, tax identification number, territory in which they are willing to practice shall be stated, and all the legal persons registered in Section four to whom they are related shall be stated. Moreover, their experience in all prior insolvency proceedings, indicating the identity of the debtor, the sector of activity of their company, and the type of procedure and remuneration received, shall be recorded.

In the case of legal persons, the name, address, legal form, electronic mail and address of each office where its activity is performed shall be stated, and the territory in which they declare they are willing to practice. They shall also state the name, address of each one of the shareholders and of any natural person registered in Section four who provides his services to a legal person. Likewise, they shall provide all the information of experience in prior insolvency proceedings in the preceding Paragraph, stating the natural person in charge of directing the work and representing the legal person.

2. Publication of the court rulings or their extracts shall have a merely informative value or one of public notoriety.

3. The structure, content and publicity system through this registry shall be detailed in the implementing regulations, as well as the insertion and access procedures, pursuant to the following principles:

1. Court rulings may be published in a summarised form that records the indispensable data to determine the content and scope of the resolution, stating the registerable data when such have caused annotation or inscription on the relevant public registers.

2. Insertion of the resolutions or their statements shall preferentially be performed through co-ordination mechanisms with the Civil Register, the Business Register, or the remaining registers of persons where the legal person insolvent debtor is recorded, according to the forms approved by the implementing regulations.

3. The register shall have a device to allow one to know and provide certifiable proof of commencement of the public diffusion 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 of telematic consultation.

TITLE IX

ON THE RULES OF INTERNATIONAL PRIVATE LAW

CHAPTER I
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 provisions that regulate the matter.

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 may change from time to time, and which are situated in the territory of

Spain at the time the insolvency proceedings are declared open, shall be governed exclusively by this 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 ownership thereof.

3. The provisions contained in the preceding Paragraphs are understood to be notwithstanding the reintegration actions that may be appropriate.

Article 202. *Rights of the debtor subject to registration.*

The effects of the insolvency proceedings on the rights of the debtor in immoveable goods or 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 such 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 on 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 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 in whose territory the immoveable property is located.

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 befitted 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 the contestation thereof 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 territorial insolvency proceedings

Article 210. *General rule.*

Except for the provisions established in this Section, territorial 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 territorial insolvency proceedings to be opened in Spain without the need to examine the insolvency of the debtor.

Article 212. *Legitimacy.*

Declaration of territorial 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 territorial insolvency, such as write-down of debts and moratorium 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 practitioners 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 territorial nature of the insolvency, the personal circumstances of the debtor, the effects on the rights of administration and disposal with regard to his assets, summoning of creditors, including those with an in rem security, the term to lodge claims with the insolvency practitioners and the postal address of the Court.

3. The information shall be provided in writing and sent individually, except if the Court decides on any other means that it deems more appropriate given the circumstances of the case.

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.

2. The insolvency practitioners 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 ignoring that 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 practitioners their claims as set forth in Article 85.

2. All creditors may lodge their claims in the main or territorial 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 disposal 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 dispose of 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 its seat. If they were to do so in another language, the insolvency practitioners may subsequently demand a translation into Spanish.

CHAPTER III
ON RECOGNITION OF FOREIGN INSOLVENCY PROCEEDINGS

Article 220. *Registration of the opening resolution.*

1. Foreign resolutions to declare open insolvency proceedings shall be recognised in Spain by the exequatur procedure regulated by the Civil Procedure Act, if they fulfil the following requisites:

1. That the resolution refers to collective proceedings based on insolvency of the debtor, by virtue whereof 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 form 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 territorial 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 territorial 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 insolvency practitioner or representative.*

1. Insolvency practitioner 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 in Spain.

3. Once the main foreign proceedings are recognised, the insolvency practitioner or representative shall be bound to:

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 apply 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 insolvency practitioner or representative of the main proceedings.

4. Once the main foreign proceedings are recognised, the insolvency practitioner 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 territorial insolvency proceedings declared open 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 insolvency practitioner or representative must respect Spanish Law, in particular with regard to the means of disposing of 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 secured, 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 substantive matter in the exequatur proceedings regulated in the Civil 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 that are 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 territorial 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 territorial 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 insolvency practitioner or representative appointed therein shall only act as write-down of debts for those who did so ignoring the existence of the proceedings.

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 insolvency practitioner 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 insolvency practitioner or representative, or the person appointed on adopting the measure, the administration or disposal 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 rights 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

Article 227. *Co-operation obligations.*

1. Without prejudice of compliance with the applicable provisions in each one of the proceedings, the insolvency practitioners in insolvency proceedings declared in Spain and the insolvency practitioner 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 insolvency practitioner 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 are 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 insolvency practitioner or representative, and of the opening of insolvency proceedings in another State with regard to the same debtor.

2. Co-ordination of the insolvency practitioner and control or supervision of the goods and activities of the debtor.

3. Approval and implementation of arrangements related to co-ordination of the proceedings by the competent courts or authorities.

3. The insolvency practitioners in the territorial insolvency proceedings declared open in Spain shall allow the insolvency practitioner or representative in the main foreign proceedings to submit proposals in a timely manner for composition, winding-up plans or any other means of disposal of properties, goods and rights of the estate or for payment of the claims.

The insolvency practitioners 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, the insolvency practitioner or representative thereof 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 insolvency practitioner or representative shall be empowered to participate in the insolvency proceedings on behalf of the creditors whose claims he has notified.

2. The insolvency practitioners in insolvency proceedings declared in Spain may lodge the claims recognised on the definitive list of creditors in foreign insolvency proceedings, whether main or territorial, as long as this is allowed by the law applicable to those proceedings. Under the same conditions, the insolvency practitioners, 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 sum in percentage terms.

Article 230. *Surplus assets from territorial proceedings.*

On condition of reciprocity, the assets remaining on conclusion of territorial insolvency proceedings shall be made available to the insolvency practitioner or representative of the main foreign proceedings recognised in Spain. The insolvency practitioners of the main insolvency proceedings declared in Spain shall demand the same treatment in any other proceedings open abroad.

TITLE X

OUT OF COURT PAYMENT AGREEMENT[167]

Article 231. *Budgets.*[168]

1. The natural person debtor who is in a situation of insolvency pursuant to the terms set forth in Article 2 of this Act, or that is foreseen shall not be able to regularly honour its obligations, may commence a procedure to reach an out of court agreement on payments with his creditors, as long as the initial estimation of the liabilities does not exceed five million euros. In the case of an entrepreneur natural person, the relevant balance sheet must be produced.

For the purposes of this title, natural person entrepreneurs shall be considered not only those who hold such a status pursuant to Business Law, but also those who carry out professional activities or who are considered as such for the purposes of the Social Security Law, as well as freelance workers.

2. The same agreement may also be instigated by any natural persons, whether or not they are capital stock companies, which fulfil the following conditions:

a) That are in an insolvent state;

b) In the event of insolvency proceedings being declared open, such insolvency proceedings must not be especially complex pursuant to the terms foreseen in Article 190 of this Act;

c) For them to have sufficient assets to settle the expenses inherent to the agreement.

3. The following may not petition to reach an out of court payment agreement:

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[167] Added by Article 21.7 of Act 14/2013, dated 27th September.

[168] Amended by Article 1.2.1 of Royal Decree-Law 1/2015, dated 27th February.
For its application, please bear in mind Transitional Provision 1.5 of the aforesaid Royal Decree-Law.
Added by Article 21.7 of Act 14/2013, dated 27th September.

1. Those who have been condemned in a final ruling for offences against property, against the social and economic order, for documentary forgery, against the Public Treasury, the Social Security, or against the rights of the workers in the 10 years prior to declaration opening the insolvency proceedings.

2. Persons who, within the last five years, have reached an out of court payment agreement with creditors, have obtained judicial homologation of a refinancing composition, or have been declared bankrupt.

Calculation of that term shall begin to be counted, respectively, from publication on the Public Insolvency Register of the acceptance of the out of court payment agreement, of the court ruling that homologates the refinancing composition, or of the order declaring conclusion of the insolvency proceedings.

4. An out of court payment agreement may not be reached by those who are negotiating a refinancing composition with their creditors, or whose petition for insolvency proceedings has been admitted to consideration.

5. Claims with an in rem security shall be affected by an out of court composition according to the terms set forth in Articles 238 and 238 bis.

Under no circumstance may Public Law claims be affected by the out of court agreement, although they may have an in rem security.

Insurance and reinsurance companies may not resort to the procedure foreseen in this Title.

Article 232. *Petition for an out of court payment agreement.*[169]

1. A debtor wishing to reach an out of court payment agreement with his creditors shall apply for appointment of an insolvency mediator.

If the debtor is a legal person, the decision on the petition shall pertain to the governing body or to the liquidator.

2. The petition shall be made in a standardised form signed by the debtor and it shall include an inventory with the cash and liquid assets available,

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[169] Amendment of Sections 2 and 3 by Article 1.2.2 of Royal Decree-Law 1/2015, dated 27th February. *For its application, please bear in mind Transitional Provision 1.2 of said Royal Decree-Law.* Added by Article 21.7 of Act 14/2013, dated 27th September.

the assets and rights held and the ordinary revenue foreseen. A list of creditors shall also be attached, specifying their identity, address and electronic address, stating the amount and maturity of the respective claims, which shall include a list of contracts in force and a list of monthly expenses foreseen. The terms set forth in Article 164.2.2. shall be applicable, in the case of consecutive insolvency proceedings, to the petition for an out of court payment agreement.

The content of the standard petition forms, inventory and list of creditors shall be determined by means of an order of the Ministry of Justice.

The list of creditors shall also include the holders of loans or credits with in rem or Public Law guarantees, regardless of whether these may not be affected by the composition. In order to evaluate the loans or credits with an in rem security, the terms set forth in Article 94.5 shall apply.

If the debtor is a married person, except if under separate marital property regime, he shall state the identity of the spouse, disclosing the financial regime of the marriage and if legally bound to keep accounting, shall also attach the annual accounts of the last three financial years.

When the spouses are the owners of their family dwelling and it may be affected by the out of court payment agreement, the petition for the out of court agreement must necessarily be made by both spouses, or by one with the consent of the other.

3. In the case of debtors who are entrepreneurs or registerable entities, the relevant Business Registrar of the domicile of the debtor shall be requested to appoint the mediator, by a petition that may be submitted telematically, who shall proceed to open the relevant sheet, if not registered. In other cases, the application for appointment shall be submitted to the Notary Public of the domicile of the debtor.

In the case of legal persons, or an entrepreneur natural person, the petition may also be addressed to the Official Chambers of Commerce, Industry, Services and Navigation, when mediation duties have been taken on pursuant to their specific regulations and to the Official Chamber of Commerce, Industry, Services and Navigation of Spain.

The receiver of the petition shall check the fulfilment of the requisites foreseen in Article 231, the data and documentation provided by the debtor. If it is considered that the petition or documentation attached suffers from any defect or that it is insufficient to prove fulfilment of the

legal requisites to initiate an out of court payment agreement, the applicant shall be granted a sole term for correction, which may not exceed five days. The petition shall be rejected when the debtor does not justify fulfilment of the legally established requisites to apply to commence an out of court agreement, but a new petition may be lodged when such requisites concur or may be proven.

Article 233. *Appointment of an insolvency mediator.*[170]

1. The appointment of an insolvency mediator shall befall a natural or legal person, sequentially assigned from among those included on the official list that shall be published on the relevant web site of the Official State Gazette, which shall be supplied by the Register of Mediators and Mediation Institutions of the Ministry of Justice. The insolvency practitioner must fulfil the conditions for mediators pursuant to Act 5/2012, of 6th July, on mediation in civil and mercantile matters and, to act as insolvency practitioner, the conditions foreseen in Article 27.

The implementing regulations shall determine the rules to calculate the remuneration of the insolvency mediator, which must be set out in his commission of appointment. In all cases, the remuneration to be received shall depend on the type of debtor, his liabilities and assets and the success achieved in the mediation. In all matters not foreseen in this Act, with regard to the insolvency mediator, the terms set forth on matters of appointment of independent experts shall apply.

2. On accepting the appointment, the insolvency mediator shall provide the Business Registrar or Notary Public, if appointed by either, an electronic address that fulfils the conditions established in Article 29.6 of this Act, to which the creditors may send any communication or notification.

3. The Registrar or Notary Public shall proceed to appointment of the insolvency mediator. When the application has been addressed to an Official Chamber of Commerce, Industry, Services and Navigation, or to the Official Chamber of Commerce, Industry, Services and Navigation of Spain, the Chamber itself shall undertake the mediation functions pursuant to the terms set forth in Act 4/2014, of 1st April, Basic on Official Chambers of Commerce, Industry, Services and Navigation, and shall appoint a commission in charge of mediation, which shall include at least one

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[170] Amendment of Sections 1, 2 and 3 by Article 1.2.3 of Royal Decree-Law 1/2015, dated 27th February. Added paragraph 5 by final disposition 5.1 of the Law 20/2015, of July 14.
Added by Article 21.7 of Act 14/2013, dated 27th September.

insolvency practitioner. Once the insolvency mediator accepts the office, the Business Registrar, the Notary Public or the Official Chamber of Commerce, Industry, Services and Navigation shall report the fact by means of certification or copy sent to the competent public registers of assets to be recorded by preventive annotation on the relevant register sheet, as well as to the Civil Register, and to other relevant public registers, and shall notify the competent insolvency Court of the negotiations of its own motion, and shall order publication thereof on the ‘‘Public Insolvency Register’’.

4. Likewise, it shall address a communication by electronic means to the State Agency for Tax Administration and to the General Treasury of the Social Security, through the means that these enable at their respective electronic seats, whether or not they are creditors, that shall record the identification of the debtor with its name and tax identification number, and that of the mediator with its name, Tax Identification Number and electronic address, as well as the date of acceptance of office by it. It shall also send notification to the representatives of the workers, if any, notifying them of their right to appear in the proceedings.

5. For insurers, the designated mediator shall be the Insurance Compensation Consortium.

Article 234. *Summoning creditors.*[171]

1. In the ten days following acceptance of office, the insolvency mediator shall verify the data and the documentation provided by the debtor, being authorised to require him to complement or correct them, or call on him to correct the errors there may be.

Within that same term, he shall check the existence and amount of the claims and shall summon the debtor and the creditors who are recorded on the list submitted by the debtor, or whose existence is known by any other means, to a meeting that shall be held within the two months following acceptance, in the area where the debtor has his domicile. Calling Public Law creditors shall be excluded in all cases.

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[171] Amendment of Sections 1 and 2 and deletion of 4 by Article 1.2.4 of Royal Decree-Law 1/2015, dated 27th February.
Added by Article 21.7 of Act 14/2013, dated 27th September.

2. The calling of the meeting between the debtor and creditors shall be performed by notarial conduct, or by any other means of individual and written communication that assures reception.

Should the electronic address of the creditors be recorded due to it having been provided by the debtor, or if those are provided to the insolvency mediator pursuant to the terms stated in Paragraph c) of Article 235.2, the notification must be made at said electronic address.

3. The calling shall state the place, day and time of the meeting, the purpose of reaching a payment agreement and the identity of each one of the creditors summoned, stating the amount of the claim, the date of generation and maturity and the personal or in rem security constituted.

Article 235. *Effects of commencement of the proceedings.*[172]

1. Once opening the proceedings is applied for, the debtor may continue with his labour, business or professional activities. From presentation of the petition, the debtor shall abstain from performing any act of administration and disposal that exceeds the acts or operations inherent to the business or trade of his activity.

2. Following notice of opening negotiations to the competent insolvency Court, the creditors who may be affected by the possible out of court payment agreement:

a) May not commence or continue any judicial or extrajudicial execution whatsoever on the assets of the debtor while the out of court agreement is being negotiated, up to a maximum term of three months. However, creditors who hold claims with an in rem security that do not befall assets or rights that are necessary for the continuity of the professional or business activity of the debtor, nor his usual place of abode are excepted. If the security befalls the assets stated in the preceding sentence, the creditors may exercise the action in rem to which they are entitled over the assets and rights covered by their security, but, once the proceedings have commenced, such actions in rem shall be halted until the term foreseen in this Paragraph has elapsed.

Once the relevant annotation of the opening of proceedings on the public registers of assets has been performed, no subsequent seizures or seizures following submission of the petition of appointment of the

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[172] Amended by Article 1.2.5 of Royal Decree-Law 1/2015, dated 27th February.
[Added] by Article 21.7 of Act 14/2013, dated 27th September.

insolvency mediator may be made with regard to the assets of the applicant debtor, except if these might be relevant in the course of proceedings conducted by Public Law creditors.

b) They shall abstain from performing any act whatsoever aimed at improving the situation in which they find themselves with regard to the common debtor.

c) They may provide the insolvency practitioner an electronic address to serve them as many communications as may be necessary or convenient, with those sent to the address provided taking full effect.

3. During the term of negotiation of the out of court payment agreement and with regard to the claims that might be affected by it, accrual of interest shall be suspended pursuant to the terms set forth in Article 59.

4. The creditor who has a personal security to settle the credit may exercise such as long as the claim against the debtor has fallen due. In foreclosing the security, the guarantors may not invoke the petition by the debtor to the detriment of the party enforcing.

5. Insolvency proceedings may not be declared against the debtor who is negotiating an out of court agreement, until the term foreseen under Article 5 bis.5 has elapsed.

Article 236. *Proposal of an out of court payment agreement.* [173]

1. As soon as possible, and in any event at least twenty calendar days prior to the date foreseen to hold the meeting, the insolvency mediator shall send the creditors a proposed out of court payment agreement on claims pending payment on the date of the petition. The proposal may contain any of the following measures:

a) A moratorium for a term not exceeding ten years;

b) Write-downs;

c) Assignment of assets or rights to the creditors in payment of all or part of their claims;

d) Conversion of debt into shares or stakes in the debtor company. In this case, the terms set forth in Section 3.ii) 3. of Additional Provision four apply;

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[173] Amended by Article 1.2.6 of Royal Decree-Law 1/2015, dated 27th February.
Added by Article 21.7 of Act 14/2013, dated 27th September.

e) Conversion of debt to participation loans for a term not exceeding ten years, in convertible bonds or subordinated bonds, in loans with interest that may be capitalised, or in any other financial instrument with a rank, maturity or characteristics that are different from the original debt.

Assignment of assets or rights of the creditors in payment may only be included if the assets or rights assigned are not necessary for continuation of the professional or business activity and when their fair value, calculated according to the terms set forth in Article 94.2, is equal to or lower than the claim settled. If it is greater, the difference shall be restored to the assets of the debtor. If they are assets assigned as security, the terms set forth in Article 155.4 shall apply.

In no case may the proposal consist of overall winding-up of the assets of the debtor to settle his debts, nor may it alter the order of preference of claims legally established, except if the creditors displaced specifically consent thereto.

2. The proposal shall include a payment plan with detail of the resources foreseen for its fulfilment and a feasibility plan that shall contain a proposal for regular fulfilment of new obligations, including, where appropriate, setting a sum for maintenance of the debtor and his family, and a plan to continue the professional or business activity carried out. It shall also include a copy of the agreement or application for instalment payment of the Public Law claims, or at least the payment dates thereof, if they are not going to be settled on their maturity dates.

3. During the ten calendar years following submission of the proposed agreement by the insolvency mediator to the creditors, these may present alternative proposals or modification proposals. Once that term has elapsed, the insolvency mediator shall send the creditors the payment and final feasibility plan accepted by the debtor.

4. The insolvency mediator must immediately apply for declaration opening the insolvency proceedings if, before the term mentioned in Section 3 of this Article has elapsed, creditors representing at least the majority of the liabilities that might be affected by the agreement decide not to continue with the negotiations and the debtor is in a situation of actual or imminent insolvency.

Article 237. *The creditors' meeting.*[174]

1. The creditors summoned must attend the meeting, except if they have declared their approval or opposition within the ten calendar days prior to the meeting. With the exception of those who have an in rem security established in their favour, the claims held by the creditor who, having received the calling, does not attend the meeting, and who has not stated his approval or opposition within the ten calendar days preceding, shall be classified as subordinate in the event that, once the negotiation has failed, insolvency proceedings of the common debtor were declared.

2. The payment plan and the feasibility plan may be amended at the meeting, as long as there is no alteration of the payment conditions for creditors who, having declared their approval within the ten calendar days preceding, have not attended the meeting.

Article 238. *The out of court payment agreement.*[175]

1. In order for the out of court payment agreement to be considered accepted, the following majorities shall be necessary, calculated on the basis of the total liabilities that may be affected by the composition:

a) If 60 per cent of the liabilities that might be affected by the out of court payment agreement have voted in favour, the creditors whose claims do not enjoy an in rem security, or the part of the credits that exceeds the value of the in rem security, shall be subjected to a moratorium, either of the principal, of interest, or of any other sum owed, for a term not exceeding five years; to write-downs not exceeding 25 per cent of the amount of the claims, or conversion of debt into participation loans for that same term.

b) If 75 per cent of the liabilities that mighty be affected by the out of court payment agreement have voted in favour, creditors whose claims do not enjoy an in rem security, or the part of the claims that exceeds the value of the in rem security, shall be subjected to a moratoriums for a term of five years or more, but that may not exceed ten years in any case; to write-downs exceeding 25 per cent of the amount of the credits, and the other measures foreseen in Article 236.

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[174] Added by Article 21.7 of Act 14/2013, dated 27th September.

[175] Amended by Article 1.2.7 of Royal Decree-Law 1/2015, dated 27th February. Added by of Article 21.7 of Act 14/2013, dated 27th September.

2. Should the proposal be accepted by the creditors, the agreement shall be recorded in a public deed without delay, which shall close the file the Notary Public has opened. For those opened by the Business Registrar or the Official Chamber of Commerce, Industry, Services and Navigation, a copy of the deed shall be lodged before the Business Registry so the Registrar may close the file. The Notary Public, Registrar or the Official Chamber of Commerce, Industry, Services and Navigation shall notify the insolvency Court that the file has been closed. The fact shall also be notified by certification or copy sent to the competent public registries of assets for cancellation of the annotations performed. The existence of the agreement shall also be published on the Public Insolvency Register by means of an announcement that shall contain the data identifying the debtor, including his Tax Identification Number, the competent Registrar or Notary Public, or the Official Chamber of Commerce, Industry, Services and Navigation, the file number of appointment of the mediator, the name of the insolvency mediator, including its Tax Identification Number, and the indication that the file is available to the creditors concerned at the Business Registry, office of the Notary Public or Official Chamber of Commerce, Industry, Services and Navigation for publicity of its content.

3. If the proposal is not accepted and the debtor were to remain insolvent, the insolvency mediator shall immediately petition the competent Court to declare of the insolvency proceedings open, which the Court shall also order forthwith. Where appropriate, he shall also petition the Court to conclude the insolvency proceedings due to insufficient estate pursuant to the provisions of Article 176 bis of this Act.

4. Out of court agreements adopted by majorities and with the requisites described in this Title may not be subject to insolvency termination in eventual insolvency proceedings by subsequent creditors.

Article 238 bis. *Subjective extension.*[176]

1. The content of the out of court agreement shall bind the debtor and the creditors described in Paragraph 1 of the preceding Article.

2. Creditors with an in rem security, for the part of their claim that does not exceed the value of the security, shall only be bound by the agreement if they have voted in favour of it.

[176] Added by Article 1.2.8 of Royal Decree-Law 1/2015, dated 27th February.

3. Notwithstanding this, creditors with an in rem security who have not accepted the agreement, for the part of their claims that do not exceed the value of the security, shall be bound by the same measures as foreseen in Letters a) and b) of Paragraph 1 of the preceding Article, as long as these have been agreed, with the appropriate scope, by the following majorities, calculated according to the proportion of the value of the collateral accepting out of the total value of the collateral established:

a) Of 65 per cent, in the case of the measures foreseen in Section 1 a) of the preceding Section;

b) Of 80 per cent, in the case of the measures foreseen in Section 1 b) of the preceding Section.

Article 239. *Challenging the agreement.*[177]

1. Within the ten days following publication, creditors who have not been summoned, who have not voted in favour of the agreement, or who previously stated their opposition under the terms established in Article 237.1, may challenge it before the Court that would be competent to hear the insolvency proceedings of the debtor.

2. The challenge shall not suspend execution of the agreement and it may only be based on failure to secure the majorities required to approve the agreement, taking into account, where appropriate, the creditors who, having to attend, had not been summoned, exceeding the limits established by Article 236.1, or on the disproportionate nature of the measures agreed.

3. All the challenges shall be processed jointly as an insolvency procedural plea.

4. The ruling annulling the agreement shall be published on the Public Insolvency Register.

5. The ruling on the challenge shall be subject to a remedy of appeal to the Higher Court with preferential processing.

6. Annulment of the agreement shall give rise to substantiation of the consecutive insolvency proceedings regulated in Article 242.

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[177] Amendment of Sections 2 and 4 by Article 1.2.9 of Royal Decree-Law 1/2015, dated 27th February. Added by Article 21.7 of Act 14/2013, dated 27th September.

Article 240. *Effects of the composition on creditors.*[178]

1. No creditor affected by the agreement may commence or continue enforcement against the debtor for debts prior to notification of opening the proceedings. The debtor may request cancellation of the relevant seizures by the Court that has ordered these.

2. By virtue of the out of court agreement, claims shall be offset, remitted or extinguished as agreed.

3. Creditors who have not accepted, or who have expressed their disapproval of the out of court payment agreement and are affected by it, shall maintain their rights before those jointly and severally obliged with the debtor and against its backers or guarantors, who may not invoke approval of the out of court agreement to the detriment of such creditors.

4. With regard to the creditors who have signed the out of court agreement, maintenance of their rights before the other parties obliged, backers or guarantors, shall depend on what was established in their respective legal relationship.

Article 241. *Compliance and breach of the agreement.*[179]

1. The insolvency practitioner shall supervise compliance with the agreement.

2. If the out of court payment agreement is completely fulfilled, the insolvency mediator shall record this in a notarial certificate that shall be published on the Public Insolvency Register.

3. If the out of court payment agreement is violated, the insolvency practitioner must file insolvency proceedings and the debtor in breach shall be deemed to be in a state of insolvency.

Article 242. *Specialities of consecutive insolvency proceedings.*[180]

1. Consecutive insolvency proceedings status shall be attributed to those declared at the request of the insolvency mediator, of the debtor or of

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[178] Amended by Article 1.2.10 of Royal Decree-Law 1/2015, dated 27th February.
Added by Article 21.7 of Act 14/2013, dated 27th September.

[179] Amendment of Paragraph 2 by Article 1.2.11 of Royal Decree-Law 1/2015, dated 27th February.
Added by Article 21.7 of Act 14/2013, dated 27th September.

[180] Amended by Article 1.2.12 of Royal Decree-Law 1/2015, dated 27th February.
Added by Article 21.7 of Act 14/2013, dated 27th September.

creditors due to impossibility of complying with an out of court payment agreement or due to breach thereof.

Consecutive insolvency proceedings status shall also be attributed to those which are a consequence of annulment of the out of court agreement reached.

2. Consecutive insolvency proceedings shall be governed by the terms provided for abbreviated proceedings, with the following specialities:

1. If the petition for insolvency proceedings is lodged by the debtor or the insolvency mediator, it must be accompanied by an early composition proposal, or a winding-up plan that shall be governed, respectively, by the terms set forth in Chapters I and II of Title V.

The petition filed by the insolvency mediator shall also be accompanied by the following documents:

a) The report referred to in Article 75, which shall be given the publicity foreseen in Article 95, after the term to notify claims has elapsed and prior to inclusion of the necessary corrections.

b) In the case of insolvency proceedings of a natural person, a pronouncement must also be issued on whether the legally established requisites are met for the benefit of exoneration of the unsettled liabilities under the terms foreseen in Article 178 bis or, if appropriate, on opening the classification Section.

Should the office of insolvency practitioner befall a person other than the insolvency mediator, or if the petition for insolvency proceedings has been lodged by the debtor or by a creditor, the report to which Article 75 refers shall be lodged within ten days following the term to notify claims having elapsed.

If the insolvency proceedings are lodged at the request of the creditors, the debtor may lodge an early composition proposal or a winding-up plan within the fifteen days following the declaration of insolvency proceedings.

2. Except for just cause, the Court shall appoint the insolvency mediator of the insolvency proceedings in the order declaring the insolvency proceedings open, who may not receive more remuneration from this that has been established in the out of court mediation proceedings. In consecutive insolvency proceedings, the principle of confidentiality shall no longer apply to the insolvency mediator who continues with the functions of insolvency practitioner.

The appointment of an administrator, whether or not the insolvency mediator is appointed, shall be performed by the Court in the order declaring the insolvency proceedings open.

3. The expenses of the out of court agreement and other claims that are considered as such pursuant to Article 84, that have been generated during the out of court proceedings and that have not been settled shall also be considered claims against the estate.

4. The term of two years to determine the acts that may be revoked shall be counted from the date of application by the debtor to the Business Registrar, Notary Public or Official Chambers of Commerce, Industry, Services and Navigation.

5. Holders of claims who have signed the out of court agreement need not apply for recognition.

6. Creditors may challenge the report of the insolvency practitioner within the term established in Article 96, formalising the challenge pursuant to the terms established in Article 191.4.

7. If an early composition proposal has been admitted to consideration, the procedure foreseen in Article 191 bis shall be followed.

8. Should the debtor or mediator have requested winding-up, and in cases of it not being admitted to consideration or of failure to lodge or lack of approval or breach of the early composition proposal, the winding-up phase shall necessarily and simultaneously be opened, governed by the terms of Title V. If not performed by the debtor, the insolvency practitioner shall submit a winding-up plan within the non-extendable term of ten days from opening the winding-up phase.

Within the term for allegations to the winding-up plan, the insolvent debtor may also submit remarks on the concurrence of the requisites demanded to grant the benefit of exoneration of the unsettled liabilities of the insolvent debtor who is a natural person. Creditors may also apply for opening of the classification Section by reasoned writ.

9. In the case of a natural person debtor, if the insolvency proceedings are classified as fortuitous, in the ruling concluding the insolvency proceedings, the Court shall declare exoneration of the liabilities not settled in the winding-up phase, as long as the requisites are fulfilled and with the effects of Article 178 bis.

Article 242 bis. *Specialities of out of court payment agreements by natural persons who are not entrepreneurs.* [181]

1. An out of court payment agreement by a natural person who is not an entrepreneur shall be governed by the terms set forth under this Title, with the following specialities:

1. The application shall be lodged before the Notary Public of the domicile of the debtor.

2. After noting the sufficiency of the documentation produced and the appropriateness of the negotiation of the out of court payment agreement, the Notary Public shall, of his own motion, notify the Court that is competent to declare the insolvency proceedings open of the opening of the negotiations.

3. The Notary Public shall be the driving force of the negotiations between the debtor and creditors, except if he were to appoint an insolvency mediator, should he consider this to be convenient. The appointment of the insolvency mediator shall be performed within five days following receipt of the application by the debtor by the Notary Public, and the mediator shall accept the office within the term of five days.

4. The notarial or registry actions described in Article 233 shall not accrue any tariff remuneration whatsoever.

5. The term to check the existence and amount of the claims and summon the meeting between debtor and creditors shall be fifteen days from the Notary Public being notified of the application, or ten days from acceptance of the commission by the mediator, if a mediator has been appointed. The meeting must be held within a term of thirty days from it being called.

6. The proposed resolution shall be submitted at least fifteen calendar days prior to the date foreseen to hold the meeting, and the creditors may submit alternative or amendment proposals within the ten calendar days following receipt thereof.

7. The proposed agreement may only contain the measures foreseen in Letters a), b) and c) of Article 236.1.

[181] Added by Article 1.2.13 of Royal Decree-Law 1/2015, dated 27th February.

8. The term for suspension of the foreclosures foreseen in Article 235 shall be at least two months from notification of opening of the negotiations to the Court, except if the out of court payment agreement is adopted or rejected earlier, or if the declaration opening the insolvency proceedings ensues.

9. If, at the end of the two month term, the Notary Public, or if appropriate, the mediator, considers it is not possible to reach an agreement, he shall lodge the insolvency proceedings of the debtor within the ten following days, submitting to the Court a reasoned report of his conclusions.

10. The consecutive insolvency proceedings shall open the winding-up phase directly.

2. The implementing regulations shall determine the liability regime of the Notaries Public who intervene in the out of court payment agreements of natural persons who are not entrepreneurs. Their remuneration shall be that foreseen for insolvency mediators.

Additional Provision 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 write-down of debts and moratorium 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 be understood to refer to persons subject to insolvency proceedings in which the winding-up phase has already been opened.

Additional Provision two. *Special regime applicable to credit institutions, investment service companies and insurance undertakings.*[182]

1. In insolvencies of credit institutions or entities that are legally assimilated thereto, investment services firms and insurance companies, as well as entities that are members of official securities markets and entities participating in the securities clearing and liquidation systems, the specialities for insolvency situations established in their specific legislation

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[182] Paragraph 2.h) amended by Final Provision 5.2 of Act 20/2015, dated 14th July. Amended by Final Provision 5 of Act 11/2015, dated 18th June.
Addition of Section 2.d of Act 5/2015, of 27th April.
Addition of Letter l) to Section 2 by Final Provision 7.1 of Act 26/2013, dated 27th December.
Amendment of Paragraph 2.k) by Final Provision 6 of Act 9/2012, dated 14th November.
Amendment of Paragraph 2.k) by Final Provision 6 of Royal Decree-Law 24/2012, dated 31st August.
Addition of Paragraph 2.k) by Final Provision 5 of Royal Decree-Law 9/2009, dated 26th June.
Amendment of Paragraph 2.a) by Article 8.4 of Royal Decree-Law 3/2009, dated 27th March.
Amendment of Paragraph 2 by Final Provision 4 of Act 30/2007, dated 30th October.
Amendment of Paragraph 2 by Final Provision 2 of Act 25/2005, dated 24th November.
Amendment of Paragraph 2 by Final Provision 3.2 of Act 6/2005, dated 22nd April.
Amendment of Paragraph 2 by Additional Provision 3 of Royal Decree-Law 5/2005, dated 11th March.
Addition of Paragraph 3 by Additional Provision 3 of Act 36/2003, dated 11th November.

shall apply, except those related to the composition, the appointment and operation of the insolvency practitioners under Insolvency Law.

2. The specifications of the following laws are deemed 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 12, 36 quater, 44 bis, 44 ter, 58 and 70 ter.2f).

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 collateral 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, on regulation of capital risk companies and their management firms.

g) Act 41/1999, dated 12th November, on payment systems and the settlement systems of securities.

h) Titles VI and VII of Act 20/2015, dated 14th July, on the ordering, supervision and solvency of insurance and re-insurance entities; 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) Act 11/2015, dated 18th June, on recovery and resolution of Credit institutions and firms of investment services.

l) Article 34 of Act 14/2013, dated 27th September, on supporting entrepreneurs and their internationalisation.

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 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.

Additional Provision two bis. *Special regime applicable to situations of insolvency of sporting societies.*[183]

In the insolvency proceedings of sporting entities that participate in official competitions, the specialities for such insolvency situations that are foreseen in the sports legislation and its implementing regulations shall be applicable. In any event, the fact such entities being are subjected to this Act shall not prevent application of the legal provisions governing participation in the competition.

Within six months following this Act coming into force, the Government shall submit a bill to Parliament on the specialities to deal with insolvency of professional sporting companies and associations with such classification pursuant to Act 10/1990, dated 15th October, on Sports, and on the salary claims by their athletes.

Additional Provision two ter. *Special regime applicable to situations of insolvency of public works and services concession companies, or public administrations contractors.* [184]

In insolvency proceedings of public works and services concession companies or public administrations contractors, the specialities

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183 Addition by Article 111 of Act 38/2011, dated 10th October.

184 Addition by Sole Article One.21 of Act 9/2015, dated 25th May.
Please bear in mind that this amendment shall be applicable to all the administrative contracts that have not been extinguished, whatever their date of award, regardless of the phase the insolvency proceedings are at, pursuant to Transitional Provision 1.8 thereof.
Addition by Article 1.10 of Royal Decree-Law 11/2014, dated 5th September.
Please refer to, with regard to the transitory regime, Transitional Provision 1.4 of said Royal Decree-Law.

established in the public sector contracts legislation and in the specific legislation regulating each type of administrative contract shall apply.

Likewise, in these insolvency proceedings, it shall be resolved to accumulate procedural processes already initiated when composition proposals are formulated that affect all of these; the public administrations, including the bodies, entities and mercantile companies linked to or dependent on them being authorised to present composition proposals. The approval of the proposed composition submitted may be subjected to the condition that the composition proposals submitted in the remaining insolvency proceedings accumulated as established in this Provision must also be approved.

The competence to process the insolvency proceedings accumulated to which this Provision refers shall be regulated pursuant to Article 25 bis.3 of this Act.

Additional Provision 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 was approved by Royal Legislative Decree 1564/1989, dated 12th December, and Act 21/1995, dated 23rd March, on Private Limited Companies, in order to adapt them to this Act.

Additional Provision four. *Homologation of refinancing agreements.*[185]

1. A refinancing agreement may be judicially homologated if it has been signed by creditors who represent at least 51 per cent of the financial liabilities, fulfilling the conditions foreseen in Letter a) and Numbers 2 and 3 of Letter b) of Section 1 of Article 71 bis, at the moment of adoption. Resolutions adopted by the majority described may not be subject to termination pursuant to the terms set forth in Paragraph 13 of this Provision. The majorities required in the following Paragraphs of this Provision shall be required in order to extend its effects. The majorities required in the

[185] Amendment of Sections 1 and 2 by Sole Article Four.4 of Act 9/2015, dated 25th May.
Amended by Article 23 of Act 17/2014, dated 30th September.
Amended by Article 13 of Royal Decree-Law 4/2014, dated 7th March.
Amendment of Paragraph 1 by Final Provision 7.2 of Act 26/2013, dated 27th December.
Amendment of Paragraph 1 by Article 31.2 of Act 14/2013, dated 27th September.
Amended by Article .112 of Act 38/2011, dated 10th October.
Added by Article 8.3 of Royal Decree-Law 3/2009, dated 27th March.

following Paragraphs of this Provision shall be required in order to extend its effects.

For the purposes of calculation of the majorities indicated in this Provision, financial liabilities held by creditors who have the status of an especially related person pursuant to Section 2 of Article 93 shall not be taken into account but, notwithstanding this, such creditors may be affected by the homologation foreseen in this Additional Provision.

For the purposes of this Provision, holders of any financial debts shall be considered financial liability creditors, regardless of whether or not they are subject to financial supervision. Such item excludes creditors for labour credits, creditors for commercial operations and creditors for Public Law liabilities.

For the purposes of calculation of the necessary majorities for judicial homologation of a refinancing agreement, and extension of its effects to not participating or dissident creditors, it shall be construed, in the case of agreements subject to a syndication regime or clause, that the creditors subscribe the refinancing agreement when a vote in favour thereof is issued by those representing at least 75 per cent of the liabilities represented by the agreement, except if the rules that regulate the syndication establish a lower majority, in which case the latter shall prevail.

A homologated refinancing agreement may be voluntarily adhered to by the other creditors who are not holders of financial liabilities or Public Law liabilities. Such adhesions shall not be taken into account for the purposes of calculation of the majorities foreseen in this Provision.

2. For the purposes of this Provision, the in rem security value shall be deemed as that enjoyed by each creditor arising from deducing from the nine tenths of the fair value of the asset on which that security is constituted, the debts pending that enjoy the pre-emptive guarantee to the same asset, without the value of the security being lower than zero in any case, nor greater than the value of the credit held by the relevant creditor nor greater that the value of the maximum mortgage or pledge liability agreed.

Only for these purposes, fair value shall be construed as:

a) In the case of securities listed on an official secondary market or another regulated market, or in monetary market instruments, the average weighted price which has been negotiated in one or several regulated markets in the last quarter prior to the date of commencement

of the negotiations to reach the refinancing agreement, pursuant to the certification issued by the company governing the official secondary market or the regulated market concerned.

b) In the case of real estate, that resulting from the report issued by a recognised appraisal company registered with the Special Register at the Bank of Spain.

c) In the case of assets other than those stated in the preceding Letters, that resulting from the report issued by an independent expert pursuant to the valuation principles and provisions generally recognised for such assets.

The reports foreseen in Letters b) and c) shall not be necessary when that value has been determined by an independent expert, within the six months prior to the date of commencement of the negotiations to reach the refinancing agreement or when cash, current accounts, electronic money or fixed-term deposits are involved.

If new circumstances arise that may significantly modify the fair value of assets, a new report by an independent expert must be submitted.

The appointment of the independent expert in the cases foreseen in this Section shall be performed pursuant to Article 71 bis.4.

In the case of the security in favour of a same creditor befalling several assets, the rule in Paragraph one shall be added to the final result applied to each one of the assets, without the joint value of the collateral exceeding the value of the relevant claim.

In the case of a collateral constituted indivisibly in favour of one or more creditors, the relevant value of the collateral for each creditor shall be that arising from applying to the total value of the collateral the proportion assigned to each one of them, according to the rules and covenants that govern the indivisibility, without prejudice to the rules that are applicable to syndicated agreements in each case.

3. Creditors holding financial liabilities who have not signed the refinancing agreement, or who have expressed disapproval thereof, and whose claims do not enjoy an in rem security, or the part of the claims that exceed the value of the in rem security, shall have the following effects agreed in the refinancing agreement extended to them by the judicial homologation:

a) If the agreement has been signed by creditors representing at least 60 per cent of the financial liabilities, the moratoriums, whether of principal, of interest, or of any other sum owed, with a term not exceeding five years, or conversion of the debt to participation loans during the same term.

b) If the agreement has been signed by creditors representing at least 75 per cent of the financial liabilities, the following measures:

1. A moratorium, with a term of five years or more, but in no case greater than ten;

2. Write-downs;

3. Conversion of the debt to shares or stakes in the debtor company. In that case:

i) Creditors who have not signed the refinancing agreement, or who have expressed their disapproval thereof, may opt between conversion of the debt to capital, or a write-down equivalent to the amount of the face value of the shares or stakes that it shall be relevant for them to underwrite or take on and, where appropriate, the relevant issue or undertaking premium. If there is a lack of specific indication, it shall be understood that said creditors opt for that write-down.

ii) The agreement to increase the capital of the debtor required to capitalise the credits must be adopted by the majority foreseen, respectively, for limited liability companies and public limited companies under Articles 198 and 201.1 of the Consolidated Text of the Capital Companies Act, approved by Royal Legislative Decree 1/2010, dated 2nd July. For the purposes of Article 301.1 of said Consolidated Text of the Capital Companies Act, the financial liabilities shall be understood to be liquid, mature and callable.

4. The conversion of debt into participation loans for the term of five years or more, but in no case exceeding ten, or into convertible bonds or into subordinate loans or into capital interest loans, or into any other financial instrument with a different rank, maturity or characteristics to the original debt.

5. Assignment of assets or rights in the creditors in payment of all or part of the debt.

4. The judicial homologation shall cover creditors holding financial liabilities who have not signed the refinancing agreement, or who have expressed

their disapproval thereof, for the part of the claim that does not exceed the in rem value, with the effects stated in the previous Section, as long as one or more of those effects have been decided, with the scope so resolved, by the following majorities, calculated according to the proportion of the value of the collateral accepting on the total value of the collateral established:

a) Of 65%, in the case of the measures foreseen in Letter a) of the preceding Section;

b) Of 80%, in the case of the measures foreseen in Letter b) of the preceding Section.

5. The competence to decide that homologation shall lie with the mercantile court that, where appropriate, is competent to declare the insolvency proceedings open.

The petition may be formulated by the debtor or by any creditor who has signed the refinancing agreement and shall be accompanied by the refinancing agreement adopted, by a certification by the auditor on the sufficiency of the majorities required to pass the resolutions for the purposes foreseen in each case, by the reports that have been issued, as appropriate, by independent experts appointed according to Article 71 bis.4 and by the certification of the agreement to increase capital in the event of it already having been adopted. If a certification, appraisal or report of those foreseen in Paragraph 2 of this Provision has been issued, it shall also be attached to the petition. The Court, having examined the homologation petition, shall hand down an order admitting it to consideration and it shall declare a moratorium of unique enforcements until the homologation is resolved.

The Court Clerk shall order publication of the order on the Public Insolvency Register by means of an announcement that shall contain the data that identifies the debtor, the competent court, the number of the judicial homologation proceedings, the date of the refinancing agreement and the effects of the measures these contain, stating that the agreement is available to creditors at the competent Mercantile Court where it has been deposited for publicity, even by telematic means, of its content.

6. The Court shall grant the homologation as long as the agreement complies with the requisites foreseen in Paragraph one of the Provision and it shall declare the extent of the relevant effects when the auditor certifies the concurrence of the majorities required in Sections three or four.

The ruling approving the homologation of the refinancing agreement shall be adopted by urgent procedure within the term of fifteen days and shall be published by announcement in the Public Insolvency Register and in the Official State Gazette, by means of a statement that shall contain the data foreseen in the last Paragraph of the preceding Section.

7. Within fifteen days following the publication, creditors holding financial liabilities affected by the judicial homologation who have not signed the homologation agreement, or who have expressed their disapproval thereof, may challenge it. The reasons to challenge shall be limited exclusively to the concurrence of the percentages required in this provision, and the assessment of the disproportionate nature of the sacrifice required.

All the challenges shall be processed jointly as an insolvency procedural plea and the debtor and rest of the creditors who are parties to the refinancing agreement shall be notified of this so that they may oppose the challenge. The ruling that resolves the challenge to the homologation, which shall be handed down within a term of 30 days, shall not be liable to a remedy of appeal and the same publicity foreseen for the homologation resolution shall be given thereto.

8. The homologation of the refinancing agreement takes effect, in all cases and without the possibility of suspension, from the day following publication of the judgment in the Official State Gazette.

9. The creditors holding financial liabilities who have not signed the homologation agreement, or who have expressed their disapproval thereof but who are affected by the homologation, shall preserve their rights against those bound jointly and severally with the debtor and before its backers and guarantors, who may not invoke neither the approval of the refinancing resolution nor the effects of the homologation to their detriment. With regard to the financial creditors who have signed the refinancing agreement, maintenance of their rights before the other parties bound, backers or guarantors shall depend on what has been decided as to the respective legal relation.

10. In enforcement of the homologated refinancing agreement, the Court may order cancellation of the seizures carried out in proceedings to enforce debts affected by the refinancing agreement.

11. In the event of the debtor not complying with the terms of the refinancing agreement, any creditor, whether or not he has adhered to it, may apply to the same Court that issued the homologation, for declaration of breach

thereof, through the equivalent procedure to the insolvency plea, that shall be notified to the debtor and to all the creditors who have appeared in order for them to be able to oppose it.

Once the breach has been declared, the creditors may instigate the declaration opening the insolvency proceedings or commence individual foreclosures. The judgment resolving the incident shall not be subject to appeal.

If the in rem securities are foreclosed, and except if it is agreed in the agreement that in the event of breach, its termination shall take place, the following rules shall apply:

a) If the amount obtained from the foreclosure were to exceed the original debt, or the balance pending thereof, had the agreement not existed, the difference between the first and second amount shall be considered as an excess for the purposes of Articles 674 and 692 of the Civil Procedure Act, Article 133 of the Mortgage Act and related provisions.

b) If the sum obtained from the enforcement is lower than the original debt, or the balance pending thereof had the agreement not been reached, but higher than that resulting from applying Paragraph 4 above, it shall be considered that there is no excess or remainder, the creditor taking charge of the whole sum resulting from the foreclosure.

c) If the sum resulting from the enforcement is lower than that resulting from applying Paragraph 4 above, the difference between both shall be considered a remainder of the credit.

12. Once a homologation is applied for, another may not be requested by the same debtor for the term of one year.

13. Judicially homologated refinancing agreements may not be subject to termination actions. Exercise of the other challenge actions shall be subject to the terms set forth in Article 72.2.

Additional Provision five. *Public deeds of formalisation of refinancing agreements.*[186]

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

[186] Added by Article 113 of Act 38/2011, dated 10th October.

Provision four, the relevant tariffs for "Documents without amount" shall apply, as foreseen in Number 1 of Royal Decree 1426/1989, of 17th November, that approves the tariff for Notaries Public. The folios of the original deed and the first copies issued shall not accrue any sum whatsoever as of the tenth folio inclusive.

Additional Provision six. *Corporate group.* [187]

For the purposes of this Act, a corporate group is understood to be as set forth in Article 42.1 of the Code of Commerce.

Additional Provision seven. *Treatment of Public Law credits in the case of an out of court payment composition.*[188]

1. The terms set forth in Title X of this Act shall not be applicable to Public Law credits for collection management to which the provisions contained in Act 58/2003, dated 17th December, General on Taxes, in Act 47/2003, dated 26th November, General on Budgets, or Royal Legislative Decree 1/1994, dated 20th June, that approves the Consolidated Text of the General Social Security Act, shall be applied.

2. The natural or legal person debtor referred to in Article 231 who has debts of those foreseen in the preceding Section, after admission of the petition for an out of court payment composition regulated under Article 232, shall apply to the competent Public Administration for a postponement or instalment payment covering the debts pending payment on that date, as long as its payment is not foreseen within the term established in the applicable provisions.

3. In the case of debts with the Public Treasury, the processing of the applications for postponement or instalment payment referred to in the preceding Paragraph shall be governed by the provisions set forth in the General Tax Act and its implementing regulations, with the following specialities:

a) The resolution on postponement or instalment payment may only be handed down when the out of court payment composition has been formalised. Notwithstanding this, it shall be possible to resolve before that circumstance arises, if three months have elapsed from

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187 Added by Article 114 of Act 38/2011, dated 10th October.

188 Added by Article 21.8 of Act 14/2013, dated 27th September.

presentation of the application without the existence of such a composition being published in the Official State Gazette or the insolvency proceedings being declared open.

b) The resolution granting the postponement or instalment payment, except for reasons of amount discretionally appreciated by the Administration determining the contrary, shall use the maximum time reference considered in the out of court payment composition, although the frequency of the terms may be different.

The postponements and instalment payments previously granted and in force on the date of lodging the petition to postpone or split the payment referred to in Paragraph 2 above, shall continue to have full effect, without prejudice to the petitions for amendment of their conditions that may submitted, in which case the debts to which they refer shall be included in that application.

In all cases, the application for postponement or instalment payment shall also include the debts included in the petitions pending resolution on the date of it being lodged.

4. In the case of debts to the Social Security, the processing of applications for postponement or split payment referred to above in Paragraph 2 shall be governed by the terms set forth in the Consolidated Text of the Social Security Act and its implementing regulations, with the following specialities:

a) The decision resolving the instalment may only be handed down when the out of court payment composition has been formalised. Notwithstanding this, it shall be possible to resolve it before such a circumstance arises, if three months elapse from the application being submitted, without the existence of such a composition having been published in the Official State Gazette or insolvency proceedings having been declared open.

b) The decision granting the postponement, except for reasons of amount discretionally appreciated by the Administration determining the contrary, shall use the maximum time reference considered in the out of court payment composition, although the frequency of the terms may be different.

In the event of the subject responsible having a payment postponement in force on the date of lodging the petition for the out of court composition, it shall continue to take full effect, without prejudice to the reconsiderations or amendments that may be requested for the purposes of including any

current debt period in the instalments, or altering any of the repayment conditions, respectively.

Additional Provision eight. *Remuneration of insolvency mediators.*[189]

The rules established, or that may be established in the future for remuneration of insolvency practitioners, shall apply to remuneration of the insolvency mediators referred to in this Act.

Transitional Provision one. *Insolvency proceedings in process.*

Proceedings pertaining to receiverships, bankruptcies, write-downs of debts and moratoriums of payment or insolvencies that are pending at the time this Act comes into force shall remain governed until their conclusion by the previous law, with no further exceptions than the following:

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 provision refers to the proceedings of Article 393 of the Civil Procedure Act; that a remedy of appeal to the Higher Court 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 pursuant to the provisions established in the aforesaid Act.

2. A judicial resolution declaring a breach of an approved composition in any of the insolvency proceedings to which this Transitional Provision refers and that becomes final after the coming into force 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 therein. These insolvency proceedings shall be followed at the same Court that has dealt the preceding insolvency proceedings.

3. In a bankruptcy of any kind by companies, no proposed composition may be approved before the procedure to recognise claims has concluded.

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[189] Added by Article 21.9 of Act 14/2013, dated 27th September.

4. Composition proposals that are formulated after this Act has come into force in any of the insolvency proceedings to which this Transitional Provision refers shall fulfil the requisites established in Articles 99 and 100 hereof. In processing and approving 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 this Act comes into force may be appealed pursuant to the specialities foreseen in Paragraph 197.

Transitional Provision two. *Mercantile Courts of Law.*

Until such time as the Mercantile Courts of Law 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.

Sole Repealing 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, concessionaries of canals and of the remaining concessionaries of public works;

2. The Act dated 19th September 1896, on compositions between railway companies and their creditors, without reaching the state of receivership;

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 of 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 Mortgages;

11. Article 568 of Act 1/2000, dated 7th January, on Civil Procedure;

12. Paragraph 10 of Article 51 of the Workers' Statute.

4. Likewise, all provisions whatsoever opposed to or incompatible with the provisions contained in this Act are hereby repealed.

Final Provision 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."

Final Provision two. *Reform of the Code of Commerce.*[190]

The Code of Commerce is hereby amended as follows:

1. Paragraph 2 of Article 13 shall henceforth be drafted as follows:

"2. Persons who are barred pursuant to the Insolvency Act, by a final judgment while the term of barring set in the judgment classifying the insolvency has not elapsed. If the insolvent debtor has been authorised to continue managing the company, or as an administrator of the insolvent company, the effects of the authorisation shall be limited to the terms specifically foreseen in the court ruling containing such".

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

[190] Amendment of Paragraph 1 and repeal of 7 by Article 115 and Sole Repealing Provision of Act 38/2011, dated 10th October.

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."

Final Provision three. *Reform of the Civil Procedure Act.*[191]

Act 1/2000, dated 7th January, on Civil Procedure, is hereby amended as follows:

1. 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.".

2. 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".

3. Subparagraph Two of Paragraph 1.2 of Article 98 shall henceforth be drafted as follows:

"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 foreclosure."

[191] Amendment of Paragraph 7 by Article 116 of Act 38/2011, dated 10th October.

4. 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 execution has been applied for, an attested copy of what is necessary for such execution 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:

"2. The Court Clerk shall decree suspension of the foreclosure, at whatever state it may be, when it is notified that the party subject to enforcement has become subject to insolvency proceedings. Commencement of the foreclosure and continuation of the proceedings already commenced, that shall solely affect mortgaged and pledged assets shall be subject to the provisions established in the Insolvency Act."

Final Provision four. *Reform of the Legal Aid Act.*

Paragraph d) by Article 2 of Act 1/1996, of 10th January, on Legal Aid, is hereby amended and 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".

Final Provision five. *Supplementary Procedural Law.*[192]

The provisions contained in the Civil 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 Procedure Act shall apply with regard to the formal and substantive organisation of the procedure.

Final Provision 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 Procedure Act.

Final Provision 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 foreclosure 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."

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[192] Amended by Article 17.49 of Act 13/2009, dated 3rd November.

Final Provision 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:

1. 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."

Final Provision nine. *Reform of the Naval Mortgages 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 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."

2. A new Paragraph is hereby 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."

Final Provision 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:

"1. Except in the case of insolvency proceedings, no direct judicial or extrajudicial composition may be made affecting the rights of the Public Treasury, nor may disputes thereon be submitted to arbitration, except by means of a Royal Decree issued by the Council of Ministers, with prior hearing of the Council of State in plenary session.

2. Subscription and entering into compositions by the Public Treasury within the scope of insolvency proceedings shall only require authorisation by the Ministry of Finance, and that competence may be delegated to the bodies of the State Tax Administration Agency.

Notwithstanding this, authorisation of the competent body of the State Tax Administration Agency shall be sufficient to sign and enter into such compositions when they affect claims whose collection management is its remit pursuant to the law or by virtue of an agreement, observing the terms agreed in the latter case. In the case of the Salary Guarantee Fund, subscription and entering into compositions within the scope of insolvency proceedings shall require authorisation by the competent body pursuant to the provisions governing the autonomous agency.

3. The terms set forth in the preceding Section shall be applicable for subscription of the compositions foreseen in the Insolvency Act or, where appropriate, to adhere to these, as well as to resolve, with agreement with the debtor and with the collateral deemed appropriate, unique payment conditions that are not more favourable to the debtor than those established in the composition for the other claims. Likewise, claim offsets may be agreed as referred to in that Paragraph under the terms foreseen in the tax laws."

Final Provision eleven. *Amendment of Act 58/2003, dated 17th December, General Tax Law.*[193]

1. Paragraph 2 of Article 77 shall henceforth be drafted as follows:

"2. In insolvency proceedings, tax credits shall be subject to the terms established in Act 22/2003, dated 9th July, on Insolvency."

2. Article 164 shall be drafted as follows:

"Article 164. Concurrent proceedings.

1. Without prejudice to respect for the pre-emptive order for collection of claims established by the law according to their nature, in the case of concurrent foreclosure proceedings to collect taxes with other foreclosure proceedings, either unique or universal, judicial or non judicial, the preference for enforcement of the assets seized in the proceedings shall be determined according to the following rules:

1. When this concurs with other unique enforcement processes or proceedings, the enforcement proceeding shall be preferential if the seizure made in the course of the enforcement proceedings is older.

2. When it is concurrent with other insolvency or universal enforcement processes or proceedings, the enforcement proceeding shall be preferential for foreclosure of the assets or rights seized therein, as long as the seizure decided therein has been performed prior to the date of declaration of opening the insolvency proceedings.

In both cases, the date of the act of seizure of the asset or right shall apply.

2. In the case of insolvency proceedings with creditors, the terms set forth in Act 22/2003, dated 9th July, on Insolvency, shall apply and, where appropriate, Act 47/2003, dated 26th November, General on Budgets, without that preventing direct issue of the relevant order of enforcement and accrual of the surcharges of the executive period if the conditions for such arise prior to the date of declaration of opening the insolvency proceedings or if these are claims against the estate.

3. The Courts of Law shall collaborate with the Tax Administration, providing the collection bodies the data on the insolvency or universal foreclosure processes that are required to exercise its functions.

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[193] Amended by Article 117 of Act 38/2011, dated 10th October.

That duty of collaboration shall also be held, with regard to their proceedings, by any administrative bodies with competence to open enforcement proceedings.

4. The preferential status of the tax credits grants the Public Treasury the right to abstain in insolvency proceedings. Notwithstanding this, in the processing of such procedures, the Public Treasury may sign the agreements or compositions foreseen in the insolvency laws, as well as reach agreements with the debtor and with the collateral deemed appropriate, on unique payment conditions, that may not be more favourable to the debtor than those recorded in the composition or agreement that puts an end to the judicial proceedings. That preference may be exercised under the terms foreseen in the insolvency legislation. Offset of such claims may also be ordered under the terms foreseen in the tax laws.

Only authorisation by the competent body of the Tax Authorities shall be required to sign and enter into the agreements and compositions to which the preceding Paragraph refers."

Final Provision eleven bis. *Reform of the Value Added Tax Act.*[194]

Act 37/1992, dated 28th December, on Value Added Tax, is hereby amended under the following terms:

1. A Letter e) is hereby introduced to Article 84.1.2., that shall read as follows:

"e) In the case of deliveries of real estate performed as a consequence of insolvency proceedings."

2. Additional Provision six shall henceforth be drafted as follows:

"Additional Provision six. Administrative and judicial mandatory enforcement proceedings.

In mandatory administrative and judicial enforcement proceedings, the awardees who are entrepreneurs or professionals for the purposes of that tax are empowered, in name and on account of the taxpayer, and with regard to deliveries of assets and provisions of services subject to these, arising from such, to:

[194] Added by Article 118 of Act 38/2011, dated 10th October.

1. Issue the invoice that documents the operation and that is passed on in the tax quota, to file the relevant tax return settlement and to deposit the resulting tax amount.

2. Where appropriate, to renounce the exemptions foreseen in Article 20.2.

The conditions and requisites to exercise such entitlements shall be determined by the implementing regulations.

The terms set forth in this provision shall not apply to delivery of real estate in which the taxpayer thereof is their receiver pursuant to the terms set forth in Letter e) of Article 84.1.2."

Final Provision eleven ter. *Amendment of Act 20/1991, dated 7th June, amending the tax aspects of the Financial Tax Regime of the Canary Islands.* [195]

Addition of a new Letter g) to Article 19.1.2. of Act 20/1991, dated 7th June, amending the tax aspects of the Financial Tax Regime of the Canary Islands, that shall be drafted as follows:

"g) In the case of deliveries of real estate performed as a consequence of insolvency proceedings."

Final Provision 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 hereby 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."

2. A Paragraph 5 is hereby added to Article 46, drafted as follows:

"5. It shall be deemed that the value set in the resolutions by the insolvency Court for the properties, goods and assets conveyed matches their real value, thus verification of values, in conveyance of properties, goods and rights that arise from insolvency proceedings,

[195] Added by Article 119 of Act 38/2011, dated 10th October.

including vesting of claims foreseen in a judicially approved composition and disposals of assets carried out in the winding-up phase, shall not be effected."

Final Provision 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:

1. 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."

2. Paragraph "b" of Article 111 is henceforth drafted as follows:

"b) The declaration of insolvency proceedings or the declaration of insolvency in any other proceedings."

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 collateral of the completion thereof."

Final Provision fourteen. *Reform of the Workers' Statute.*[196]

The Consolidated Text of the Workers' Statute, 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 security, 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 exercise 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 Section is hereby added to Chapter III of Title I that, as Section 5, and under the Title "Insolvency Proceedings", shall comprise the following Article:

"Article 57 bis. Insolvency proceedings.

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[196] Addition of Paragraph 3 by Article 120 of Act 38/2011, dated 10th October.

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. Paragraph 3 of Article 33 is hereby amended and shall henceforth be drafted as follows:

"3. In the case of insolvency proceedings, from the moment of knowledge of the existence of labour claims arising, or if the possibility of such existing is assumed, the Court, on its own motion or at the request of the party, shall summon the FOGASA, otherwise the latter shall not honour the obligations set forth in the preceding Sections. The Fund shall appear in the proceedings as subsidiary party legally liable for payment of such claims; being authorised to instigate whatever is in its legal interests and without prejudice to, after this, continuing as a creditor in the proceedings. For the purposes of payment by the FOGASA of the sums recognised to workers, the following rules shall be taken into account:

One.

Without prejudice to cases of direct liability of the agency in the cases legally established, recognition of the right to compensation shall require the claims by the workers to be included on the list of creditors or, where appropriate, recognised as debts against the estate by the competent body of the insolvency proceedings for such purposes, in an amount equal to or greater than that demanded of FOGASA, without prejudice to the obligation of such body to reduce the amount applied for or to reimburse the FOGASA the relevant sum when the recognised amount on the definitive list is lower than that requested or that already received.

Two.

Compensations to be paid by FOGASA, regardless of what may be decided in the insolvency proceedings, shall be calculated on the basis of twenty days per year of employment, with the maximum limit of one yearly pay, without the daily salary taken as the base for calculation exceeding three times the minimum interprofessional salary, including the proportional part of extraordinary pays.

Three.

In the event of the workers due to receive such compensations applying to FOGASA for payment of the part of the compensation not paid by the employer, the limit of the compensatory provision to be paid by the Fund shall be reduced by the sum already received by them."

Final Provision 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."

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 new Paragraph 5 is hereby 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 new Paragraph 5 is hereby 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 hereby 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."

Final Provision sixteen. *Reform of the General Social Security Act.*[197]

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

[197] Amendment of Paragraph 2 and addition of 5 by Article 122 of Act 38/2011, dated 10th October.

Code. The other Social Security claims shall enjoy the same order of preference established in Section 2 of 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.

Notwithstanding the order of precedence for collection of claims established by Law, when the administrative collection proceedings coincide with other singular foreclosure 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. Compromises of Social Security Rights.

No judicial or extrajudicial compromise may be made over Social Security rights, nor may disputes arising with regard to these be submitted to arbitration, other than by Royal Decree adopted by the Council of Ministers, after hearing the Council of State.

The preferential status of the claims pertaining to the Social Security entails the privilege for the General Treasury of the Social Security of abstaining from insolvency proceedings. Notwithstanding this, the General Treasury of the Social Security may subscribe or adhere to the arrangements or compositions in insolvency proceedings as foreseen in Insolvency Law; as well as agreeing to, with the consent of the debtor and with the securities deemed appropriate, specific payment terms, which may not be more favourable to the debtor than those reflected in the composition or agreement putting an end to the judicial procedure."

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 handed down within 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 handed down within insolvency proceedings."

5. Subparagraph 3 of Paragraph 1 of Article 208 shall henceforth be drafted as follows:

"3. When the ordinary working day is temporarily reduced, by virtue of redundancy proceedings or a court order handed down within insolvency proceedings, pursuant to the provisions contained in Article 203.3."

Final Provision 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."

Final Provision 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 collateral constituted by those entities participating in the systems managed by it. Without prejudice to the

foregoing, the surplus remaining after clearance of the secured 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 practitioners 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 practitioners 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 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.".

Final Provision nineteen. *Reform of the Mortgage Market Act and the Act on Measures for Reform of the Financial System.*

1. Two new Paragraphs are hereby 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 hereby 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 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."

Final Provision 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 as follows:

1. Article 124 shall henceforth be drafted as follows:

"Article 124. Prohibitions.

1. Non-emancipated 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 shall 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 shall 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 carried."

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."

Final Provision 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. Non-emancipated 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 shall 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 render 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."

Final Provision 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."

Final Provision 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:

1. Subparagraph Two of Paragraph 2 of Article 43 shall henceforth be drafted as follows:

"Commercial and professional honourability 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 honourability."

2. 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".

3. 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."

Final Provision twenty-four. *Reform of the Act on Capital Risk Companies.*

Act 1/1999, dated 5th January, regulating capital risk companies and their management firms, is hereby amended as follows:

1. Paragraph c) of Section 2 of Article 8 shall henceforth be drafted as follows:

"c) That none of the members of the Board of Directors, as well as none of its General Managers or similar, be barred, in Spain or abroad, as a consequence of insolvency proceedings, be indicted, or in the case of the proceedings referred to in Title III of Book IV of the Criminal Procedure Act, a ruling has been handed down at oral trial, or hold a criminal record for offences of misrepresentation, against the Public Treasury and against the Social Security, for disloyal custody of documents and breach of secrecy, for money laundering, receiving stolen goods and other similar behaviour, embezzlement of public funds, against property, or if barred or suspended, under criminal or administrative proceedings, from holding public offices or from directorship or management of financial institutions."

2. Paragraph b) of Article 13 shall henceforth be drafted as follows:

"b) Due to having been declared in insolvency proceedings."

3. Section 2 of Article 33 shall be drafted as follows:

> "2. In the case of declaration of insolvency proceedings of the management company, the insolvency practitioners shall apply for a change according to the procedure described in the preceding Paragraph. The National Stock Exchange Commission may order that substitution when it is not requested by the insolvency practitioners, immediately notifying the Court hearing the insolvency proceedings."

Final Provision 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:

> "3. By opening the winding-up phase, when the Group is subject to insolvency proceedings."

2. 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 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 carried 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.

Final Provision twenty- six. *Reform of the legal statute of the Insurance Compensation Consortium.*[198]

(Repealed)

Final Provision twenty- seven. *Reform of the Act on Organisation and Supervision of Private Insurance.*[199]

(Repealed)

Final Provision twenty- eight. *Reform of the Insurance Contracts Act.*

Article 37 o Act 50/1980, dated 8th October, on Insurance Contracts, shall henceforth be drafted as follows:

> "The rules of Articles 34 to 36 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."

Final Provision 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."

Final Provision thirty. *Reform of the Air Navigation Act.*[200]

Two new Paragraphs are hereby added at the end of Article 133 of Act 48/1960, dated 21st July, on the rules regulating air navigation, as Paragraphs three and four, drafted as follows:

> "The preferences and the order of preference established in the preceding Paragraphs shall only apply in cases of singular foreclosure.
>
> In the case of insolvency proceedings, the right to separation of the aircraft foreseen in the Insolvency Act shall be recognised to the holders of the preferential claims included from Subparagraphs 1 to 5 of Paragraph 1."

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198 Repealed by the Sole Repealing Provision of Royal Legislative Decree 7/2004, dated 29th October.

199 Repealed by the Sole Repealing Provision of Royal Legislative Decree 6/2004, dated 29th October.

200 Amended by Article 122 of Act 38/2011, dated 10th October.

Final Provision thirty- one. *Reform of the Consumers and Users Defence Act.*

A new Paragraph 4 is hereby 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 not be effective. To such end, the order declaring the insolvency proceedings open shall be notified to the agency through which the bond was formalised and to the National Arbitration Board, and from that moment the insolvent debtor shall be excluded to all effects from the consumer arbitration system.".

Final Provision 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.

Final Provision 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 foreclosures.

Final Provision 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.

Final Provision thirty-five. *Entry into force.*

This Act shall come into force on 1st September 2004, except with regard to the amendment of Articles 463, 472 and 482 of the Civil Procedure Act, effected by Final Provision thirty-two, and the mandate contained in Final Provision thirty-two, which shall come into force on the day following its publication in the Official State Gazette.

MAQUETACIÓN

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