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# Insolvency/bankruptcy



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European Judicial Network  
(in civil and commercial  
matters)

## 1 Who may insolvency proceedings be brought against?

Insolvency proceedings may be brought against commercial operators (individuals or companies) provided that they have either:

- a) assets of EUR 300 000.00 or more in the three years before the application for compulsory insolvency or composition with creditors
- b) gross annual revenue of EUR 200 000.00 or more in each of the three years before the application for compulsory insolvency or composition with creditors
- c) total debts (on the date of the application for compulsory insolvency or composition with creditors) of EUR 500 000.00 or more (regardless of the date on which they were incurred)

## 2 What are the conditions for opening insolvency proceedings?

- a) compulsory insolvency requires that the undertaking be insolvent. It can be applied for by:
  - a debtor (or administrative bodies or authorities that have supervisory and monitoring functions over the undertaking)
  - a creditor
  - the Public Prosecutor
- b) composition with creditors (*concordato preventivo*) requires the undertaking to be in difficulty (i.e. experiencing financial difficulties that are not severe enough to cause insolvency) or insolvent, and can only be applied for by the debtor.

## 3 Which assets form part of the insolvency estate? How are the assets treated which are acquired by or which devolve on the debtor after the opening of the insolvency proceedings?

All assets form part of the procedure, except for:

- 1) strictly personal property and rights;
- 2) maintenance allowances, wages, pensions, salaries and what the debtor earns in their work within the limits established by the court as being necessary to support themselves and their family;
- 3) income from the debtor's lawful usufruct of their children's estate, assets in funds set aside for the family's

needs (*fondo patrimoniale*) and the income therefrom, except as provided for by Article 170 of the Civil Code;

4) items that may not be attached by law.

Assets in the proceedings include all assets acquired by the debtor after the proceedings have been initiated, but does not include the liabilities incurred in order to acquire and keep those assets.

## 4 What powers do the debtor and the insolvency practitioner have, respectively?

The insolvency practitioner (administrator) has the power/duty to manage the assets, sell them, and distribute the proceeds to the creditors.

The debtor can contact the administrator for information and can challenge measures taken by the administrator and the court-appointed receiver, but only if they were adopted in breach of the law (not, therefore, merely for reasons of expediency).

## 5 Under which conditions may set-offs be invoked?

The same person's debt and counterclaim (*controcredito*) relating to the proceedings may be offset if they arose before the proceedings were initiated.

## 6 What effect do insolvency proceedings have on current contracts the debtor is a party to?

As a general rule, contracts are suspended when a compulsory insolvency procedure is initiated. The administrator can decide whether to take over or terminate the contract.

Special rules are laid down for certain types of contracts, which, depending on the case, are either automatically terminated as a result of the initiation of the compulsory insolvency proceedings, or continue without being suspended.

The general rule for composition with creditors is that the contract continues, unless the debtor requests that the court suspend or terminate it.

## 7 What effect does an insolvency proceeding have on proceedings brought by individual creditors (with the exception of pending lawsuits)?

Normally, a creditor cannot initiate or continue an enforcement procedure or action for interim relief for assets involved in proceedings after they have commenced, except when the administrator decides to take them over.

Creditors can take legal action after the initiation of the insolvency proceedings only if the administrator fails to act, i.e. does not take such action (deliberately or even just through negligence).

## 8 What effect does an insolvency proceeding have on the continuation of lawsuits pending at the moment of the opening of the insolvency proceeding?

The initiation of a compulsory insolvency procedure stops on-going proceedings, which can then be resumed subsequently.

Lawsuits started by a creditor against a person who is subsequently subject to court-ordered insolvency may only be continued by the administrator and will follow the ranking inherent to those proceedings.

The debtor may only intervene in exceptional cases.

## 9 What are the main features of the participation of the creditors in the insolvency proceeding?

The creditors' committee is made up of three or five creditors during the compulsory insolvency proceedings and has significant powers. In particular, it:

- authorises transactions, debt reductions, special agreements, out-of-court settlements, recognises the rights of third parties, the cancellation of mortgages, the return of pledges, the release of bonds, the acceptance of inheritances and gifts, and all the other acts of special administration;
- monitors the administrator's actions and may request their dismissal from the court;
- approves the liquidation plan;
- authorises the administrator to take over or terminate an ongoing contract on the date that the compulsory insolvency procedure is initiated;
- attends stocktaking operations involving the debtor's assets;
- accesses all documents relating to the proceedings;
- authorises the administrator to exclude from the assets, or to abandon the liquidation of, one or more assets if liquidation appears manifestly disadvantageous;
- applies to the court-appointed receiver for the suspension of the sale of assets.

In addition to the above active administrative powers, the creditors' committee expresses opinions on measures taken by the court-appointed receiver or the court, namely:

- authorising secured creditors to sell assets held as security;
- authorising the court-appointed receiver to continue running the company temporarily (the creditors' committee must approve the continuation);
- authorising the court-appointed receiver to lease the business (the creditors' committee must approve the lease).

The creditors' committee is appointed by ratifying judgment as part of the liquidation arrangements with creditors, and exercises the same powers, when compatible.

## 10 In which manner may the insolvency practitioner use or dispose of assets of the estate?

The administrator may (subject to prior authorisation):

- continue to run the company or specific sectors;
- lease the business or specific sectors;
- sell all the assets in order to distribute the proceeds to the creditors;
- decide not to sell or acquire low-value assets.

## 11 Which claims are to be lodged against the debtor's insolvency estate and how are claims arising after the opening of insolvency proceedings

## treated?

Each creditor, irrespective of their level and the amount of their claim, may ask the court to initiate compulsory insolvency proceedings against the debtor. The creditor does not need to have an enforcement order; what is important is that there is documentary evidence for the claim.

All creditors (including those who applied for and obtained the initiation of the proceedings) must apply for their claims to be admitted after the initiation of the proceedings.

## 12 What are the rules governing the lodging, verification and admission of claims?

Creditors can submit their claims directly without legal representation.

Their applications must include the documentary evidence for the claim and must be submitted electronically (by sending a certified email to the administrator).

## 13 What are the rules governing the distribution of proceeds? How are claims and the rights of creditors ranked?

The proceeds from the sale of the assets are distributed among all the creditors, as per the ranking.

Amounts are usually paid in the following order: 1) pre-deductible claims 2) preferential claims (the law gives priority to mortgages, securities, and general or special preferential claims, for some or all of the assets) 3) unsecured claims 4) deferred claims.

If (as almost always happens) the proceeds are insufficient to meet all the claims, they are not distributed on the basis of the claim amount, but rather in line with the pre-established ranking. Then, within each category of claims, the principle of equal treatment is followed, which means that allocations are made based on the claim amount.

## 14 What are the conditions for, and the effects of closure of insolvency proceedings (in particular by composition)?

Compulsory insolvency proceedings are closed when:

- no claims have been submitted;
- all claims have been met;
- the entire proceeds of the sale of the assets have been distributed;
- it is ascertained that there are no assets to sell or other proceeds.

Specific measures are applied to a closure when property is seized or confiscated under anti-mafia legislation.

Once the compulsory insolvency proceedings are closed, the debtor regains the capacity to initiate and respond to legal action, and can acquire assets without them being seized by the administrator.

Composition with creditors and compulsory insolvency arrangements end when the agreement between the debtor and the creditors has been approved. However, when the agreement requires the liquidation of assets (*concordato liquidatorio*), the procedure continues with the sale and, therefore, is concluded once all the assets have been sold and the proceeds have been distributed to the creditors.

Once composition with creditors and compulsory insolvency arrangements are closed, the debtor is released from all their debts.

## 15 What are the creditors' rights after the closure of insolvency proceedings?

Once compulsory insolvency proceedings are closed, creditors can take action against the debtor to recover any residual debt (i.e. the portion of the debt that was not repaid by the administrator), unless a discharge procedure has taken place, in which case the creditors cannot claim anything from the debtor.

Once composition with creditors is closed, creditors cannot claim anything from the debtor. Should, however, the debtor fail to meet their obligations, the creditors can apply for the termination of the arrangement. The application must be made within one year of the established deadline set for the last commitment within the arrangement. Termination is not allowed if the non-fulfilment is of minor importance.

## 16 Who is to bear the costs and expenses incurred in the insolvency proceedings?

The costs of insolvency proceedings are borne by the insolvency proceedings themselves, and paid out of the proceeds from the sale of the assets.

If there are no assets, the administrator and the costs incurred by the administrator are paid for by the State.

## 17 What are the rules relating to the voidness, voidability or unenforceability of legal acts detrimental to the general body of creditors?

Acts that are free of charge and payments made by the debtor after the application for compulsory insolvency proceedings has been lodged, or in the two years prior, have no legal force over creditors.

Acts entered into by the debtor after applying for compulsory insolvency or in the previous year or six months thereafter, can be revoked, depending on the case.

Legal acts carried out by the debtor after the initiation of the procedure are void.

Acts of special administration carried out during arrangements with creditors and without the court's permission are void.

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