

1 Who may insolvency proceedings be brought against?

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

- assets of €300 000.00 or more in the three years before the application for insolvency or composition
- gross annual revenue of €200 000.00 or more in each of the three years before the application for insolvency or composition
- total debts (on the date of the application for insolvency or composition) of €500 000.00 or more (regardless of the date on which they arose)

2 What are the conditions for opening insolvency proceedings?

a) insolvency requires that the undertaking is insolvent; it can be applied for by:

- the debtor
- a creditor
- the Public Prosecutor

b) an arrangement with creditors (*concordato preventivo*) requires that the undertaking is in difficulty (i.e. is experiencing financial difficulties that are not severe enough to cause insolvency); it can be applied for only 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 insolvency estate, except for the following:

- strictly personal property and rights;
- maintenance allowances, wages, pensions, salaries and what insolvents earn in their work within the limits of what is necessary to support themselves and their family;
- income from the assets of an insolvent's children, available to him/her by operation of law, assets in funds set aside for the needs of the family (*fondo patrimoniale*) and the income from them, except as provided for by Article 170 of the Civil Code;
- items that may not be attached by law.

The insolvency estate also includes all assets acquired by the insolvent after the proceedings are opened, 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 insolvent can be questioned by the administrator to reveal 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?

Anyone who has to pay money to the insolvency practitioner can set off this debt with a claim (*controcredito*) in respect of the same proceedings, but only if both (debt and the claim) arose before the proceedings were opened.

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

The administrator can decide whether contracts in force when the insolvency proceedings were opened should continue or be terminated.

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

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

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

Lawsuits started by a creditor against a person who is subsequently declared insolvent may only be continued by the administrator.

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 and has significant powers in that it:

- authorises transactions, compromises, the abandonment of lawsuits, the recognition of the rights of third parties, the cancellation of mortgages, the return of securities, the release of bonds, the acceptance of inheritances and gifts, and all other acts of special administration
- applies to the court for the replacement of the administrator
- approves the liquidation plan
- authorises the administrator to take over contracts in force on the date of the insolvency declaration
- attends inventory operations on the insolvent'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).

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
- lease the business

- sell all the assets in order to distribute the proceeds to the creditors
- decide not to sell 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?

Any creditor can apply to the court to have the debtor declared insolvent. It is not necessary for the creditor to have an enforcement order; what is important is that there is documentary evidence for the claim.

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

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

Creditors can submit their claims without legal representation.

Their applications must include the documentary evidence for the claim and must be submitted electronically (using certified electronic mail)

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 in order of priority. The law gives priority rights to many claims (mortgages, securities, general or special preferential claims) over some or all of the assets.

If (as almost always happens) the proceeds of disposal are insufficient to meet all the claims, they are distributed not in proportion to the amount of the claim but in the order of priority laid down by the Civil Code.

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

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.

Once the insolvency proceedings are closed, the insolvent regains the capacity to initiate and respond to legal action, and can acquire assets without the knowledge of the administrator.

Arrangements with creditors are closed when the agreement between the debtor and the creditors is approved but, when the agreement requires the disposal of assets (*concordato liquidatorio*), the procedure continues for the sale and, therefore, is concluded once all the assets have been sold and the proceeds have been distributed to the creditors.

Once an arrangement with creditors is closed, an insolvent is released from all his or her debts.

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

Once insolvency proceedings are closed, creditors can take action against the debtor to recover the 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 insolvent.

Once an arrangement with creditors is closed, creditors cannot claim anything from the debtor. However, if the debtor fails to meet his or her obligations, the creditors can apply for the termination of the arrangement; the application must be made within one year.

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?

Legal acts carried out by the insolvent before the opening of the insolvency proceedings can be revoked if they were carried out within a certain period (one year or six months) before the opening of the proceedings.

Legal acts carried out by the insolvent after the opening of the insolvency proceedings are void.

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

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