

Spain introduces regulations on insolvency mediators

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Act 22/2003, of July 9 ("**Spain's Insolvency Act**"), has been recently amended to include a new chapter regulating the so-called "insolvency mediators" and the extrajudicial settlement of payments ("**ESP**") as a form of negotiating the debts of the entrepreneurs.

The reform has been introduced by Act 14/2013, of September 27, on entrepreneurs and their internationalization (hereinafter, the "**Act**") which regulates the ESP as a means for the extrajudicial negotiation of entrepreneur's debt (be they persons or legal entities). The objective of the ESP, as stated in the grounds of the Act, is to *"guarantee that a business failure does not result in impoverishment and frustration to the extent of inhibiting an entrepreneur from starting a new venture, but rather as a means to learn and progress"*.

This process is supervised by an independent professional, known as the insolvency mediator, which promotes and coordinates the process by carrying out the different tasks and procedures stated in the Act. Likewise, the Act defines the concept of consecutive insolvency, referring to cases in which an ESP is not reached or, when reached, is breached or rendered null.

Persons entitled to seek ESP protection

Any entrepreneur (including sole practitioners) with liabilities of 5 million euros or less that is in a state of insolvency can make a request for an insolvency mediator to be named in order to try to reach an ESP with his creditors.

An ESP is not open to the following persons: those convicted by a final judgment for economic crimes, such as crimes against the Public Treasury or against workers; those who have already reached an ESP in the previous 3 years; and those who are currently negotiating a refinancing agreement with their creditors or whose insolvency petition has already been accepted.

It must also be noted that an ESP is not possible when any of the debtor's creditors—or those which must be necessarily included in the settlement—is declared insolvent, nor when insurance or reinsurance entities are a party in the process.

Procedure to reach an ESP

The procedure shall not last more than 3 months. During this time insolvency proceedings cannot be requested and there is a prohibition to initiate or continue any seizure of the debtor's assets, except for creditors holding *in rem* security interests (unless they have decided to participate in the ESP) or those creditors holding public law debts. The debtor can continue with his work activity during this period of time.

The payment plan shall not include debt moratoriums greater than 3 years, nor reliefs or write-offs greater than 25% of the amount of the credit. Furthermore, it must include a viability plan and a negotiation proposal of the loans and credits; as well as a copy of the agreement or request for deferral of the public law credits.

The ESP requires the favourable vote of those creditors representing 60% of all liabilities. This percentage will be increased to 75% if the plan consists of the transfer of the debtor's assets as payment of debts, as well as the consent of the creditor or creditors that hold *in rem* security interests over those assets.

The insolvency mediator

The ESP is in the charge of the insolvency mediator, who has the authority of summoning the creditors and the debtor to a meeting and putting in place a payment plan of all debts to be paid.

The insolvency mediator will be named by the commercial registrar or by the public notary of the debtor's place of residence, from among the mediators included in the list of Spanish Mediators and Mediation Institutions. The parties will inform the insolvency administrator of the commencement of the ESP.

Within the first 10 days of being named, the insolvency mediator will make a list of all debts and, within the following 2 months, will convene a meeting with the debtor and their creditors to negotiate a binding agreement. The insolvency mediator is responsible for assisting the parties in reaching an ESP and in supervising its compliance. The insolvency mediator also has the right to request the start of the insolvency proceedings before a judge, if the negotiations are not moving forward; if the payment plan is not accepted; or if the ESP is breached.

In the event that the insolvency mediator refers the insolvency proceeding to a judge for determination, the judge will name the insolvency mediator as the insolvency administrator, giving rise to the so-called "consecutive insolvency".