LOZANO SCHINDHELM
law. tax. clarity.

# NEW VERSION OF THE BAKRUPTCY ACT

In the Spanish Official State Gazette of 7 May, the Spanish Government published Royal Decree-Law 1/2020 of 5 May, which confirmed the new version of the Bankruptcy Act, in the midst of a legislative earthquake of special laws that apply exceptionally.

**1. Publication of the new version and its entry into force**

At the present time and in the context of a noticeable economic crisis resulting from the health crisis of Covid-19, which led to the proclamation and successive extensions of the state of alert. With a view to overcoming a deep economic and social crisis, the complaints about the appropriateness and the untimeliness of the recent publication of the new version of the Bankruptcy Act were not long in coming. The new law will come into force on 1 September 2020 and will also have to coexist for some time with the provisions of Royal Legislative Decree 16/2020 of 28 March.

**2. The need to revise the text: Correcting the mistakes of the past**

Both the Cabinet's sources and the text itself in its explanatory memorandum justify its publication on the basis of a threefold necessity: to regulate, clarify and unify a matter which has undergone no fewer than 28 amendments since the publication of Bankruptcy Act 22/2003 of 9 July. Some of them were profound and changed the principles of the original version. Therefore, the new version has been prepared primarily in the interest of a fundamentally greater legal certainty in the systematic interpretation of the rules and regulations in the field of bankruptcy law. Even the legislator himself describes the need for a new legislative text as urgent in view of the improvisation that was pursued in the past in the reforms introduced in Law 22/2003, which led to numerous problems of systematic interpretation and thus to legal uncertainty.

**3. Wording, systematics and structure of the recast**

In the course of this unification work, the legislator acknowledges that the new revised text had to make profound changes to the system of the current Law 22/2003, which is still in force until 1 September 2020, in order to comply with the mandate received to rewrite a subject that has undergone so many modifications and partial reforms that, over time, have led to doubts and conflicts of interpretation in important aspects of its application.

It should not be forgotten, however, that the recasting does not essentially imply the inclusion of new content, but rather the unification and clarification in the field of insolvency legislation, in order to facilitate both the identification of the applicable rule and the understanding of the function of each provision, by introducing a new systematic and orderly content.

The first book, which is devoted to insolvency proceedings, contains in its fourteen titles all the general provisions of the procedure, while the second book is devoted separately to the law prior to the insolvency proceedings, which was previously characterised in an unnamed way by the famous Article 5bis, the refinancing agreements, their recognition and the effects of their non-compliance, as well as the extrajudicial payment agreement, the insolvency mediation and the subsequent insolvency and liquidation resulting from the non-compliance with the extrajudicial agreement.

For its part, the third book, unlike its previous content, systematically and individually sets out the rules of private international law, the application of which is without prejudice to the provisions of Regulation (EU) 2015/848 of the Parliament and of the Council of 20 May 2015 on insolvency proceedings and other relevant Community or contractual provisions and, in any event, invokes the principle of reciprocity in cases where the authorities of another State do not cooperate systematically.

**4. A recast text focusing on the incorporation of amendments to insolvency law and adaptation to European Community rules**

It should not be forgotten that the purpose of this recasting is nothing other than to rearrange and clarify the texts to be revised in order to facilitate their interpretation, and that the amendment and introduction of new content cannot under any circumstances be carried out under the pretext of giving them new wording. Although we find in this recast a substantial change in the wording of the principles and a shift of the previous content through the three books of the new revised text, an explanation of the principles that have developed in the practice of bankruptcy matters in recent years has been provided. The resulting new wording of the text does not lead to the introduction of new principles in insolvency matters, without forgetting that the legislator's intention in carrying out a systematic reorganisation is to take account of the changes that must take place in

the short and medium term in the European Union.

---


## Unai Mieza

**Attorney at Law**
Bilbao
T +34 944 25 66 98
u.mieza@schindhelm.com