



INSOLVENCY LAW: NEW ADDITIONS TO THE LAW

START THE TOUR

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BACKGROUND

Panama, through Law 2 of August 22, 1916, approved its Commercial Code which entered into force on October 10, 1917. In its estate it dedicated its Book III to the regulation of bankruptcy, from article 1534 to 1648 which includes the following topics in five titles: Title I: Declaration of bankruptcy and its effects; Title II: Of the administration of the bankruptcy and of the diverse classes of credits; Title III: Provisions relating to the bankruptcy of companies; Title IV: Of the rehabilitation and; Title V: Of the bankruptcy declared outside the Republic.

GENERAL EFFECTS:

The first and most relevant effect is the disqualification of the debtor from the ability to manage and dispose of their own assets. This has the purpose of preventing the debtor from transferring and hiding their assets, thus avoiding their obligations to creditors, who will require those assets to collect their credits. It takes effect once the bankruptcy declaration resolution is duly notified.

The second effect is the prohibition to carry out any act of commerce. This effect limits the debtor's ability to act as a member of a board of directors of any other company. It also comes into effect once the resolution of the bankruptcy declaration has been duly notified.

The third effect is the automatic qualification of each credit against the debtor as collectible. It is not the purpose of this article to cover the type of credits or the ways to collect them, so we will not cover the different effects of this statement for creditors in terms of their type of credit.

An order will also be issued to restrict the debtor from leaving the area of the district in which the bankruptcy was declared, without a formal request filed with the Judge who is familiar with the bankruptcy process.

All other civil proceedings against the debtor will be immediately suspended until the receiver presents his notification and takes a position as representative of the debtor.



JUDICIAL EFFECTS

The most important effect of this bankruptcy declaration is the immediate order issued by the judge to freeze all the debtor's accounts, the seizure of all his property and the retention of the assets founded on his property.

This is the most important duty of the receiver of the bankruptcy process, since it is the one that will determine the debtor's ability to respond to the claims of creditors. All these assets will be placed in the custody of the receiver and the funds transferred to a bank account in favor of the creditor committee. Another effect will be the publication of the bankruptcy declaration, destined to summon all its creditors within a period of 10 business days, with the possibility of extending this term for each foreign creditor.

Through Law 12 of May 19, 2016, the insolvency proceedings regime was established in the Republic of Panama, which aims to protect credit and creditors, through the reorganization process, in order to guarantee the recovery and conservation of the efficient company, or through a prompt and orderly judicial liquidation of the inefficient company. The aforementioned insolvency law contemplates three (3) processes, which we will explain concisely:

- ▶ **Bankruptcy Reorganization Process:** Process by which the financial prosperity and viability of the company is restored by maintaining its operations by various means such as the write-off, restructuring or capitalization of the debt, merger or spin-off of the debtor company or parts of it as business going.
- ▶ **Bankruptcy Liquidation Process:** Process followed for the sale or realization of the debtor's assets in favor of the creditors.
- ▶ **Process of Recognition of a Foreign Main Process:** The Insolvency Law establishes in its articles 225, 230 and 231, that the opening or recognition of a foreign main process of reorganization can be requested, and also considers as one of the immediate effects which entails such recognition, the impossibility of initiating enforcement proceedings against the debtor and the suspension of those ongoing proceedings.

JURISDICTION OF INSOLVENCY OF THE BANKRUPTCY PROCEEDINGS

In order to comply with the provisions of Law 12 of May 19, 2016, Article 17 creates the Fourth Superior Court of the First Judicial District, made up of three magistrates who would be elected by the Plenary of the Supreme Court.

Said instance has powers to hear Ad Quem of the insolvency proceedings that are heard in the first instance in the Insolvency Circuit Courts, throughout the national territory. As well as the enforcement processes known to the Insolvency Circuit Courts of their constituency, in which there is room for appeal, in fact, or consultation. In turn, through article 21, the Insolvency Circuit Courts are created, which have the exclusive competence to hear insolvency proceedings in the first instance, as well as all higher-value enforcement processes.

However, article 262 grants temporary powers to the Superior Courts to resolve challenges to appeals as a second instance and Civil Circuit Courts to continue hearing insolvency proceedings until the Supreme Court of Justice, through the Agreement Chamber, determines the creation and nomenclature of these courts and courts on a permanent basis based on the needs of the service.

ADDITIONS TO THE INSOLVENCY LAW

Through Law 231 of June 28, 2021, two (2) paragraphs are temporarily added, with the main objective of meeting the current needs facing the administration of justice, derived from the constant evolution of the commercial system that governs our country, which made it imperative to adapt the justice system to the demands of the globalized economy.

The main objective of this legal instrument is to empower and enable temporarily or provisionally the Third Superior Court of Justice currently operating, created by Law No°45 of October 31, 2007 and whose original jurisdiction is attributed to business or judicial processes related to consumer protection and competition defense matters, so that it receives and resolves in the merits, the appeals of the insolvency proceedings that are provided in all the Circuit Courts, Civil Branch, at the level of first instance; established in the different Judicial Circuits of the Judicial Districts that operate in the justice system of our country. In other words, the new regulation seeks to avoid, increase the budgetary burden that, in terms of salaries and operating expenses, would entail the material implementation of the Fourth Superior Court of Justice, created by Law No°12 of May 19, 2016, judicial office originally instituted by means of a formal law to attend to the aforementioned processes. The foregoing is closely related to the measures to reduce public spending and institutional austerity applied by the health crisis in the country, the three (3) State Bodies, try to apply to their respective assigned budgets.

It should be concluded that Law 12 of May 19, 2016, which regulates the matter of Insolvency Proceedings, positively modernizes the administration of justice, taking into account the constant changes in commercial matters, which is why it is imperative to apply measures to the efficient application of the norm through our judicial system.

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