Council of Ministers

Draft Bankruptcy Law

Moncloa Palace, Madrid, 21 December 2021

The Council of Ministers has approved submitting the draft Law on the Reform of the Bankruptcy Law to Parliament, a law that places Spain at the forefront of corporate restructuring in Europe.

The Minister for Justice, Pilar Llop, stressed that the law transposes the European directive on restructuring and insolvency and joins two other structural reforms, also included in the Recovery, Transformation and Resilience Plan, which are currently in parliamentary procedure: the Crea y Crece Law and the so-called Startups Law.

Pilar Llop said that the aim of the regulation is to ensure that no viable company "has to close its doors" because of specific economic difficulties: "We don't want any entrepreneur to give up entrepreneurship because of a failed project that will weigh them down forever".

The directive focuses on three points: the early restructuring of viable companies, the possibility of debt relief for bona fide debtors and the need to increase the efficiency of insolvency restructuring and debt restructuring procedures.

The Minister for Justice pointed out that the new regulatory framework represents a qualitative leap with respect to the current bankruptcy model because it streamlines and makes procedures more flexible and incorporates the best practices of other European models.

The key, the minister reiterated, is the viability of economic activity: "It is not a question of maintaining the vital constants, of keeping any company going, at any cost, at any price, what is known as 'zombification' of companies, but of keeping companies going that are really viable, i.e. those whose going-concern value is higher than their liquidation value.

Pilar Llop added that this regulation will contribute to maintaining jobs and strengthening the productive business fabric in a context of recovery and transformation after the crisis resulting from the COVID-19 pandemic.

Restructuring plans

The minister said that reforms not covered by the EU directive but necessary to protect micro-companies have also been undertaken. In this sense, the text of the draft law introduces the figure of corporate restructuring plans, a pre-bankruptcy instrument aimed at avoiding insolvency or overcoming it, which encourages early action. Early warning indicators will alert companies to resort to pre-insolvency procedures before they reach financial problems.

Furthermore, Pilar Llop stressed that an online liquidation platform will simplify procedures, reduce costs and establish a specific procedure for micro-companies, which will allow them to restructure without having to go to a notary or an auditor.

Along the same lines, a new figure is regulated, the restructuring expert, who will mediate in the negotiations of restructuring plans and who will accompany debtors with little experience in those cases that go to court.

Second chance

On the other hand, it will make it easier for a bona fide debtor, whether entrepreneur or consumer, to write-off their debt. Llop explained that the deadlines for reaching final exemption are shortened. What is commonly known as the second chance is now called the discharge of unsatisfied liabilities benefit.

The debtor may opt for immediate discharge, through the liquidation system, or for a payment plan, a provisional discharge system.

The minister added that the efficiency and transparency of the procedure will be increased by improving the training, qualification and responsibility of insolvency administrators.