

FAQs ABOUT INSOLVENCY PROCEEDINGS



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Although it's been several years since receivership and bankruptcy were replaced by the ever so well known, threat, fear and anguish-inducing insolvency proceedings, companies still have a lot of doubts about the procedure, especially with the how and when. And they are quite right, because not only is the Bankruptcy Law a world unto itself with its labyrinths, vacuums and incongruities, but also because the courts make different interpretations of the same facts, depending on which court and where it is. And all this, of course, makes for a great deal of uncertainty in insolvency proceedings.

In this post we would like to take the opportunity to provide our customers and readers with some answers to the questions we are most frequently asked in the Estudi Jurídic insolvency department. Feel free to ask questions in the comments section. If we consider them of interest to our readers, we will publish the reply.

- **When should a company turn to an insolvency lawyer?** From the moment they cannot meet their payments properly, the Law gives an insolvent company an extremely short period of **two months** to declare insolvency proceedings. This period is conceded as much to negotiate with creditors, as to liquidate the company.
- **How to know that a company may be on the point of initiating insolvency proceedings?** When a company cannot meet its payroll, tax, Social Security and regular bank payments etc for the second month running, that's significant. If in doubt, the best is to carry out a due diligence.
- **What happens if you don't initiate insolvency proceedings in the two month time period?** The director, or directors, can be declared **personally liable** for part or all of the company's debts.

- **We are negotiating with my creditors to try to reach a payment agreement and for this reason we have not declared insolvency proceedings.** Be careful, the law envisages a special mechanism to “stop the clock” when the debtor is negotiating with his/her creditors. Their lawyers must provide the court with a written report explaining this circumstance, as, if the negotiations break down, the two months granted by the law for initiating insolvency proceedings will have passed, with possible personal liability for the director.
- **What is the role of the insolvency administrator?** The insolvency administrator will, to put it bluntly, be an appointee of the judge, and will either take over the running of the company or, in some cases, completely replace the director.
- **Can the shareholders be declared liable for the debts merely by reason of being a shareholder?** This would not happen merely by reason of being a shareholder. Nevertheless, if the shareholder also acts as a shadow or “de facto” director they could be declared personally liable.
- **I’m the director of the company, and feel we should declare insolvency proceedings but the shareholders don’t want to or cannot pay for it.** The director, or directors, of a company are legally obliged to either 1) declare insolvency proceedings in the case of insolvency even though the shareholders do not want to, or 2) increase the share capital by as much as is needed. If the company has no money, the director must personally assume the cost unless s/he wants to be declared personally liable for not having done so.
- **What happens with sureties and other guarantees that directors, shareholders, family members etc. have given?** The insolvency proceedings does not free them from these guarantees. If the principal debtor does not pay, the creditor who has guarantees can claim them from the guarantor and the insolvency proceedings can not serve as an umbrella to save you. The most urgent is to try to get payment postponed or paid in installments.
- **Are seizures lifted in insolvency proceedings?** Some seizures can be lifted by the judge, depending on their type and date.
- **Who pays the employees’ redundancy pay?** The company must assume this obligation so long as there is the money to do so. The Spanish Wages Guarantee Fund will pay the part of the redundancy pay the company cannot meet.
- **¿Can we try to save company assets before initiating insolvency proceedings?** Absolutely not. Any suspicious movement made during the two years prior to the insolvency proceedings will be declared null and void and the administrator must personally compensate the insolvency creditors. In this prohibition are included, for example, sales of company assets to family or friends at suspiciously lower prices, loan

compensations for people related to the company, payment to shareholders for loans they had made to the company, etc.

- **How long does an insolvency proceedings take?** Bearing in mind that an insolvency proceedings can either be voluntary (brought by the debtor) or enforced (by the creditors); abbreviated or ordinary; that it negotiates payment periods and debt relief with the creditors or else liquidation, and, furthermore, depends on the backlog of work in the court in question, the proceedings could last for anything from 6 months to 4 years.

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