

AMENDMENTS TO THE EXECUTION AND BANKRUPTCY LAW

The Law to Amend the Execution and Bankruptcy Law and Other Laws numbered 7327 (the "**Amendment Law**"), which entered into force on 19 June 2021, amends several different laws, particularly the Execution and Bankruptcy Law (the "**EBL**"), and brings with it fundamental changes, especially to the concordat institution. Along with the amendments made to the concordat provisions, the bankruptcy liquidation process has also been revised.

1. Amendments to the Concordat Provisions

The concordat had gained currency, again, following the amendments made to the EBL in 2018 and, as the postponement of bankruptcy was abolished, it had become an institution to which many real and legal persons applied. In this context, important amendments have been made to the concordat provisions with the Amendment Law in order to address certain problems that have been observed in the concordat practice over the past three years.

The Amendment Law mainly includes amendments in relation to practices within the duration of a definite concordat period, and while a concordat lawsuit is pending.

Execution proceedings through the liquidation of pledges had been available prior to enactment of the Amendment Law, in terms of receivables secured by a pledge. However, no protection measures had been available, nor had any sales been carried out, within the scope of such execution proceeding. With the new regulation, under certain conditions, the sale of the pledged asset is allowed during the definite concordat period. In order to carry out the sale of the pledged asset, the relevant asset can be liquidated if, "*The pledged asset is not provided to be used by the entity in line with the concordat project, or is devalued, or if its protection will be too costly.*"

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Another action to be taken throughout the definitive concordat period is to terminate the contracts that are "excessively cumbersome." Prior to the amendment, it had been regulated that the debtor could terminate the permanent debt-creditor relationships that it was a party to, and which prevented the concordat from achieving its objective, upon the approval of the commissioner, and the permission of the court. Now, the debtor can only terminate "excessively cumbersome" contracts that it is a party to, and which prevent the concordat from achieving its objective. The court will interpret whether the contract is "excessively cumbersome." Moreover, in accordance with the Amendment Law, "*Transfer of movables that are essential for the continuance of business operation,*" is included among the allowed transactions of the debtor that are, again, subject to the court's permission.

One of the most important changes brought by the Amendment Law pertains to the liquidation process to be applied if the concordat project is not approved and, therefore, the lawsuit is dismissed. According to the new regulation, the court that renders the bankruptcy decision will decide whether the liquidation shall be conducted through either a simple or an ordinary liquidation procedure, and whether the ordinary liquidation shall be carried out by the commissioners, if necessary. This regulation can be considered as a new liquidation method in our law, because the liquidation will be carried out by the commissioners, without the creation of a bankruptcy administration. The objective of this amendment is to have the commissioners, who had *de facto* control of the company throughout the concordat process, and who had knowledge of the company's assets, conduct the ordinary liquidation; thereby allowing the liquidation to be carried out in a more effective and timely manner.

Another important amendment is the granting of privilege to the debts that have been concluded with the commissioner's permission, within the duration of definite concordat period. Before the amendment, these debts were subject to the ordinary concordat provisions. According to the Amendment Law, in the event of default regarding such debts, an execution proceeding may be initiated. Moreover, secured pledged receivables will also be ranked as privileged in the ranking table, and will be paid before all other receivables. Upon a bankruptcy liquidation, such receivables will also be paid prior to payment of the bankruptcy receivables. Accordingly, security will be provided to the creditors of the debts that are concluded with the commissioner's permission during the concordat process.

2. Amendments to the Liquidation of Bankruptcy Provisions

With the Amendment Law, an important change was made regarding the bankruptcy liquidation, as well. The amendment made in 2018 had included a provision that "*The assets and rights that have a commercial and economic integrity, or which will evidently produce higher income if sold as a whole, will be sold as a whole,*" among the procedures concerning liquidation of the assets. This provision has been amended with the new regulation by adding the phrase, "***The entities incorporating these assets and rights are sold as a whole***" and, accordingly, an entity can be sold as a whole by the bankruptcy administration. Such sales will be settled upon taking into

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account the continuance of the entity and its contribution to the economy. Given that the movables, immovables, and rights will be sold as a whole, provisions regarding the liquidation of immovables will apply.

Finally, an amendment was made regarding the trustees' qualifications and, accordingly, at least one of the trustees who forms part of the bankruptcy administration is required to be a legal expert.

Conclusion

The Amendment Law aims to solve the problems encountered in practice since the broad amendments that had been made to the EBL in 2018 and, especially, to modernize the concordat process and bankruptcy liquidation so that they are more effective. This law also seeks to prevent certain problems that were encountered in concordat lawsuits and which, perhaps, complicated the approval of a concordat project. Consequences of the new transactions that can be made with the permission of the commissioners and the court will, again, be observed through practice. However, it is clear that the legislator's general objective is to ensure a more uniform and effective application of the concordat.

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