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THE NEW INSOLVENCY REGULATORY REGIME IN SPAIN

I.- INTRODUCTION.

The Spanish legislation regulating an insolvency situation –either temporal or permanent- has undergone substantial changes over a relatively little time.

Thus, there is a new framework for the relations between a debtor and its creditors, which has been created not only by the 22/ 2003 Insolvency Act of 9 July (*–Ley Consursal* hereinafter referred to as the “LC”) embodying the basic principles that from 1 September 2004 are ruling insolvency situations, but also by the 8/ 2003 Organic Act of 9 July for the Insolvency Reform (*–Ley de Reforma Concursal–* hereinafter referred to as the “LRC”) – which amends the 6/ 1985 Organic Act of 1 July of the Judicial Power- providing for a new organization of the courts with jurisdiction to deal with insolvency situations.

Amidst the results of the new regime there are two particularly beneficial consequences, namely:

1. Unification of the juridical bodies applied to insolvency situations. One should not overlook that a real legislative myriad (formed by the Commercial Code of 1829, Commercial Code of 1885, Act on suspension of payments of 1922, etc.) has given way to a sole text that -for good or evil- will serve as the source to refer to when it comes to examine what regulations are of application to an insolvent debtor.
2. Creation of certain courts particularly specialised in hearing and dealing with matters relating to Commercial Law –including insolvency. Such courts will have to confront the new challenges presented by the current business world, which do not seem easily faced if it is not with a suitable technical education, which will only be acquired by delimiting activity fields and improving the level of knowledge –of several branches- to be achieved .

Finally it is worth mentioning that the new regime seems to encourage the commencement of bankruptcy proceedings, thus under the new regulator:

- a) if the proceeding is voluntarily initiated by the debtor the law permits it to continue managing its business –although subject to a supervisory system similar to that of former suspension of payments-; and
- b) if the proceeding is brought by a creditor, it is such creditor whom the law grants a privilege that will cover up to one fourth of its credit.

II.- REQUIREMENTS TO INITIATE AN INSOLVENCY PROCEEDING

Both individuals and legal entities can be made bankrupt, provided they are going through a situation of insolvency consisting on the inability to pay their debts as due and in the ordinary course of their business.

The LC foresees several circumstances in which insolvency may be presumed:

- a) Generalized seizure of property.
- b) General default of payment obligations.
- c) Fraudulent concealment or alienation of property, and
- d) General default of obligations or duties that may be regarded as sensible, such as taxes, social security contributions and salaries.

III.- ELEMENTS OF BANKRUPTCY

A) Bankruptcy Administration

The Court will designate the components of an administration panel (i.e. a lawyer, an economist and a representative of the creditors) or as for those instances the Court may deem convenient it will instead nominate a sole administrator.

Where the insolvency proceeding is concerned with a Securities or Derivative Instruments Issuer or with a credit entity or an insurance company, the National Commission of Capital Markets as well as the Guarantee and Deposit Guarantee Funds and the Insurance Compensatory Consortium will play a major role in the appointment of the bankruptcy administration and in the management of the insolvency proceeding.

B) Active bankruptcy estate

Constituted by the rights and obligations with economic contents of which the insolvent debtor is holder.

Consistently with the above the active estate will not include those rights that cannot be seized or that do not have patrimonial substance.

Creditors are provided with two kinds of actions: the civil actions of subrogation and revocation, and the bankruptcy vindication action (created by the LC).

The bankruptcy vindication action does not need of any intentional component; it will be enough that the bankruptcy administration concludes that the act which is contested has damaged the insolvent debtor's property. Thus there will be a presumption of patrimonial damage in the following circumstances:

- a) gratuitous alienations or cancellation of obligations that were to become due after the bankruptcy adjudication of the bankruptcy, provided there are not evidences to the contrary.
- b) onerous alienations in favour of persons with a especial relation with the insolvent debtor and creation of securities in connexion with pre-existing obligations or new obligations undertaken in the place of the formers

(strengthening of obligations), even when there is possibility of evidence to the contrary.

C) The passive insolvency estate

It is formed by the liabilities of the insolvent debtor, as determined by the Insolvency Administration that will differentiate between bankruptcy credits –which are paid only after completion of the bankruptcy proceeding- and credits against the estate –which are immediately payable-.

a) Credits against the estate.

They have to be paid at their due dates, although the Act permits to postpone payment as creditors holding such claims are not allowed to require payment until the liquidation phase has commenced or a creditors' composition has been approved, or in the absence of the formers after elapse of one year from the bankruptcy adjudication.

The following claims are ranked as credits against the estate:

1. Proceeding costs.
2. Obligations posterior to bankruptcy:
 - 2.1. Food
 - 2.2. Compensations
3. Obligations previous to bankruptcy:
 - 3.1. Labour claims for salaries related to the 30-day period prior to the bankruptcy adjudication and in an amount not greater than double the minimum inter-professional minimum wage.
 - 3.2. Claims due to secured obligations, when the Insolvency administration decides to pay them.
 - 3.3. Rehabilitation of bilateral agreements.
 - 3.4. Rehabilitation of real estate tenancy

b) Insolvency credits

Formed by all the insolvent debtor's debts that cannot be classified as a credit against the bankruptcy estate. They can be divided into:

A) Privileged credits.

In turn the privilege attached may be special or general

- (i) Credits with a special privilege:
 - a) Those over vessels and aircrafts as provided by the Ship Mortgage Act and the Air Navigation Act.
 - b) Those secured with legal mortgage.
 - c) Those secured with in rem guarantee.
 - d) Those secured with pledge on securities.
 - e) Those deriving from quotas of a leasing or from instalments of a sale-purchase under an agreement that provides for either a reservation of domain or a prohibition to alienate or for a resolatory condition applying in the event of payment default.
 - f) Those ranked as refectionary claims.

(ii) Credits with a general privilege:

The privilege of these claims is not attached to a particular asset but to the entire bankruptcy estate. Such general privileges do not grant to their holder a right to seeking individual enforcement but either a privileged position in a prospective creditors composition or a right to preferential collection in case of liquidation.

Credits bestowing a general privilege on the creditors are listed below in their proper order of priority:

- a) Credits deriving from employment relations where the employer is the insolvent debtor; as well as those arising from compensations due to the termination of employment relations or from compensations due to work-related accidents and illnesses or from surcharges or penalties imposed upon breach of duties related to health and safety at work.
- b) Credits of Public Administration bodies related to withholding taxes or social security contributions due by the insolvent debtor.
- c) Credits deriving from self-employed people.
- d) Credits related to taxes and other public duties for up to 50% the total due –the other half will be regarded as ordinary credits-.
- e) Credits related to Social Security, which will have a regime similar to the above-mentioned tax-related credits.
- f) Credits related to extra-contractual civil responsibilities.
- g) Credits held by the creditor who has forced the declaration of bankruptcy (up to one-fourth its total claim)

B) Ordinary Credits.

This category embodies the credits that do not have any privilege -whether special or general- but cannot be ranked within the subordinate class.

C) Subordinated Credits

This category includes credits that in the event of liquidation will be satisfied in the order of priority provided by the LC and only after payment of ordinary credits, and which in the event of a creditors' composition will still be paid after ordinary credits but will not confer a voting right.

Subordinate credits are the following:

1. Debts notified to the bankruptcy administration once the delay foreseen by the LC has elapsed
2. Debts Subordinate by virtue of an agreement.
3. Debts arising from interests due and payable by the insolvent debtor.
4. Debts resulting from sanctions.
5. Debts resulting from a bankruptcy resolution in case of bad faith.
6. Debts held by creditors with a special relation with the insolvent debtor.

IV.- THE BANKRUPTCY PROCEEDING.**A) General Principles.**

The new Act maintains the same organizational scheme of bankruptcy into Sections, namely:

- (i) First: adjudication and consequences of bankruptcy.
- (ii) Second: Bankruptcy administration.
- (iii) Third: Active Estate
- (iv) Fourth: Passive Estate
- (v) Fifth: creditors' composition or liquidation, and
- (vi) Sixth: Qualification of the bankruptcy.

B) Bankruptcy Incident

The LC lays down the application of the bankruptcy incident to any questions arising during the course of bankruptcy proceeding. This procedure is characterised by its nature which is (i)residual -because it applies to every issues or disputes arising in the bankruptcy proceeding but to the questions which must be judged within a specific proceeding (ii) summary -there are very specific steps to follow and a compulsory judgement-ruling within 10 days- and (iii)with no suspensive effects on the course of the of the bankruptcy proceeding.

C) Jurisdiction and Competence

The competent court in the bankruptcy proceeding holds also exclusive jurisdiction for any issues that may affect the bankrupt's property.

Objectively speaking, jurisdiction falls within Commercial Courts.

As regards territorial competence, the general rule is that it shall lie with the court of the place where the debtor has the centre of its main interests and where that centre differs from debtor's registered office, then creditors will be able to opt for any of them so as to initiate the proceeding. Debtors can only bring insolvency proceedings in the centre where their main interests are.

D) Legitimacy

The legitimated parties in a bankruptcy proceeding are creditors and any other interested parties, that is to say, third parties that may be affected by the formation of the bankruptcy estate.

E) Legal representation

Whereas the debtor must be assisted by a Lawyer and a *Procurador*, creditors can examine documents related to their credits, and also attend and participate in the Creditors Meeting with assistance of neither a Lawyer nor a Procurator.

F) Stages of a Bankruptcy proceeding

I.- Common Phase.

A) Application

Bankruptcy is voluntary if the bankruptcy proceeding is brought by the debtor itself, otherwise bankruptcy is necessary or forced.

a) Voluntary Bankruptcy

The debtor may file an application for commencement of a bankruptcy proceeding when it thinks it is in a situation of insolvency. The LC permits debtor to present this petition even before becoming insolvent, if insolvency is imminent or the debtor envisages its own inability to meet its obligations on a regular and punctual basis.

b) Necessary or forced bankruptcy

It is the bankruptcy proceeding that either the creditors or any third party entitled to or the debtor itself bring within the three months following a court's leave to proceed in respect of a former petition.

The LC prizes the creditor that initiated the proceedings by regarding a part of its credit – i.e. up to one fourth- as a privileged credit.

c) Report by the Bankruptcy Administration

There is a time limit of two months for the Bankruptcy administration to prepare a report including an inventory of the active bankruptcy estate and a list of creditors.

B) Conclusion of the common phase.

The common phase of bankruptcy ends upon

- elapse of the term allowed by the LC (10 days) to present any objection to the inventory or to the creditors' list with no objection lodged, or
- resolution of any such objections as presented within the abovementioned term.

Once this phase has ended, the Court will issue (in 15 days) order declaring the phase for composition or the phase for liquidation opened.

C) Conclusion and re-opening of the proceeding.

(i) Conclusion

Bankruptcy proceeding only concludes for any of the following reasons:

- a) Lack of insolvency.
- b) Fulfilment of the composition.
- c) Lack of assets and rights.
- d) Prescription of the proceeding

(ii) Reopening

A Bankruptcy proceeding can only be reopened after having ended with the liquidation of all bankrupt's assets. Thus where the bankrupt or insolvent debtor is a legal entity the reopening will merely be the liquidation of assets and rights appearing thereafter. Conversely, where the subject to bankruptcy is an individual, this reopening will only take place where the debtor is adjudged bankrupt again within 5 years following conclusion of the former proceeding.

Should the proceeding be reopened competence will lie with the same Court and the same bankruptcy administration.

D) Summary proceeding.

In case of an insolvency situation of little significance, the court may decree application of a summary proceeding, provided that it meets the following circumstances:

- a) debtor's total liabilities do not surpass EUR 1.000.000 and
- b) the debtor is an individual or a legal entity authorised to submit brief balance-sheets.

II.- Scheme of Arrangement or Composition Phase

Composition is an agreement -although of a procedural nature in which the court's monitoring is aimed at ensuring application of the principle of equality by and between all the creditors- pursuant to which there is a novation of creditors' ordinary and subordinate credits, and of privileged credits from creditors that have voted for the composition. Such creditors will not longer be able to claim their "former" credits but those deriving from the composition.

A) Proposal for a Composition

- a) The proposal usually contains a debt adjustment concerning either a reduction of the amounts due -"*quita*"- or an extension of the payment term -"*espera*"- or both .

It is worth noting the limits affecting ordinary credits for which the *quita* cannot exceed half the amount of each credit and the *espera* cannot extend any further than five years - as of the Court's final decision authorising the composition-. The Court may exceptionally clear compositions that go beyond those limits, provided that:

- the insolvent debtor is a company of material weight within the national economy, and
- in case of an anticipated proposal, provided that the continuation of the insolvent debtor's business or professional activity will generate enough resources to meet the obligations arising under the composition.

B) Anticipated proposal

In taking this option neither the composition phase nor the meeting of creditors will be necessary. Nor will the proposal for composition have to meet the abovementioned limits of *quita* and *espera* in respect of ordinary credits.

An early proposal will be held accepted only when agreed upon by creditors holding credits that represent **HALF** the debtor's ordinary **LIABILITIES**, saving when the proposal consist on the full payment of the ordinary credits in less than three years or the immediate payment of ordinary credits due and payable with a reduction -*quita*- inferior to 20%, in which case it would be sufficient for approval when the part of ordinary liabilities voting for the proposal is higher that the part voting against.

III.- Phase of liquidation.

In this phase the debtor's property is realised and the proceeds will be distributed among the creditors. There are two stages in this phase:

- winding up operations strictu sensu by which the bankruptcy administration (though under supervision of the Court) realises the assets of the active bankruptcy estate, and
- payment to creditors by distributing the proceeds of assets realisation among them.

The LC sets the following priority for collection of credits:

1. Credits against the bankruptcy estate
2. Privileged credits, within which those of a special nature will rank before the general ones.
3. Common or ordinary credits and
4. Subordinate credits.

The time limit allowed to carry out the operations of liquidation –concerning those business operations effected by the bankruptcy administration aimed at realising the bankruptcy active estate- is **ONE YEAR**. Liquidation does not entail the automatic discharge of debtor's debts if they have not been really satisfied.

V.- CONSEQUENCES OF BANKRUPTCY ADJUDICATION.

A) Upon the debtor

(i) Effects on the management of the business

The general rule applied is (i)the suspension of debtor's managerial faculties in a forced or necessary bankruptcy, and (ii)the intervention of a bankruptcy administration in a voluntary bankruptcy. However, the Court may decide otherwise by way of an order explaining the reasons and an audience with the bankrupt.

In the first instance -i.e. suspension/necessary bankruptcy- the administration and disposal faculties are assigned to the bankruptcy administration –here the insolvent debtor retains its ownership over the property but there is an ex lege substitution in respect of the exercise of its management and disposal faculties-.

In the second instance –i.e. intervention/ voluntary bankruptcy- the debtor retains the management and disposal faculties over its property, and the bankruptcy administration is there only to allow or disallow debtor's proposals but cannot replace the debtor in such capacity (except where the bankruptcy administration is authorised by the court to bring the legal actions or appeals the debtor refuses to lodge).

(ii) Effects on personal matters.

Bankruptcy adjudication has restrictive effects on the debtor's basic rights and freedoms to the extent decided by the bankruptcy court.

(iii) Effects of the designation and activity of the bankruptcy administration.

On taking in their appointments the LC grants to bankruptcy administrators the faculty to jointly and severally intervene or replace the debtor.

B) Effects on the proceedings to which the debtor is party

If the Court opts for the suspension regime, the bankruptcy administration will be vested with the faculties of management and disposal over the debtor's property, what shall include the proceedings with a material effect on the property (yet the insolvent debtor may retain its right to a separate appearance and legal assistance).

Pursuant to the LRC the Bankruptcy judge has exclusive jurisdiction to grant cautionary measures over the debtor's property and at any jurisdictional level, what means that no judge or court other than the bankruptcy judge will be competent to grant such measures.

C) Effects on the debtor's obligations

Bankruptcy adjudication may have different consequences on the obligations undertaken by the debtor:

a) Earned Interests

The bankruptcy adjudication will produce the suspension of interests earning, only reinstated in the following circumstances:

- if a composition is approved, interests will be earned again upon approval of such composition –what marks the end of the bankruptcy effects- and as agreed in the composition scheme.
- if there is liquidation, interests earned and accrued throughout the bankruptcy proceeding will only be collected if there is a surplus after payment of all the bankruptcy credits.

There are however two exceptions to the earning of interests above: in case of a real guarantee -in which respect interests are earned only to the extent covered by the guarantee-, and credits related to recognised wages –included in the list of creditors- which will earn interests -regarded as a subordinate debt- at the legal interest rate.

b) Term obligations.

One of the consequences of commencement of the liquidation process is the early maturity of the bankruptcy term credits, which no longer enjoy the benefits of such term.

c) Employment obligations.

(i) Ranking:

i. CREDITS AGAINST THE BANKRUPTCY ESTATE: The obligations related to wages posterior to the adjudication are ranked as credits against the bankruptcy estate, irrespective of the amount involved.

Likewise, wages related to the 30-working-day period prior to the adjudication are ranked as credits against the estate for the amount that does not exceed the double of the minimum inter-professional wage.

The fact that employment credits will continue generating interests even during the bankruptcy proceeding is especially significant.

ii. **SPECIALLY PRIVILEGED CREDITS.** Relating to the goods produced by the employees.

iii. **CREDITS WITH A GENERAL PRIVILEGE:** Those related to wages or compensations that were due before the adjudication of bankruptcy and so long as they do not surpass three times the minimum inter-professional wage and the contributions owed by the bankrupt to the Social Security.

iv. **ORDINARY CREDITS:** Any other employment debt will rank as an ordinary credit.

v. **SUBORDINATE CREDITS:** Those relating to interests of any kind, provided that they have been generated prior to the bankruptcy adjudication.

(ii) Procedural aspect.

From a procedural point of view it is worth noting that after adjudication an employee cannot seek new declaratory judgements from employment tribunals, but only from the bankruptcy court/judge. Furthermore, any proceedings under way at the time of adjudication must be incorporated to the bankruptcy proceeding.

In case of a liquidation process with absence of assets, the Spanish Salary Guaranty Fund –*Fondo de Garantía Salarial -FOGASA-* will have a subsidiary responsibility for the salaries and compensations pending payment up to a limit of twice the minimum inter-professional wage and within certain ceilings.

D) Effects on the agreements to which the debtor is a party

a) Synallagmatic contracts.

In general terms, bilateral agreements to which the debtor is a party are not affected by the bankruptcy adjudication; they will maintain their binding force on the parties and continue producing their effects, and the obligations deriving from them with a posterior maturity will rank as credits against the estate.

The *LC* permits the bankruptcy administration to rehabilitate funding agreements in terms similar to those mentioned above when referring to sale-purchase -provided that the other party has not brought any action claiming the credits yet-.

b) Employment agreements.

In general terms, the relation between employer and employee continues unchanged upon adjudication. Neither does bankruptcy adjudication affect the terms and conditions under collective bargaining agreement.

However, the *LC* provides for the following exceptions:

(i) Labour adjustment plans involving substantial changes or collective suspension or termination of employment.

Once the bankruptcy has been declared those adjustment plans entailing substantial modifications or collective suspensions or terminations of employment will not be subject to labour law provisions on employment adjustment plans but to special rules.

- (ii) Top management agreements.

As regards this matter the bankruptcy regulations detail certain specialities that may be outlined as follows:

- Bankruptcy administration on its own volition or at debtor's request may decide the termination or suspension of top management agreements.
- In the event of termination the bankruptcy judge may mitigate the compensation due to the top manager up to a limit of 20 days of salary per year of service.
- In the event of suspension, the officer may terminate the agreement prior notice of 1 month, retaining his/her right to the compensation he/she may be eligible for termination.
- In any case, the bankruptcy administration may decide the deferral of any compensation payment until there is a final ruling on the qualification of the bankruptcy, because in case of negligent bankruptcy the officer might be held accessory liable.

VI.- CRIMINAL AND CIVIL LIABILITIES.

A) Criminal Liabilities. General Rules.

Firstly it is to be noted that the Criminal Code regime regulating the "Punishable Insolvencies" remains unchanged though it must be construed in line with LC provisions.

As regards criminal acts that may be resulting from the breach of any duties relating to the bankruptcy proceeding, we find the filing of false account details and the realization of undue payments to creditors.

B) Liabilities deriving from the bankruptcy qualification.

Qualification of the bankruptcy proceeding constitutes the sixth section of the bankruptcy proceeding, which will be dealt with in a separate part. This section can only be operated:

- in proceedings concluded by compositions that entail a payment postponement *-espera-* longer than three years or a reduction *-quita-* greater than one third of the credits, so long as any such composition applies to all the creditors or to a class of them.
- bankruptcy proceedings leading to the commencement of the liquidation phase.

Bankruptcy proceedings may be qualified as accidental or negligent. Accidental bankruptcy is the residual category and not imputable to the debtor, whereas the other results from debtor's negligence.

C) LIABILITIES OF COMPANY DIRECTORS.

Regulations relating to directors' liabilities resulting from corporate damage or debts continue being fully effective after bankruptcy adjudication, though with some specification. Thus, the authority to lodge actions against directors as provided by the LC is granted to the bankruptcy administration and the jurisdiction over those actions lies with the bankruptcy judge.

Legal actions to seek liabilities for damages may be lodged in the bankruptcy proceeding, irrespective of whether they are grounded on acts performed by directors in office before the bankruptcy adjudication or after such event (bankruptcy administrators).

VII.- SPECIAL REGIME.

A) Cross-Border Insolvencies.

Provisions of EC/1346/2000 Rule (hereinafter "the RULE") and LC will apply to insolvency proceedings in which the debtor's rights or assets or the creditors affected are located abroad.

Thus, where the bankruptcy is within an intra-communitarian scope it will be regulated in the first place (for instance on the LC) by the provisions of the RULE and then by the provisions of the LC on matters for which the Rule is silent. International bankruptcies exceeding EU boundaries will be governed by the LC.

In general terms, the law of the country in which the insolvency proceeding is commenced and conducted will govern international insolvency situations. Thus, Spanish law will determine the circumstances, effects –both in procedural and material terms–, development and conclusion of bankruptcies adjudged in Spain.

There is a distinction to be made between the main or underlying bankruptcy proceeding, which is that conducted in the State where the debtor has the centre of its main interests, and a territorial bankruptcy proceeding that may be conducted in any State where the debtor has an establishment or assets attached to a business activity.

Under the new Act there is a possibility of initiating a territorial proceeding in Spain based on another principal and for which it will not be required examination of the debtor's insolvency.

II.- Bankruptcy conducted in Spain with a foreign component.

Upon adjudication the bankruptcy administration must give prompt and written notification of it to the known creditors that have their habitual residence, address or registered office abroad. The information so provided must be written in any of the official languages of Spain and indicate in its heading the sentence reading "call for filing claims" –*Convocatoria para la presentación de créditos*– written in French and English.

III.- Coordination between concurrent proceedings.

The administration or representative of a foreign proceeding is entitled to communicate to the bankruptcy adjudged in Spain the credits that have been recognised in the proceeding that is taking place abroad.

IV.- Recognition and enforcement of foreign resolutions.

a. Recognition of resolutions.

Foreign resolutions to commence a proceeding of insolvency are admitted in Spain through the exequatur proceeding as regulated by the LEC (Spanish Civil Procedural Act).

b. Resolutions enforcement.

Foreign resolutions of a executory nature can only be enforced in Spain through an exequatur proceeding. And where concerning an intra-EU bankruptcy it will apply the exequatur as provided for by the 2001/44/EC Rule amending the scheme of the 1968 Brussels Convention.

c. Cautionary Measures

The LC as well as the RULE regulate the recognition and enforcement in Spain of any cautionary measures ordered in the course of a foreign insolvency proceeding.

B) Specifics relating to insolvency circumstances of financial entities.

In view of the weight that credit entities have in the overall economy of a country, the LC has devoted a series of provisions aimed at regulating the regime applying to insolvency situations of the said entities and intended to protect the interests of users of services provided by said entities, thus ensuring the proper operation and functioning of the financial market. Regulations of the LC are complemented by other regulations expressly declared in force for these purposes by the LC itself, which provides special rules for insolvency situations of the entities to which these special provisions apply.

The abovementioned regulations –LC and special regulations- may affect the following entities:

- a) Credit entities in the strict sense (Banks, Saving Banks and Credit Cooperatives.)
- b) Investment Companies, members of and participants to securities markets and systems of registration, clearing and liquidation of securities and payments and entities issuers of listed securities.
- c) Insurance companies.

Specialities:

- i. At the time the court or judge is considering to adjudge bankruptcy it must inform the competent supervisory body about that circumstance.
- ii. The formation of the Bankruptcy administration does also have specialties.
- iii. Where the bankrupt entity is officially intervened, it will constitute a separate unit of qualification of the bankruptcy.

Finally, only to remark that the LC applies the specialties provided under several legal texts –from the Act regulating the mortgages market, to the Act of Securities Market, through regulations about securitization of assets, liquidation and clearing, derivative products and venture capital companies- for bankruptcy situations of companies to which those texts apply. The said specialties may be summarized in two basic principles of material importance for the financial world: (1) the credit or claim to be included in the bankruptcy estate will be that resulting from the netting made by a financial entity and its counter-party of their respective credits, and (2) the financial operations –of the type

mentioned in the special regulations- will not be subject to any vindication by the bankruptcy bodies.

This summary of the law applying in Spain does not intend to constitute any legal advice whatsoever nor an exhaustive summary of the law in force; its only purpose is to systematize and explain the new Spanish regulator of insolvency situations. The opinions this text may contain are only based on the said legal text as passed and enacted and not on any jurisprudential or doctrinal line that may be regarded as consolidated.

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September 2004