

## **HOW TO CLOSE A SUBSIDIARY IN SPAIN** **EXPRESS INSOLVENCY AND NEW PROCEEDING FOR MICROENTERPRISES**

There are foreign companies with a subsidiary in Spain that are considering the possibility of ending their activity in Spain due to the economic situation over the past years.

Closing down an insolvent business in an orderly manner (i.e: bankruptcy proceeding) is a legal obligation, but the obligation to file for bankruptcy has been suspended during the pandemic, and it is still suspended until June 2022.

For this reason, foreign companies have been asking us how they should close their subsidiary in Spain, and if it is better to do it before the 30th of June or after. Facing this question, it is important to consider that on the 30th of June not only finishes the suspension of the obligation to file a bankruptcy proceeding petition for insolvent companies, but it is expected that the reform of the Insolvency Law introduces a new proceeding.

### **Current regulation: express insolvency proceeding**

The liquidation of a company depends on whether it has enough assets to pay all its liabilities. In such a case, the liquidation proceeding requires the agreement of the shareholders' meeting, the designation of a liquidator, and the sale of the assets to pay the company's liabilities.

If the company has more liabilities than assets, the company will have to initiate a bankruptcy proceeding. In the bankruptcy proceeding, a bankruptcy administrator will be designated, who will classify the credits, sell the assets, and pay the debtors up to where the value of the assets' realization reaches, and the bankruptcy administrator can even claim responsibility to the former directors of the company if they had a negligent conduct in the company's management.

In Spain there exist a bankruptcy proceeding called "express bankruptcy proceeding", by which the company can ask the court to declare the insolvency, and at the same time, without appointing a bankruptcy administrator, ask the court to close and file the insolvency proceeding due to the insufficiency of assets. In other words, if the company does not have enough assets to face all the expenses of the insolvency proceeding, the Judge shall close the process without having to appoint a bankruptcy administrator, and therefore, not following the longer ordinary insolvency proceeding.

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To have access to the express bankruptcy proceeding, it is necessary to accurately explain the company's activity, especially the one that took place during the months prior to filing the petition, justify what the company has done with its assets (company's assets can be sold at its market value), where the assets have been allocated (company's assets can be used to pay debts if it does not prejudice preferential creditors, such as employees, Tax or Social Security), and finally justify that the directors carried out the company's management correctly and with diligence.

### **After the Insolvency Law reform: new procedure for microenterprises**

The Insolvency Law is undergoing a major reform that will provide a new proceeding for microenterprises (less than 10 employees in the prior year and less than 2 million euros of turnover or liabilities). This new proceeding could come into force as of the 30th of June 2022.

This procedure consists in the request of an insolvency proceeding just the way it is done for the current express insolvency proceeding. Such request must include a liquidation plan, different from the insolvency express proceeding in which the assets' liquidation is done *de facto* before filing the insolvency request. The liquidation plan is executed once the liquidation has been filed and without the need of appointing a liquidation administrator. However, some creditors may ask the court to appoint a liquidation administrator, which means that at the time of filing the petition it will be uncertain whether the liquidation will be done with or without liquidation administrator. It is also foreseen that the procedure for microenterprises can be processed electronically and even without the need for a lawyer.

### **Conclusion**

The new proceeding for microenterprises, which may come into force as of the 30th of June 2022, can be a very agile way to close a Spanish subsidiary, but due to its novelty, we don't know whether the procedure will be quick enough and if it will arise any problems in its application.

On the other hand, we do know that the current express insolvency proceeding works efficiently and allows closing companies within two or three months, requiring some prior work to prepare all the documentation and the liquidation of the assets, which is the key aspect for the court to declare the insolvency and its immediate filing.

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Therefore, we recommend foreign companies that are considering closing their subsidiary in Spain, to evaluate their particular situation, so that they can decide whether to file for the insolvency proceeding before or after June 2022, when the new bankruptcy procedure is in place.

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