

Second Chance Law: Forget Your Debts



ASUFIN: FINANCIAL DEBT ADVICE



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What is a “second chance”?

It is a legal instrument that allows you to free yourself from debts, with certain exceptions.

Regulation: Law 16/2022, of September 5, on the reform of the Revised Text of the Bankruptcy Law.

Who can use the second chance mechanism?

Natural persons (natural o entrepreneur)

Legal persons

Requirements that a person must meet in order to Access the exemption

Insolvency situation:

- Current
- Inminent

Good faith of the debtor

Exceptions to good faith

Final sentence, in the 10 years prior to the request for exemption (for crimes against patrimony and against the socioeconomic order, of falsifying documents, against the Public Treasury and Social Security or against the rights of workers), provided that the maximum penalty indicated for the crime is equal to or greater than three years, unless the pecuniary responsibilities derived from the crime have been satisfied.

When in the previous 10 years you have been sanctioned by a final administrative resolution for very serious tax, Social Security or social order infractions, or when in the same period a firm agreement of derivation of responsibility has been issued, unless its responsibility had been fully satisfied.

Exceptions to good faith

When the insolvency process has been declared guilty, unless the reason was exclusively for having breached the duty to promptly request the declaration of bankruptcy.

When, in the previous 10 years, you have been declared an affected person in the court decree of a third party qualified as guilty, unless s/he had fully satisfied his/her responsibility.

When you have breached the duties of collaboration and information by the Judge of the proceedings and the Insolvency Administration.

When the debtor has provided false or misleading information or has behaved recklessly or negligently.

Exemptible credits

All bankruptcy and debts against the estate assets, with exceptions..

Non-exemptible credits

- Debts for non-contractual civil liability, for death or personal injury, as well as compensation derived from work accidents and occupational disease, whatever the date of the resolution declaring them.
- Debts for civil liability arising from a crime
- Food debts.
- The debts for salaries corresponding to the last 60 days of effective work carried out before the declaration of bankruptcy (with limitation of amount), as well as those that would have accrued during the procedure, unless their payment had not been assumed by the Salary Guarantee Fund.
- Debts for fines in criminal proceedings and very severe administrative sanctions.
- Debts for court costs and expenses arising from the processing of the request for exemption.
- Debts with collateral.

Special reference to public credit

Exemptible only the first time: the debts for whose collection management the State Tax Administration Agency is competent, as well as debts for credits in Social Security.

Exemptible amount: up to €10,000 (for the first €5,000 of debt the exoneration will be full and, and after that, the exoneration will reach 50% of the debt up to the maximum of €10,000).

Preliminary ruling referred to the CJEU by the Eighth Section of the Provincial Court of Alicante, dated 11 October 2022.

Second Chance Law

Arts. 486 a 502 TRLC.

“Debtor is a natural person, whether or not entrepreneur”.

Insolvency (imminent, current... or probable).

Art. 1911 CC

Two procedural lines (and variants)

Payment plan without an estate asset liquidation (Art. 486.I.1st and 495 to 500 bis TRLC)

Liquidation of estate assets (Art. 486.I.2° and 501 to 502 TRLC)

EPI with unliquidated payment plan

Solicitud art. 495 TRLC.

Contenido plan de pagos art. 496 TRLC.

Efectos exoneración y PdP sobre los créditos art. 496 bis.

Tramitación arts. 498 y 498 bis TRLC.

EPI with unliquidated payment plan

Debtor application under 495 and 496 TRLC

Transfer to creditors 498.1 TRLC Dispute 498 bis TRLC

Provisional denial or concession of EPI and POPs 498.2 TRLC

Effects provisional exemption 498 ter TRLC

Definitive exemption 500 TRLC

Modality change 500 bis TRLC

EPI with estate asset liquidation

Debtor request "after the liquidation of the estate assets".

Arts. 501.1 y 501.2 TRLC

Request art. 501.3 TRLC

Transfer to the AC y creditors art. 501.4 TRLC

There is the option for appeal via the incidental procedure 502.2 TRLC

Concession (or denial) 502.1 TRLC

Exemption regime

From BEPI to EPI.

General requirements and “exceptions” 487

TRLC Exemption Extension 489 TRLC

New application 488 TRLC

The usual residence

Public credit

THANK YOU!

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