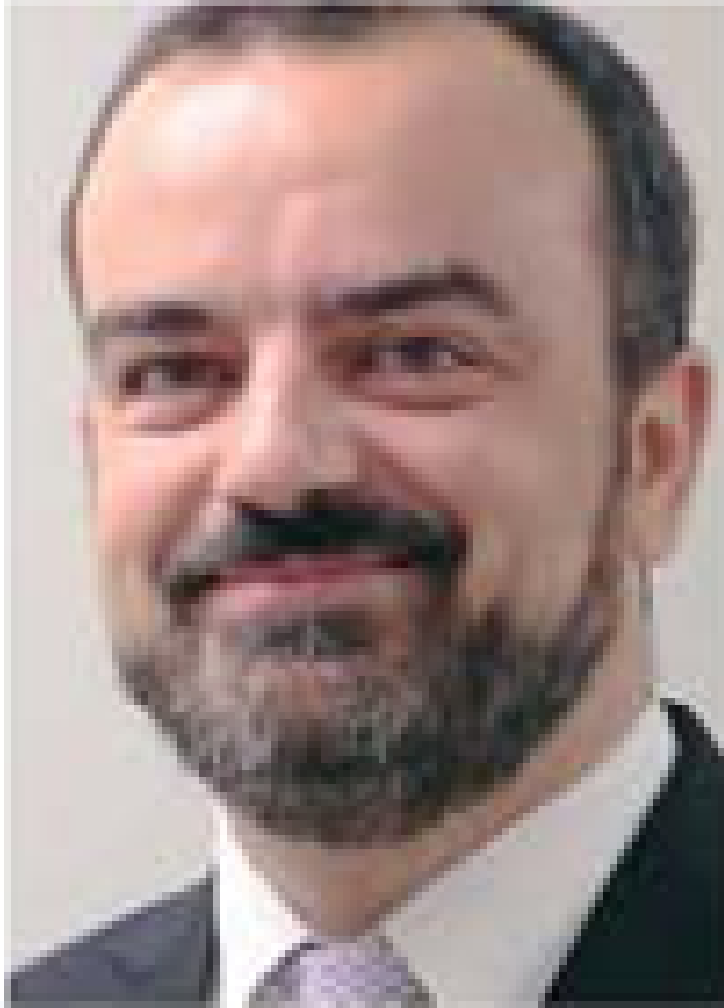
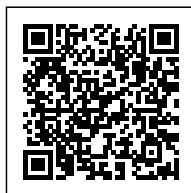


NEW DEBTOR REFORM INTRODUCED - AC&G ASESORES LEGALES

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The Royal Decree Law on Second Opportunity Mechanism, Financial Load Reduction and Other Social Measures – which modifies the Spanish Insolvency Act (Law 22/2003 Concursal) was published on 28 February.

This Royal Decree adds a new article (178bis), which regulates the circumstances under which a debtor (natural person) may be partially (in some cases fully) exonerated from debts. This reform intends to constitute an exception to the general rule for the Universal Asset Liability, stated in Art. 1911 of the Spanish Civil Code, which states that “debtors will be held accountable for

their financial liabilities with any and/or all of their present and future assets". The reform seems to be aimed at helping natural persons in special risk of being unable to pay debts.

However, the reform has been criticised by many sectors, academic, judicial and social. The main complaints make reference to: (i) the possibility of revocation of the benefit during the five years following its granting; (ii) the special treatment provided for public credits (tax and social security); and (iii) the publication – in some cases- of the particulars of the person awarded this benefit in a special insolvency file.

In particular, it has been argued that the revocability of the benefit by reason of "improvement of the economic situation of the debtor" defeats the purpose of the "second opportunity/debts remission" institution, as far as it is aimed at improving the economic situation of the debtor.

As a matter of fact, in accordance with the current regulation, if the economic situation of the debtor substantially improves during the five years following the granting of the debts exoneration benefit, it may be revoked, at the creditors' request.

This action granted to the creditors to request the revocation of the benefit does not exist in any country in which this kind of debts exoneration benefit or second opportunity mechanism has been regulated. In particular, the report of the World Bank on Treatment of the Insolvency of Natural Persons specifically concludes (363) "the benefits of a discharge may remain illusory, however, unless the discharge is respected after the insolvency procedure has concluded".

Critics argue that this action granted to the creditors converts the debts remission institution into a non-request agreement or *non petendi* agreement, which would prevent the debtor from improving its economic situation (or showing it) during the five years following the granting of this benefit. Obviously this may have the effect of promoting the black market, precisely what the reform intends to avoid.

It should be noted that although the Royal Decree has already entered into force, it has been submitted to the Spanish legislative bodies for discussion, and is expected to be subject to modifications in the following three to months.

Hopefully the Parliament will take into account these critics and amend the regulation on this specific aspect.

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