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VALLE

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ROUND IN CIRCLES WITH THE REFORM OF THE INSOLVENCY ACT

On 1 September 2020, the Consolidated Text of the Insolvency Act (hereinafter, CTIA) came into force, replacing Law 22/2003, of 9 July. The CTIA comprises three volumes, divided into 752 articles (compared to 242 in the 2003 law), the vast majority of which were refinements that do not alter their interpretation.

Barely a year after it came into effect, a new Preliminary Draft Bill was presented to amend the Insolvency Act to adapt to Directive (EU) 2019/1023, of the European Parliament and of the Council, of 20 June 2019.

Principally, the Preliminary Draft of the Insolvency Act introduces five key changes:

i. The introduction of business restructuring plans. This pre-bankruptcy mechanism aims to overcome or prevent the state of insolvency. Essentially, this is a new Article 538 of the CTIA (formerly, 5 bis) which will be abolished as, according to the Government, this new mechanism replaces it.

ii. New insolvency procedure for micro-companies and the self-employed. For companies with fewer than 10 employees and self-employed professionals, a new free online form is introduced that eliminates the need for the intervention of solicitors or clerks.

iii. Modification (or de facto abolition) of the second chance procedure. Aimed at giving a second chance to natural persons (consumers) and the self-employed by being exonerated from a portion of their liabilities (debts), this reform eliminates the requirement of the prior liquidation of the debtor's assets and the need to attempt to reach an out-of-court settlement. As a general rule, the maximum duration of this payment plan will be set at 3 years. This also entails the elimination of the figure of the mediator.

iv. Changes supposedly intended to streamline the procedure. The reform includes remuneration incentives for the insolvency administrator depending on the speed and agility of the procedure. Likewise, the administrator will face penalties if the management of the procedure is not efficient. Specifically, the procedure will be deemed inefficiently managed when it lasts for longer than a year for reasons attributable to the insolvency administrator. Moreover, the administrator must be appointed by agreement of the main creditors and, in many cases, their fees will be paid by the creditors.

v. Amendment of the Judiciary Act. The Preliminary Draft states that litigation regarding general contracting conditions and consumer protection will now come under the jurisdiction of the courts of first instance, with the aim of reducing the workload of the commercial courts.

With respect to Directive (EU) 2019/1023, its transposition into Spanish law is still pending. Bearing in mind that the CTIA was drafted to facilitate this transposition, the new Preliminary Draft casts doubt on the possibility of correctly transposing Directive (EU) 2019/1023, of the European Parliament and of the Council, of 20 June 2019, without this involving endless changes and chaos in terms of the content of the law.

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PINTÓ RUIZ & DEL VALLE

The lawyer Bruno Clar Oller has joined our firm. Bruno gained his Law Degree at the Universidad de Navarra before moving to Madrid to take his Master in Law at the Centro de Estudios Garrigues, specializing in Company Law. After passing the bar examination to join the profession, he joined the Bar Association of the Balearic Islands.

He did a year-long internship in the Procedural Law Department of the firm Lener. Bruno also spent a few weeks at our firm on a summer placement before setting off on his Madrid adventure. Based in our Balearic office, our new member will mainly focus on commercial, real estate and corporate issues, without losing sight of liquidation and contentious proceedings. He speaks Spanish, Catalan and English.

03

THE RFEF MODIFIES ITS GENERAL REGULATIONS TO PREVENT CLUBS SIGNING PLAYERS OUTSIDE OF THE TRANSFER WINDOW DUE TO LONG-TERM INJURY

On 15 June, the Executive Committee of the Consejo Superior de Deportes (Sports Council) definitively approved the amendments to the General Regulations of the Real Federación Española de Fútbol (Royal Spanish Football Federation, hereinafter, the RFEF). Specifically, the new RFEF Regulations have modified the criteria under which clubs are allowed to register players, as regulated by Article 124 of the regulations.

As a result, clubs can still sign players during the transfer windows established for this purpose. However, from the 2021/22 season onwards, there will be only two exceptions under which players may be signed outside of the transfer windows:

- (i) the contracts of the players in question have expired or the players can prove that they are currently legally unemployed before the end of the transfer window;
- (ii) in the specific case of a female player being pregnant. Therefore, this amendment of Article 124 of the RFEF Regulations eliminates the exception that previously allowed clubs to sign players outside of transfer windows if the player was signed off with a long-term injury, which was possible until last season.

04

OPENING LECTURE ON THE SPORTS LAW PROGRAMME OF THE UNIVERSIDAD AUSTRAL IN BUENOS AIRES

On 21 September, our President José Juan Pintó Sala gave the opening lecture on the Sports Law programme of the Universidad Austral in Buenos Aires.

In his lecture, he discussed issues related to the Court of Arbitration for Sport based in Lausanne, Switzerland.

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THE FIFA FOOTBALL TRIBUNAL BEGINS OPERATION

After its announcement on 22 March within the framework of the FIFA Football Law Annual Review (FLAR) by Gianni Infantino and Emilio García, the FIFA Football Tribunal began operations on 1 October. For the time being, it will operate with the Dispute Resolution Chamber (DRC) and the Players' Status Chamber (PSJ).

According to the announcement at the FLAR and then later reiterated in FIFA's Circular 1769, the purpose of this tribunal is to consolidate the dispute system under a sole decision-making body with a single set of procedural rules and composed of 3 chambers: the existing DRC and PSJ, and the soon to be created FIFA Agents Chamber, which will be constituted once the respective regulations are approved.

To form this Tribunal, in its Circular 1759, FIFA invited the member associations, FIFPRO, the European Club Association, and the World Leagues Forum to propose suitable candidates with a professional legal background and relevant experience in the football industry. They were also encouraged to propose female candidates to ensure the gender balance of the decision-making bodies.

As a result, on 31 August, the Bureau of the FIFA Council appointed the chairpeople, deputy chairpeople, members and representatives of players and clubs who would compose the new Dispute Resolution Chamber and Players' Status Chamber. Moreover, amendments were approved to the Regulations on the Status and Transfer of Players (in force as of 31 August) and the new Procedural Rules (in force as of 1 October). Some of the key changes to the Procedural Rules were listed in FIFA's Circular 1769:

- Procedures are free of charge if one of the parties is a natural person.
- The deadline to pay procedural costs (if applicable) is ten days. Payment remains a mandatory requirement for grounds of a decision. Notification of such grounds will only be made to the party that requested the grounds and paid the procedural costs.
- When the parties' evidence and submissions are in a single official FIFA language, this language alone shall be used for the procedure. When they are in more than one FIFA language, the procedure will be conducted, and the decision issued, solely in English.
- An expedited decision process for preliminary procedural matters has been introduced. This procedure will be used in cases in which the respective chamber obviously lacks jurisdiction or a claim is obviously time-barred. In such cases, it may refer the matter for a decision before continuing the procedure.
- Resolving conflicts through mediation is now possible. Parties may be invited to undertake a voluntary and free mediation process. If successful, the mediator and the Chairperson of the Chamber will ratify a settlement agreement. This will be considered a final and binding decision for the parties.