



## **Panama Tax News**

Executive Decree No. 90 which regulates Law 212 of 2021 which establishes a special regime for the reconciled reorganization processes carried out in connection with the national emergency due to the COVID-19 pandemic

July 2021

# Executive Decree No. 90 of July 9, 2021, which regulates Law 212 of 2021, which establishes a special regime for the processes of reconciled reorganization carried out in connection with the National Emergency due to the COVID-19 pandemic

- Law 12 of 2016, which establishes the insolvency proceedings and dictates other provisions, was created to regulate the processes of reorganization and insolvency in an economy in a state of normalcy.
- That Law 212 of 2021 creates a special regime for the processes of reconciled reorganization for reasons of COVID-19 and provides for an abbreviated process with defined terms to approve a reorganization agreement.
- By means of Executive Decree No. 90 of 2021, the rules and procedures applicable to the process of reconciled reorganization are regulated, to which those companies seeking their conservation can benefit, recovery and the obtaining of the resources to meet their obligations in the face of the insolvency situation in which they are found by the State of Emergency declared by COVID-19, establishing the following:
  - Purged debt is understood to be the debt resulting from segregating from the liabilities of the total company the outstanding obligations to shareholders, those to related companies and to the public sector.
  - The period in which the company's economic activities were closed as a result of the measures taken during the State of Emergency shall be counted within the term "twenty-four months of continuous operation".
  - That in the process of conciliated reorganization the will of the parties will prevail so that the appointment of the conciliator must be made, by common agreement, between the debtor and the creditors that represent the holding of more than 51% of the entire liability of the company, they must also agree on where conciliation sessions are held. When the conciliator is proposed by the debtor, it shall be ratified by the Board of Creditors.
  - The determination of the reconciled reorganization process requires the approval of 51 per cent of the debt cleared.
  - Before formalizing the start of a reconciled reorganization process, the debtor must provide the institutional center or the designated independent conciliator with the following documents:

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1. Authenticated copy of the Shareholders' Meeting or corresponding body, which contains the resolution to invoke the conciliation reorganization process, in the case of a commercial company.
2. Explanation of the reasons they determine financially, such as the measures taken in the pandemic, affected their operations and led the company to a state of default, imminent insolvency or foreseeable lack of liquidity.
3. Audited financial statements for the last fiscal year and interim financial statements for the last quarter immediately prior to the date of the application, issued by the Independent Authorized Public Accountant. In the event that the debtor does not have audited financial statements, it may submit the following:
  - a. Income statements submitted in the last two fiscal years;
  - b. An affidavit of the debtor stating that it has books or records of accounting and that these have been delivered to an Authorized Public Accountant for review; and
  - c. An opinion or report of the Authorized Public Accountant that reviewed the debtor's books or records of accounting that certifies:
    - That the company's books or accounting records have been reviewed.
    - That you did not find any inconsistencies in your company's books or accounting records.
    - That from the review of the books or records of the accounts, you find that the company is in default, imminent insolvency or foreseeable lack of liquidity.
    - Inventory of assets and liabilities with cut-off in the last quarter immediately prior to the date of the application, certified by an Authorized Public Accountant.
    - List of your assets, place you are in and the levies that affect you.
    - List of processes you have pending.
    - Workers' roster or list of associates, whatever their contractual status, for the month immediately preceding the application.
    - List of all your creditors and credits, with your contact details. This list includes creditors of all kinds, including banks, suppliers, the State, workers, among others.
  - Or optionally, you can submit a continuity plan proposal.
  - For the purposes of Article 12 of Law 212, all interested creditors, national or foreign, shall be deemed to have a period of 10 working days to appear in the proceedings after the publication of the Notice of Intent in the written media for 5 calendar days.
  - It is established that once the creditors interested in the process of conciliated reorganization appear to the same, it is understood that the regulatory quorum to assemble them validly is the absolute majority of those who make up the entire liability of the debtor.
  - Under Article 23 of Law 212, it is required that the hedging of the performance bonds and/or advance payment bonds constituted by the debtor to guarantee works contracted with the State are suspended while the financial protection is in force. It will be automatically restored and without the need for resolution after more than six months from the beginning of the period of bankruptcy financial protection or ending,

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for any reason, of the bankruptcy financial protection, whichever comes first.

- For the purposes of article 27 of Law 212, a special voting mechanism shall be required for the ratification of the continuity plan when attending the process of reconciled reorganization of linked and unrelated creditors when the existence of linked creditors is identified, two separate votes shall be taken for the approval of the continuity plan. One in which an affirmative vote of an absolute majority of creditors representing at least 51 per cent of the total liability constituting the debt owed shall be required, and another requiring an affirmative vote of the absolute majority of creditors representing at least 51 per cent of the entire liability of the other group of creditors that are not included in the debt cleared. Ratification of the continuity plan will require approval in both votes.

- Article 12 of Law 212 provides that, during the period of bankruptcy protection, The debtor shall have a maximum period of 6 months of protection from the publication of the Notice of Intent and the effects set out in article 4, paragraph 24, of Law 12 of 2016 shall apply. The terms of limitation of credits held by creditors shall be suspended in full for the term of the financial protection of the contestal.
- It is stated that the provisional fees of the conciliator may be agreed and covered on behalf of the party initiating the conciliated reorganization process, depending on the complexity of the matter and the financial capacity of the debtor. The fees may be modified by the Board of Creditors at the first conciliation meeting and the parties shall agree whether the costs generated by the process shall be covered by the debtor or prorated between the parties. In the event that there is more than one creditor, the percentage to be covered by

each creditor at the 50 per cent that corresponds to pay to the Creditors' Meeting will be proportional to the amount owed to them.

- Failure to comply with the conciliation agreement signed in a conciliation reorganization process will give way to res judicata and provide executive merit before the ordinary courts.

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