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Reform of the Spanish Organic Law on the Judiciary: jurisdiction *ratione materiae* of the Commercial Courts

On 28 July 2022, the Official State Gazette ("**BOE**") published Organic Law 7/2022, of 27 July, amending Organic Law 6/1985, of 1 July, on the Judiciary, concerning Commercial Courts ("**LO 7/2022**").

As part of the process of the transposition into Spanish law of Directive (EU) 2019/1023 of the European Parliament and of the Council of 20 June 2019, on preventive restructuring frameworks, on discharge of debt and disqualifications, and on measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt, and amending Directive (EU) 2017/1132 ("**Directive (EU) 2019/1023**"), the reform we are about to analyse aims to ensure that restructuring, insolvency and debt discharge procedures are handled efficiently and swiftly.

The amended provisions will enter into force on 17 August 2022, except for the amendments relating to appeals against decisions of the Spanish Patent and Trademark Office that conclude administrative proceedings, which will enter into force on 14 January 2023.

1. The reasons for the reform

The Explanatory Memorandum of LO 7/2022 provides that the forthcoming reform of the Consolidated Text of the Insolvency Act for the transposition into Spanish law of Directive (EU) 2019/1023 requires certain amendments to be made to the jurisdictional powers granted to the Commercial Courts in order to achieve the procedural speed and efficiency required by the European standard.

Therefore, and on the basis of the experience gained from the functioning of such judicial bodies over the last eighteen years, which endorses the wisdom of their creation, the original allocation of matters currently attributed to the Commercial Courts and the specialised sections of the Courts of Appeal has been rearranged.

In addition, LO 7/2022 has been used to improve the wording, to include clarifications, as well as updates, in the criteria for determining the jurisdiction *ratione materiae* of these judicial bodies.

To strengthen specialisation in order to achieve greater uniformity, which is always desirable in order to achieve greater legal certainty, the General Council on the Judiciary is permitted, in certain situations and subject to the relevant reports, to authorise one or several Courts of the same class in a given jurisdiction to take on the exclusive jurisdiction of certain types of cases. Similarly, in the event that there is more than one section specialising in commercial matters in the same Court of Appeal, the General Council on the Judiciary is authorised to distribute the matters within the jurisdiction of the Commercial Courts among each of these sections. In this regard, the provision for the insolvency proceedings of natural persons which, as we shall see, are attributed in their entirety to the Commercial Courts and for whose distribution it is contemplated that in those provincial capitals where there are between one and five Commercial Courts, such applications for the declaration of insolvency will be distributed to only one of them; and in those provincial capitals where there are five or more commercial courts, these applications will be distributed to two or more of them, to the exclusion of the others.

2. The main new features introduced by the reform

Among the amendments made by LO 7/2022, we highlight the following:

- (i) A certain level of jurisdiction that until now was held by the Commercial Courts is transferred to the Courts of First Instance, with the latter hearing the collective actions provided for in the legislation on general contracting conditions and in the legislation on the defence of consumers and users.
- (ii) Similarly, and although jurisdiction *ratione materiae* in matters of national and international land, sea and air transport continues to be assigned to the Commercial Courts, the following matters are excluded from their jurisdiction. These matters may be brought before the Courts of First Instance:
 - a) Matters relating to damage arising from the destruction, loss of or damage to checked baggage provided for in the Convention for the Unification of Certain Rules for International Carriage by Air, signed in Montreal on 28 May 1999;
 - b) Matters covered by Regulation (EC) No. 261/2004 of the European Parliament and of the Council, of 11 February 2004, establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No. 295/91;
 - c) Matters relating to rail passengers' rights and obligations, as provided for in Regulation (EC) No. 1371/2007 of the European Parliament and of the Council, of 23 October 2007;
 - d) Matters concerning the rights of bus and coach passengers, as provided for in Regulation (EU) No. 181/2011 of the European Parliament and of the Council, of 16 February 2011, amending Regulation (EC) No. 2006/2004; and
 - e) Matters concerning the rights of passengers when travelling by sea and inland waterway, under Regulation (EU) No. 1177/2010 of the European Parliament and of the Council, of 24 November 2010, amending Regulation (EC) No. 2006/2004.
- (iii) Within the list of powers in insolvency matters, insolvency proceedings of non-business individuals, which until now had been heard by the Courts of First Instance, are assigned to the Commercial Courts. Similarly, its jurisdiction extends to labour actions relating to the modification of working conditions, as well as to preliminary civil, administrative and labour rulings directly relating to the insolvency proceedings or whose resolution is necessary for the proper handling of the insolvency proceedings (Article 86b).
- (iv) Concerning antitrust proceedings, the old reference to Articles 81 and 82 of the Treaty establishing the European Community in Article 86b(2)(f) of the Organic Law on the Judiciary has been replaced by the more correct and current reference to Articles 101 and 102 of the Treaty on the Functioning of the European Union. It also expressly mentions the assignment of jurisdiction *ratione materiae* to the Commercial Courts to hear the matters relating to Articles 1 and 2 of Law 15/2007, of 3 July, on the Defence of Competition, as well as claims for compensation for the damage caused by the breach of competition law (Article 86 bis).
- (v) In relation to the specialised sections of the Courts of Appeal, the civil sections are authorised to hear individual actions on general contracting conditions that have been brought before the Courts of First Instance and the collective actions provided for in the legislation on general contracting conditions and in the legislation on the defence of consumers and users.

- (vi) The specialised sections of the Courts of Appeal are authorised to hear appeals filed against resolutions of the Spanish Patent and Trademark Office that exhaust administrative remedies in industrial property matters (Article 82.2).
- (vii) Finally, the first final provision amends Law 1/2000, of 7 January, on Civil Procedure, in relation to certain aspects of the consolidation of actions, the consolidation of cases and counterclaims, with two notable consequences:
 - a) The Commercial Courts shall hear related actions whose cognizance is assigned to Courts with different jurisdiction *ratione materiae*, provided that they have jurisdiction to hear the main action and the others are related or prejudicial to it.
 - b) It shall be possible to file a counterclaim in litigation before a Court of First Instance, even if the action brought by way of counterclaim falls within the jurisdiction of the Commercial Courts, if it is connected with the main action. In such a case, the Court of First Instance shall, after hearing the plaintiff and the other parties to the proceedings, transfer the case to the Commercial Court that has jurisdiction.
- (viii) In accordance with the above, the second transitional provision establishes that legal proceedings in progress on the date of entry into force of this reform will continue to be processed by the Court that has had jurisdiction until then.

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