CMS Rodríguez-Azuero

# Analysis of Law 2437 of 2024 Modifying Law 1116 of 2006

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# Introduction

In light of recent regulatory developments, we have prepared a high-level analysis of Law 2437 of December 12, 2024, which introduces significant amendments to Law 1116 of 2006, governing the Business Insolvency Regime in Colombia.

This document addresses the most relevant regulatory changes and their impact on insolvency processes, with the aim of providing key information to our clients in the Banking and Finance and Insolvency sectors.

# Analysis of Law 2437 of 2024 Modifying Law 1116 of 2006

Law 2437 of 2024 introduces significant amendments to Law 1116 of 2006, which governs business insolvency and reorganization in Colombia. The amendment seeks to enhance the flexibility and efficiency of bankruptcy procedures, with particular focus on small and medium-sized enterprises. Understanding the background of Law 2437, which incorporates temporary measures introduced during the COVID-19 pandemic through Decrees 560 and 772 of 2020, is essential for fully appreciating how the new law builds on and modifies the original insolvency framework.

By incorporating provisions from Decrees 560 and 772 of 2020, Law 2437 not only strengthens but also complements Colombia's insolvency framework. The amendments improve the regulatory system by offering more flexible mechanisms for debt restructuring, enhancing access to credit, and streamlining judicial processes. Importantly, these reforms prioritize the preservation of viable businesses, ensuring that companies are provided with every opportunity to recover and continue operations. This approach aligns with the evolving needs of businesses in Colombia, particularly in response to the economic challenges exacerbated by the COVID-19 pandemic.

Law 2437 of 2024 represents a significant overhaul of Law 1116 of 2006, with a clear focus on equipping businesses with the tools necessary to survive and recover from bankruptcy. These changes not only strengthen the legal framework but also introduce a more agile and accessible reorganization process, ensuring that Colombia's insolvency system remains robust and adaptable in the face of economic challenges.

Here some of the main amendments:

## 1. Expedited Access to Reorganization Procedures (Article 2)

Article 2 of Law 2437 amends Law 1116 of 2006 by eliminating the requirement for judicial verification of the debtor's financial information. Under the revised framework, it is now the debtor's responsibility, in conjunction with its accountant or fiscal auditor, to certify the accuracy of the financial data filed with the insolvency judge/court. While the judge retains discretion to request additional information if deemed necessary, this modification accelerates the initiation of reorganization proceedings by removing delays associated with judicial verification. As a result, distressed businesses can enter the reorganization process more promptly, enabling a faster response to financial difficulties.

## 2. Financial Relief and Business Reactivation (Article 3)

Article 3 restores financial relief mechanisms previously established by Decree 560 of 2020, including debt capitalization, discharge of excess debt, and sustainable debt agreements. These mechanisms enable the restructuring of debts or their conversion into equity or bonds, without the need for full extinguishment of obligations. Debt restructuring is achieved through the issuance of securities with revised terms or conditions. This approach provides greater flexibility in debt reorganization, allowing businesses to continue operations while addressing/reorganizing their liabilities. By enabling companies to restructure rather than liquidate their debts, this provision helps preserve jobs, maintain economic activity, and support business continuity.

## 3. Financing Incentives During Reorganization (Article 4)

Article 4 allows the debtor to secure financing to support its economic activities from the initiation of the reorganization process until the confirmation of the reorganization agreement, without the need for judicial approval. If the debtor is unable to obtain financing under traditional conditions, it may request judicial authorization to secure financing on special terms, such as offering collateral on pledged assets or creating secondary security interests. Additionally, if the debtor cannot present a viable financing option,

creditors may submit their own financing proposals. If the judge determines that the creditors' terms are less burdensome, the debtor must choose whether to revise its proposal or accept the creditors' financing. This provision improves access to financing for distressed companies, enabling them to continue operations during the reorganization process. By permitting financing without initial judicial approval, it reduces delays and facilitates the financial restructuring process.

## 4. Salvage of Companies in Imminent Liquidation (Article 5)

Article 5 establishes a procedure for salvaging companies at imminent risk of liquidation. Under this provision, a creditor may inject capital into the debtor to avert judicial liquidation, provided the expression of interest is made after the judge has declared the termination of the reorganization process and ordered the commencement of liquidation. Upon receiving the creditor's expression of interest, the judge suspends the liquidation proceedings and orders a revaluation of the company's assets and liabilities. The creditor must present a financial offer that covers, at a minimum, the total amount of first-priority claims and other priority liabilities, including labor related credits and administrative costs.

This mechanism provides distressed companies with a second opportunity to avoid liquidation and continue the reorganization process, provided it is possible to salvage the productive unit.

## 5. Simplified Reorganization Negotiation Procedure (Article 6)

Article 6 introduces a simplified procedure for negotiating reorganization agreements. This process, which has a maximum duration of three months, requires the debtor to notify the court of its intent to negotiate with creditors. If the request is accepted, the negotiation process begins. During negotiations, creditors must raise objections regarding the project of classification and qualification of credits, as well as the determination of voting rights. Any objections will be resolved in a hearing convened by the judge, who will then decide whether to confirm the reorganization agreement. This streamlined procedure shortens the negotiation timeline and facilitates agreement between the parties, thereby preventing unnecessary delays. It strengthens Law 1116 by providing a faster pathway to reorganization agreements.

## 6. Recovery Procedures before Chambers of Commerce (Article 7)

This article allows debtors to negotiate reorganization agreements with creditors through a mediator before the chambers of commerce, rather than following the traditional judicial process. The procedure, which lasts for up to three months, must be validated by the court. By providing an extrajudicial process, the law reduces the burden on the courts and offers a faster, more cost-effective solution for companies facing financial distress. Agreements reached through the chambers of commerce have the same binding effect as those concluded in the judicial system.

## 7. Consequences of Failed Reorganization or Recovery Attempts (Article 8)

Article 8 provides that if a reorganization or recovery procedure fails, the debtor will be prohibited from attempting these procedures again for a period of one year. However, the debtor may still seek insolvency relief under Law 1116. This measure is designed to prevent abuse of insolvency procedures by discouraging companies from prolonging their insolvency status when reorganization is no longer feasible, thereby improving the efficiency of judicial management in insolvency cases.

## 8. Subsidiary Application of Law 1116 (Article 9)

Article 9 provides that the provisions of Law 1116 of 2006 will apply subsidiarily to the reorganization and recovery procedures under Law 2437, to the extent that they are compatible. This ensures that the procedures set forth in Law 2437 complement the general principles of Law 1116, preserving consistency within the regulatory framework governing insolvency and business reorganization.

## 9. Lifting of Precautionary Measures (Article 12)

Article 12 provides for the automatic lifting of precautionary measures on non-registered assets that were imposed in collection proceedings once the reorganization process begins. This provision allows the debtor to continue operations without the additional restrictions imposed by these precautionary measures, thereby helping to preserve the company's economic activity during the insolvency process.

## 10. Reorganization for Small Insolvencies (Article 18)

Article 18 introduces abbreviated reorganization procedures for debtors with assets totaling less than 5,000 monthly wages. These procedures provide a more efficient and cost-effective process, benefiting small businesses by offering a streamlined approach in terms of both time and costs. This measure ensures that smaller companies are not burdened by the complexity of the traditional reorganization process.

## 11. Simplified Liquidation for Small Insolvencies (Article 19)

Article 19 establishes simplified liquidation procedures for small insolvencies, specifically for debtors with assets totaling less than 5,000 monthly wages. This procedure ensures a quicker and more cost-effective liquidation process for smaller businesses, reducing the burden on both the companies involved and the judicial system. It offers small businesses an efficient means of handling liquidation, minimizing unnecessary delays and costs.

## 12. Subsidiary Application of Expedited Procedures (Article 20)

Article 20 clarifies that the provisions of Law 1116 of 2006 will apply subsidiarily to the expedited procedures for small insolvencies. This ensures that the general principles of Law 1116 are preserved in the expedited reorganization and liquidation processes, maintaining coherence within the legal framework.

## 13. Derogation of Articles 37 and 38 of Law 1116 (Article 21)

Article 21 of Law 2437 repeals Articles 37 and 38 of Law 1116, which previously regulated the consequences of failing to present or confirm the reorganization agreement, including the dissolution of the legal entity and the removal of its directors. By eliminating these automatic consequences, Law 2437 introduces a more flexible approach, prioritizing the rehabilitation of companies without the immediate imposition of sanctions.


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59,3% female
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EUR
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54 new
partners in 2023,
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to over
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