

BANKRUPTCY: LEGAL CONSIDERATIONS

The Bankruptcy process applies in Panama to merchants and non merchants that cannot repay their debts as they become due, if and only if these debts are product of an act of commerce. This way the bankruptcy in fact arises to the judicial world when the judge declares it.

This process can either be initiated by any creditor that legally posses a past-due bill against the debtor, or by the debtor himself if he believes there is no other way to face and respond to his creditors. But this effect does not start before a Judge formally rules over the motion to declare the state of bankruptcy.

Every declaration of bankruptcy, represent certain effects over the person declared bankrupt. Some of them will generally apply to every person as of the moment of declaration, we will call those “general effects”, and some others will depend on other facts like the qualification of the bankruptcy.

General Effects:

- The first and most relevant effect is the disqualification of the debtor of the ability to administrate and dispose of his own assets. This has the purpose of prevent the debtor to transfer and hide his assets, this avoiding his obligations with the creditors, who will require those assets to collect their credits. It takes effect once the resolution of declaration of bankruptcy is duly notified.
- The second effect is the prohibition to perform any act of commerce. This effect limits the capacity of the debtor to act as member of a board of directors of any other company. It also takes effect once the resolution of declaration of bankruptcy is duly notified.
- Third effect is the automatic qualification of every credit against the debtor as collectible. It is not the purpose of this article to cover the type of credits or the ways to collect them, therefore we will not cover the different effects of this declaration for the creditors regarding their type of credit.
- Also there will be issued an order to restrict the debtor to leave the area of the district in which the bankruptcy was declared, without a formal request submitted before the Judge who knows of the bankruptcy process.
- Every other civil process against the debtor will immediately be suspended until the receiver submit its notification and take position as the debtor’s representative.

Judiciary Effects:

- The most important effect of this declaration of bankruptcy is the immediate order issued by the Judge to freeze all of the debtor's accounts, the seizure of all his properties, and retention of the assets founded on his property.
- This is the most important duty of the receiver of the bankruptcy process, since it is the one that will determinate, the capacity of response of the debtor before the creditors' claims. All this assets will be put in custody of the receiver and the funds transferred to a bank account in favor of the board of creditors.
- Other effect will be the publication of the declaration of bankruptcy, destined to summon all his creditors within a period of 10 business days, with the possibility to extend this period for every foreign creditor.

Particular Effects:

These effects will depend on certain situations that might or might not happen during the bankruptcy process.

- The first one will depend if the Judge declares the bankruptcy state with retroactivity effects. If that happen every act performed by the debtor after the date in which the bankruptcy state was set back to will be void by law.
- The other one relevant to mention is the notification to the District Attorney's Office, if the bankruptcy is declared fraudulent. If that is the case, the District Attorney's Office has the obligation to initiate the proper investigations to determinate if indeed the debtor committed fraud and to seek the criminal repercussions of this crime before a Criminal Court.

This is a short review of the most relevant effects of the declaration of bankruptcy. This is a very complex a variable process that can have so many different outcomes depending on the condition of the bankruptcy, the type of business that the debtor use to practice, and the condition in which he managed his company.

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