

Suspensions of payment and declarations of ban- kruptcies statistic (BS)

Methodological note



INSTITUTO NACIONAL DE ESTADÍSTICA

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1 Background

The Suspension of Payments and Declarations of Bankruptcy Statistic was created by Royal Order on 29 August 1923.

There have been various Orders dictated to reorganise, modify or broaden the contents of the statistic since the date of its implementation. The most recent modification was in 1993.

The first monography on the Suspension of Payments and Declarations of Bankruptcy Statistic was published in 1982.

Later the monographies of this statistic were replaced by the **annual tables** to make the information more accessible. The first data offered in this manner were referred to 1991. The information is also offered electronically as of 1994.

In order to improve the statistics provisional data, as of 2002, the results are published quarterly.

2 Objectives

The objective of the statistic is to know the number of companies, or creditors of these companies, that have filed a suspension of payments or bankruptcy declaration with the Court because of financial crisis, and had their petition accepted.

As well as the number of companies affected, information is covered on the following:

Company assets

Company liabilities

Companies main economic activity (NCEA 93, to two digits)

Legal nature of the company

Financial cause of the suspension

Proposal for the payment of loans

Bankruptcy procedure, and kind of bankruptcy

This statistic, together with other financial indicators, is useful for the short term analysis of the Spanish economy.

3 Research scope

3.1 POPULATION SCOPE

The population scope studied is formed by the Court of First Instance and Preliminary Investigations and the Court of First Instance, which are the legal bodies where suspension of payment or bankruptcy declarations are presented.

3.2 GEOGRAPHICAL SCOPE.

Deals with the whole country.

3.3 TEMPORAL SCOPE

The reference period is monthly, until December 2001. As of 2002, the reference period is quarterly.

4 Variables and definitions

4.1. SUSPENSION OF PAYMENTS

Situation in which the company, possessing sufficient capital to cover their debts, foresees the impossibility of meeting these obligations on their respective due dates, and thus can declare a state of suspension of payments, which the local Judge of First Instance will declare upon receipt of their petition.

In this situation companies can also be found that possess sufficient assets to cover their liabilities, but within forty eight hours following the due date of an unsatisfied obligation, a company can present itself in a state of suspension of payments.

Suspensions of payment have become a preliminary procedure to which companies in financial crisis can resort, whatever the causes may be of their inability to meet debts on their due dates. This has occurred in order to avoid bankruptcy, since the suspension of payments eliminates the rigorous personal effects which the bankruptcy declaration produces and specifically the debtor's business' liquidation.

4.2. FINANCIAL CAUSES FOR THE SUSPENSION OF PAYMENTS

The financial causes due to which a company could find itself in this legal situation, are classified into four headings:

4.2.1. Lack of liquidity

The companies financial situation can be considered as a lack of liquidity when it foresees the impossibility of carrying out payments of its debts on their due dates.

4.2.2. Scarce demand for production of goods or services

Corresponds to that situation where the carrying out or preparation of products or services is barely undertaken, because of scarce demand.

4.2.3. Low productivity

Productivity is known as the relation that exists between the quantity produced and the financial means employed in the production of said asset.

4.2.4. Other Causes

This section covers the remaining financial causes that the company sets out in its corporate report upon presenting the suspension of payments, and that have not been previously specified.

4.3. PROPOSAL MADE FOR THE PAYMENT OF DEBITS

The company that intends to declare a state of suspension of payments should include a series of documents accompanying the petition request. Among them is the proposal for the payment of its debits.

The types of proposal are:

- Waiting list
 - . Period less than 3 years
 - . Period greater than 3 years
- Deduction
 - percentage proposed for the reduction of loans
 - . 0 to 10% of the loans
 - . 10 to 20% of the loans
 - . more than 20% of the loans
- Other proposal

4.4. BANKRUPTCY DECLARATION

Bankruptcy is the universal execution procedure for an insolvent companies assets.

Bankruptcy, as a legal state, begins with a legal declaration. With this, in addition to the judge declaring the companies insolvency, a legal situation is created that produces determined effects both in relation to the debtor as well as the creditors.

4.5. BANKRUPTCY DECLARATION PROCEDURE

A company is considered in a state of bankruptcy when it can no longer meet its obligations with current payments.

The bankruptcy declaration will proceed:

- When the bankrupt party requests it
 - When the bankruptcy declaration is requested by the bankrupt party from the Judge.

- By legitimate creditors

When the bankruptcy is requested by the creditors, they must necessarily prove the bankrupt parties insolvent situation. This situation becomes manifest, among others, in the following cases:

- . Individual sale without sufficient assets for payment:

It will be necessary that the request be based on a claim for which the sale or payment demand was dispatched and that there are not sufficient assets free after the repossession for repayment.

- . General dismissal of current debt payment:

Bankruptcy declarations requested by creditors will also proceed, even without obtaining the repossession demand, in those cases where the loans are justified and that the business person has generally dismissed the current payment of their obligations.

- . Flight or concealment of the bankrupt party:

Given the case of flight or concealment of a business person, accompanied by the closure of their offices or warehouses, without having left a person to manage them and meet their obligations in their representation, it will suffice for the creditor to justify their claim and prove these facts by offering information to the Judge or Court in order to file the bankruptcy declaration.

The judges will also proceed as a matter of course, to occupy the establishments of the parties that fled, and they will dictate measures which require their conservation, while the creditors carry out their rights in the bankruptcy declaration, in cases of notorious flight or where they have exact notice.

4.6. TYPE OF BANKRUPTCY

Legally, there are five types of bankruptcy :

4.6.1. Suspension of payments

Should the debtor not comply with the agreement, any of their creditors may request its rescission and the bankruptcy declaration before the Judge.

4.6.2. Fortuitous insolvency

A fortuitous bankruptcy is understood as that where the business person undergoes unfortunate events, which having to be considered as chance events in the usual and prudent proper commercial administration, reduces their capital to the extreme of not being able to meet all or part of their debts.

4.6.3. Culpable insolvency

A culpable bankruptcy is that where businesspersons are found in one of the following situations:

- . If the bankrupt parties personal and domestic expenses had been excessive and disproportionate in relation to their liquid capital, based on the circumstances of their rank and family.
- . If they had suffered losses in any type of gambling, which exceed what a careful head of family would venture in this type of entertainment for recreation.
- . If the losses had occurred as a consequence of imprudent and large bets or of purchases and sales or other operations with the object of delaying the bankruptcy.
- . If in the six months preceding the bankruptcy declaration they had sold at a loss or below market price assets purchased on credit and still have a balance outstanding.
- . If there is evidence that during the time from the last inventory up to the bankruptcy declaration, the bankrupt party at some time owed - through direct obligations - twice the amount of liquid capital available in the inventory.

4.6.4. Fraudulent insolvency

A fraudulent bankruptcy is that in which some of the following circumstances occur:

- . Fraudulent conveyance of part or all of their assets
- . Include in the balance, reports, achievements or other documents relative to transfers or negotiations, assets, loans, debts, losses or supposed expenses.
- . Not having kept books, or in keeping them, include in them, with damage to third parties, entries not placed in an appropriate time and place.
- . Cross-out, erase or otherwise alter in any way the books, to the detriment of a third party.
- . Not have accounted for the debit or existence of the assets from their last inventory, and of the money, shares, furniture and assets, of any kind, which is accounted for or justified as having entered into the bankrupt parties possession afterwards.
- . Hide in the balance some amount of money, credits, products or other kind of goods or rights.
- . Have consumed and applied foreign assets, left on deposit, for administration or as commission, for personal business.
- . Negotiate, without the owners authorization, bills of exchange drawn on an account other than their own in their power for collection, dispatch or another use other than for negotiation, had they not consigned their product.
- . If, being commissioned for the sale of some products or to negotiate loans or shares, they had hidden the transaction from the owner for any length of time.
- . Simulate disposals of any kind.

. Grant, sign, consent to or recognize supposed debts, assuming them, except when proven contrary, to be all those which have no just cause or determined value.

. Purchase real estate, assets or loans, placing them in a third parties name, to their creditors detriment.

. Have anticipated payments to their creditors detriment.

. Negotiate, after the last balance, bills of exchange drawn on their own account and put in charge of a person without funds nor loans drawn against them, nor authorization to do so.

. If, with the bankruptcy declaration filed, they perceived and applied money to personal use, assets or loans on assets, or having taken from it some of their belongings.

4.6.5. Fraudulent conveyance

When the company undergoes a fraudulent conveyance of part or all its assets.

4.6.6. Without classification

Since the data collected for this statistic comes from the initiation of the petitions, some times the type of bankruptcy has yet to be classified.

4.7. THE LEGAL NATURE OF THE COMPANY

In the Suspension of payments and declarations of bankruptcy statistic, the legal nature of the company is classified according to whether it is a physical or a legal person and these in turn are classified as a public limited company, a private limited company and other companies

4.7.1. Physical person

An **individual business person** is considered under two different concepts: the financial and the legal.

Financially, the individual business person, can be defined as that person who makes the business their profession whether by directing the commercial industry or collaborating as an employee.

Legally, business persons are those that having legal capacity to carry out the business, usually dedicate themselves to it.

Community of property. A community of property does not have a legal personality. It is a group of persons with commonly owned assets which are indivisible. The asset or assets belong to each co-owner, who in turn owns an abstract participation, in such a way that none separately owns the asset, nor is able to dispose solely of the proportional part owned.

4.7.2. Public limited company.

The Public Limited Company is incorporated by means of public memorandum, which should be inscribed in the Mercantile Registry. With its inscription it will receive its legal personality.

The capital will be divided into shares and will be made up of the partners contributions, who will not be personally responsible for the corporate debt.

The corporate capital cannot be less than 60,101 euros.

No company shall be able to incorporate without its capital completely registered and tendered by one quarter its value, at least, the nominal value of each of its shares.

The Public limited company is characterised by:

- . Corporate management is entrusted to administrators.
- . The constitution of the common fund is divided into shares.
- . Does not have a group name, but rather its own corporate name, indicating "public limited company" or its abbreviation "PLC".

The public memorandum of association should show:

- . The partners.
- . Each partners contribution.
- . The incorporation expenses.
- . The corporate statutes.
- . The entity of persons that initially take charge of the administration and representation of the company.
- . Where necessary, the identity of the account auditors.

The corporate mission should be listed on the corporate statutes, determining the activities it covers.

4.7.3. Private limited company.

In a Limited Partnership, the capital will be divided in corporate participations and is made up of all the partners contributions, who will not personally responsible for the corporate debt.

The capital cannot be less than 3,005 euros, which will be expressed in this currency and must be completely tendered since the beginning.

The corporate capital will be divided into indivisible and accumulable parts. The shares will attribute the same rights to the partners, save exceptions expressly established by present Law.

The corporate participations will not have the value of shares, they will not be represented by means of titles or of entries in accounts, nor shall they be called shares.

The company will be incorporated by means of public memorandum, which should be inscribed in the Mercantile Registry. With its inscription it will receive its legal personality.

The corporate mission should be listed on the corporate statutes, determining the activities it covers.

4.7.4. Other companies

In this section are included the rest of trading companies, other entities and special companies covered by current legislation.

4.8. ASSETS

These are that part of the balance which reflects the total assets (cash in savings banks and banks, machinery and furniture, bills of exchange, etc.) and rights that the company owns. This material value is what permits the payment of debts, should they occur.

4.9. LIABILITIES

These are the part of the balance that reflects the total funds (corporate capital, reserves, etc.) and debts to others (suppliers, mortgage debts, etc.).

4.10. MAIN ECONOMIC ACTIVITY

The corporate objective of those companies which enter into a suspension of payments or bankruptcy declaration situation, is coded to one and two digits, according to the NCEA93:

A **Agriculture, livestock, hunting and forestry**

A01 Agriculture, livestock, hunting and related service activities

02 Forestry , logging and related service activities

B **Fishing**

05 Fishing, aquaculture; service activities incidental to fishing

C **Extractive Industries**

10 Extraction and agglomeration of anthracite, coke, lignite and peat.

- 11 Extraction of crude petroleum and natural gas; service activities incidental to oil and gas extraction, excluding surveying
- 12 Mining of uranium and thorium ores
- 13 Extraction of Metallic Ores
- 14 Extraction of non-metallic and non-energetic ores.
- D Manufacturing industries**
- 15 Manufacture of food products and beverages
- 16 Tobacco industry
- 17 Textile industry
- 18 Clothing and Furs Industry
- 19 Preparation, tanning and finishing of leather; manufacture of leather travel goods, saddlery, harness-making and footwear
- 20 Wood and cork industry, except furniture, basketmaking and esparto
- 21 Paper Industry
- 22 Publishing, graphic arts and reproduction of recorded supports
- 23 Manufacture of coke, refinement of petroleum and treatment of nuclear fuels
- 24 Chemical Industry
- 25 Coking plants, refinement of petroleum. Chemistry. Rubber and Plastic Products.
- 26 Manufacture of other non-metallic ore products
- 27 Metallurgy
- 28 Manufacture of fabricated metal products, except machinery and equipment
- 29 Construction of Machinery and Mechanical Equipment Industry
- 30 Office machines and computers
- 31 Manufacture of electrical machinery and material
- 32 Manufacture of electronic material; manufacture of radio, television and communication equipment and apparatus
- 33 Manufacture of medical and surgical equipment and instruments; for precision, clocks and watches
- 34 Manufacture of motor vehicles and trailers
- 35 Manufacture of other transport material

- 36 Manufacture of Furniture; other manufacturing industries
- 37 Recycling
- E Production and distribution of electricity, gas and water**
- 40 Production and Distribution of Electrical Energy, Gas, Steam and Hot Water
- 41 Collection, Treatment and Distribution of Water
- F Construction**
- 45 Construction
- G Trade; motor vehicles, motorcycles and mopeds and personal and domestic use articles repair**
- 50 Sale, maintenance and repair of motor vehicles and motorcycles; retail sale of automotive fuel
- 51 Wholesale trade and trade intermediaries, except of motor vehicles and motorcycles
- 52 Retail trade, except of motor vehicles, motorcycles and mopeds; repair of personal effects and household equipment
- H Catering**
- 55 Accommodation
- I Transport, storage and communications**
- 60 Land transport; transport via pipelines
- 61 Maritime, cabotage and in-land waterway transport
- 62 Air and space transport
- 63 Activities annexed to transport; travel agencies activities
- 64 Post and communications
- J Financial intermediation**
- 65 Financial intermediation, except insurance and pension funds
- 66 Insurance and Pension Funds, except Compulsory Social Security
- 67 Activities auxiliary to financial intermediation
- K Real estate and rental activities; corporate services**
- 70 Real estate activities
- 71 Renting of machinery and equipment without operator and of personal and household goods

72	Computer activities
73	Research and development
74	Other business activities
L	Public Administration, defense and compulsory social security
75	Public Administration, defense and compulsory social security
M	Education
80	Education
N	Health and veterinary activities Social work
85	Health and social work
O	Other social activities and services rendered to the community; personal services
90	Public Sewage Activities
91	Activities of membership organisations n.e.c.
92	Recreational, cultural and sporting activities
93	Various personal services activities
P	Households which employ domestic personnel
95	Households which employ household personnel
Q	Extra-territorial organisations
99	Extra-territorial organisations and bodies

4.11. REFERENCE PERIOD

The reference period is monthly and corresponds to the date on which the suspension of payments or bankruptcy declaration petition is initiated in the Courts.

4.12. PROVINCE

Both the suspensions of payments as well as the bankruptcy declarations are classified by the province where the Courts that initiate the petitions are located.

5 Collection method

Information is collected by mail. Each Court sends a completed questionnaire for each petition presented, be they suspension of payments or bankruptcy declaration. A negative report is issued for months when no petitions are presented.

5.1. QUESTIONNAIRE

The data requested to produce the statistic are completed on a standardised Mod.S.P.Q. questionnaire, elaborated jointly by the Judiciary General Council and the INE. There is a copy in this publication.

5.2 STATISTICAL UNIT

The statistical units that provide the information are the Courts of First Instance and Instruction for the whole country and that are authorised to initiate the suspension of payment and bankruptcy declaration files. The current number of Courts that intervene monthly in the elaboration of this statistic is 1476.

6 Tabulation

Once the questionnaires are recorded, they are submitted to filtering programs and methods to correct possible errors. The information is tabulated when all phases are finished.

The INE elaborates informative sheets monthly with the most significant provisional data, and annual sheets with the definitive data. In addition to this annual sheet, the quarterly and annual summaries on an Autonomous Community scale are published in **Annual tables**.

7 Dissemination of the information

The results obtained from the Suspensions of Payments and Declarations of Bankruptcy Statistic are spread over different tables published for the nation and for Autonomous Communities.

Until December 2001 these publications were monthly and annual, but as of 2002 the information is accumulated for three months and the publication is carried out quarterly. Thus, data is disseminated each of the four quarters of the year (January to March, April to June, July to September and October to December).

7.1 STATISTICAL YEARBOOK

7.1.2. National table

Historical series of the last ten years for:

- Bankruptcy declarations: number, assets and liabilities
- Suspensions of payment: number, assets and liabilities

7.1.3 Tables on Autonomous Communities communities

- Bankruptcy declarations: number, assets and liabilities
- Suspensions of payment: number, assets and liabilities

7.2. ELECTRONIC PUBLICATION

7.2.1. Annual suspensions of payments National table

According to the cause for suspension

According to the proposal for debt repayment

According to economic activity

7.2.2. Annual suspensions of payments table by Autonomous Community

7.2.3. Annual bankruptcy National table

According to bankruptcy procedure

According to economic activity

7.2.4. Annual bankruptcy table by Autonomous Community

7.3 ON INTERNET

Quarterly provisional data can be accessed by means of this computerised service at:

<http://www.ine.es>

7.3.1. Press releases

The main quarterly results are published, with comments, variation rates and graphs.

7.3.2 Results Summary

The monthly data series are included from January 1994 until 2001, and the quarterly data series since 2002.

7.3.3. TEMPUS chronological series

Data on a national scale from January 1983. The series selected can be graphed automatically.

Note.- The currency used until December 2001 is the peseta. As of the data for the first quarter of 2002, the currency used is the euro.