

Bankruptcy Proceedings Statistics (BPS)

Methodology



INSTITUTO NACIONAL DE ESTADÍSTICA

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Index

Background	3
<hr/>	
Objectives	4
<hr/>	
Research scope	5
<hr/>	
Variables and definitions	6
<hr/>	
Collection method	12
<hr/>	
Tabulation	13
<hr/>	
Dissemination of the information	13

1 Background

1.1 STATISTICS OF SUSPENSIONS OF PAYMENTS AND DECLARATIONS OF BANKRUPTCY

The main precedent of the *Bankruptcy Proceedings Statistics* is the *Statistics of Suspension of Payments and Declarations of Bankruptcy* compiled by the National Statistics Institute until August 2004, and created by Royal Order of August 29 1923. This statistical operation that is of interest to monitor the corporate and economic situation, provided information on the number of companies in suspensions of payments or that had declared bankruptcy and the amounts of their assets and liabilities, in accordance with the main activity and type of company (natural person, PLC, Limited Liability, etc.).

This survey also provided additional information on the economic causes of the suspension of payments and the proposal for payment to creditors; in the case of bankruptcies, it presented the procedure for the declaration of bankruptcy and the type of bankruptcy.

As of 2002, the survey started to be published on a **quarterly** basis, although the information was collected **monthly**. The informant units were the over one thousand **Courts of First Instance and Courts of First Instance and Trial**, that dealt with the suspensions and bankruptcies files, presented to them each month.

The collection mechanisms consisted in the direct dispatch of the questionnaires, completed appropriately, from the courts to the INE (one for each file presented at the court each month). If no files were presented during the reference month, the courts were under the obligation of notifying the INE by registered post.

1.2 THE NEW INSOLVENCY ACT

With the entry into force on **September 1 2004 of Organic Law 8/2003, for the Reform of Bankruptcy Proceedings, and the Insolvency Act 22/2003**, it is necessary to replace the INE's *Suspensions of Payments and Bankruptcy Declarations Statistic* with this new statistic since the legal concepts of the suspension of payments and bankruptcy declarations have been replaced with the terms **bankruptcy proceedings**, designating the entities subjected to this process, **bankrupt debtors**. The name of the law, **the Insolvency Act**, is due to the concurrence of the creditors on the assets of the common debtor.

The questionnaire of the new statistic designed by the INE, *Bankruptcy Proceedings Statistics*, adapted to the new Act, gathers information both on the number of bankruptcies admitted and the number of bankruptcy orders issued by the judge during the reference month, as well as the type of bankruptcy process (voluntary or necessary), and the type of procedure (ordinary or abbreviated), the existence of anticipated proposals of

agreement and the contents (acquittance, wait, arrangement with creditors, or another proposition).

The survey also garners information on the total of the stock of assets and liabilities corresponding to each procedure, once said stock has been established by the so-called Bankruptcy Administration.

2 Objectives

The main objective of the statistic is to provide quarterly information on the number of bankrupt debtors and some of their main characteristics.

This statistic has a short-term nature and aims to act as an indicator of the corporate situation and of the economic situation, and alongside other indicators, to contribute to the analysis of the periods of growth, crisis or cooling of the Spanish economy.

The *questionnaire* collects information on the following variables:

- Number of bankruptcy proceedings presented at the Court**
- Number of bankruptcy orders (Number of bankruptcies notified)**
- Tax Identification Number (NIF) of the bankrupt debtor**
- Type of bankruptcy (Voluntary/Necessary)**
- Type of procedure (Ordinary/Abbreviated)**
- Existence of anticipated proposals of agreement (YES/NO)**
- Content of the proposal (acquittance, wait, arrangement with creditors, or another proposition)**
- Stock of assets of the bankrupt debtor**
- Stock of liabilities of the bankrupt debtor**

Additionally, and in cases of bankrupt debtors that carry out a corporate activity, be they natural or legal persons, this statistic provides information on other variables obtained by crossing the bankrupt company's Tax Identification Number (NIF) included in the questionnaire, with data from the INE's *CCD (Central Company Directory)* and from other INE surveys. In the statistic, these bankrupt debtors are called *bankrupt companies* to establish a difference with bankrupt natural persons who do not perform a corporate activity. These variables are:

- Interval of employees the bankrupt company belongs to**
- Main economic activity of the bankrupt company (NACE 93, two digits)**
- Interval of annual turnover of the bankrupt company**
- Company belongs to a corporate group (YES/NO); if it does, whether the group is or is not controlled by a foreign group (YES/NO)**

- Legal nature of the bankrupt debtor

3 Research scope

The scope of the survey is defined with respect to the population researched, time, and space.

3.1 POPULATION SCOPE

The population scope under study is composed both by the **new Mercantile Courts** and the **Courts of First Instance and the Courts of First Instance and Trial with mercantile competence**, that are the legal organs that receive and manage bankruptcy proceedings.

With a view to collecting the information and coming into effect as of September 2004, **in 2005 the INE and the General Council of the Judiciary Branch** signed an **addendum to the Collaboration Agreement** that already existed between the two institutions for the realisation of **legal statistics**. Said addendum establishes the INE's capacity to use the questionnaire to collect the bankruptcy proceedings notified to the courts included in the statistic's population scope.

The total number of courts surveyed a month amounts to 66. The complete register of legal organs with competence to process and resolve bankruptcy proceedings has been provided by the General Council of the Judiciary Branch.

3.2 GEOGRAPHICAL SCOPE

The whole of the **country**. Bankruptcy proceedings are classified by the provinces where the courts dealing with said procedures are located.

The bankruptcy file will be presented at the court with mercantile competence in the province where the debtor has the centre of his/her main interests, in other words, where the debtor exercises the administration of said interests normally and in a manner that is recognised by third parties.

3.3 TIME SCOPE

The period reference for **collection of the information** is the **natural month**. Therefore, the survey will collect the number of bankruptcies presented at and notified to the courts in the reference month.

As of 2006, the data will be **disseminated, quarterly**.

4 Variables and definitions

The variables that are collected in the questionnaire appear hereunder alongside others that are collected for other statistical sources and are used to classify the bankrupt debtor:

4.1 BANKRUPTCY PROCEEDINGS ADMITTED/PRESENTED IN THE COURT

Proceedings presented by the debtor him/herself or by creditors of said debtor at the courts corresponding to the population scope of the survey, in the case of insolvency of the company or of insufficient assets of the debtor to regularly fulfil the obligations taken on by the debtor.

The judge may or may not dictate a court order for bankruptcy on the proceedings presented, depending on whether said proceedings fulfil all the requirements established in the Insolvency Act.

4.2 BANKRUPTCY COURT ORDER

Court order issued by the judge of a mercantile court notifying of bankruptcy proceedings.

If the request presented by the debtor, in the case of *voluntary bankruptcy*, includes all the necessary documentation, the judge will issue the order declaring bankruptcy. If the request is presented by one of the creditors, in the case of *necessary bankruptcy*, the court order is not issued until the debtor appears before the judge to confirm a status of insolvency.

4.3 Tax Identification Number (NIF)

The Tax Identification Number (NIF) or Company Tax Identification Number (CIF) of the bankrupt debtor that is in a situation of insolvency. This classification considers all bankrupt debtors, regardless of whether they are natural or corporate persons. Nevertheless, given its importance, the statistic distinguishes, on the one hand, bankrupt debtors that perform a corporate activity, which are designated *bankrupt companies*, regardless of them being corporate or natural persons, and on the other, natural persons who do not perform a corporate activity.

4.4. TYPE OF BANKRUPTCY

Bankruptcies are classified by type into:

4.4.1. Voluntary bankruptcy

When *the request is presented by the debtor* within the two months prior to the date when he or she knew or should have known about the insolvency status.

Insolvency may be present or imminent; the latter is produced when the debtor foresees that he or she will not be able to fulfil his or her obligations regularly.

4.4.2. Necessary bankruptcy

When the *request is presented by any of the creditors* of the debtor, specifying the origin of the loan, the nature, sum, date of acquisition and expiration, as well as the loan situation when the bankruptcy is requested.

4.5 TYPE OF PROCEDURE

There may be two different types:

4.5.1. Ordinary procedure.

Normal procedure carried out to file a bankruptcy process.

4.5.2. Abbreviated procedure.

Procedure that is applied when the debtor is a natural or corporate person that is authorised to present an abbreviated balance and the initial estimate of his or her liabilities does not exceed one million euros.

The abbreviated procedure reduces the deadlines envisaged in the Insolvency Act unless the judge determines the opposite.

4.6 . ANTICIPATED PROPOSAL FOR AGREEMENT

The Act allows the possibility of either the debtor or the creditors to present a proposal for agreement alongside the bankruptcy request.

The proposal can include different alternatives to avoid the liquidation of the company and preserve the professional or corporate activity of the bankrupt person.

The possible alternatives appear below:

Aquittance (percentage proposed for the reduction of the loans)

Wait (deadline proposed for the payment of the loans)

Arrangement with creditors (combination of the previous alternatives)

Another proposition (conversion of the loan into shares, holdings or social quota, or into participative loans,...).

4.7 STOCK OF ASSETS

Both the stock of assets and the variable that appears below, the stock of liabilities, are determined by the *Bankruptcy Administration* , which is in

charge of carrying out an inventory of the debtor's assets and liabilities and a list of creditors and of auditing the actions performed by the debtor.

The stock of assets is formed by the ensemble of assets and rights that compose the debtor's estate on the date of the declaration of bankruptcy and those that are registered at the same time or are acquired until the conclusion of the procedure. With the exception of goods and rights that are assets by nature but are legally nonseizable.

4.8 STOCK OF LIABILITIES

Formed by the loans against the common debtor which, in accordance with the Insolvency Act, are not considered loans against the stock.

4.9 DATE OF THE DECLARATION OF BANKRUPTCY

Corresponds to the month and year in which the judge pronounces the declaration of bankruptcy. This date is required in section 3 of the questionnaire, *Stock of assets and liabilities determined by the bankruptcy administration*, with the objective of knowing the date when the bankrupt debtors for which the Bankruptcy Administration has determined the stock of assets and liabilities in the reference month were declared as such in the court order of the declaration of bankruptcy.

Since bankruptcy proceedings are time-consuming in their processing and resolution, the bankrupt debtors for which the bankruptcy administration has determined assets and liabilities in the reference month will not coincide with the debtors who during the reference month have been declared bankrupt in the previous section of the questionnaire.

Consequently, the information on the stock of assets and liabilities of the bankrupt debtors cannot be published at the same time as the rest of the information on said bankrupt debtors in a given quarter. The stock of assets and liabilities collected in that period will obviously correspond mostly to debtors whose bankruptcies were declared in the quarters prior to the reference of the publication.

As well as the variables obtained in the statistics' questionnaire, other published results are obtained by crossing the information on the debtor with other statistical sources like the CCD (Central Company Directory compiled by the INE) and different surveys the INE has sent to companies. Specifically, these variables have only been used for the bankrupt debtors designated as companies

4.10 ECONOMIC ACTIVITY OF THE COMPANY

Determined according to the National Classification of Economic Activities 1993 (NACE-93), with two digits, in accordance with the information from the CCD:

- A. Agriculture, livestock, hunting and forestry**
- 01 Agriculture, livestock, hunting and related services activities
- 02 Forestry, forest industry and related services activities
- B Fishing**
- 05 Fishing, aquaculture and service activities incidental to fishing
- C Extractive Industries**
- 10 Extraction and agglomeration of anthracite, coal, 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 metal 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 dressing of leather; manufacture of luggage, handbags; saddlery, harness and footwear
- 20 Wood and cork industry, except furniture; basket making and straw and plaiting materials
- 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 Manufacture of 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 Machinery and mechanical equipment construction industry
- 30 Manufacture of office machines and IT equipment
- 31 Manufacture of machinery and electrical material

32 Manufacture of electronic material; manufacture of radio, television and communications apparatus

33 Manufacture of medical and surgical equipment and instruments; for precision, clocks and watches

34 Manufacture of motor vehicles, trailers and semi-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, purification and distribution of water

F Construction

45 Construction

G Trade; trade, repair of motor vehicles, motorcycles and mopeds and personal and domestic articles

50 Sale, maintenance and repair of motor vehicles, motorcycles and mopeds: retail sale of fuel for motor vehicles

51 Wholesale commerce and commerce intermediaries, except of motor vehicles and motorcycles

52 Retail trade except trade of motor vehicles, motorcycles and mopeds; repair of personal effects and household equipment

H Catering

55 Catering

I Transport, storage and communications

60 Land transport; pipeline transport

61 Maritime, cabotage and in-land waterway transport

62 Air and space transport

63 Activities annexed to transport; activities of travel agencies

64 Post and telecommunications

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; business services

70	Real estate activities
71	Renting of machinery and equipment without operator and of personal and household goods
72	Computer and related activities
73	Research and development
74	Other business activities
L	Public Administration, defence and compulsory social security
75	Public administration, Defence and compulsory Social Security
M	Education
80	Education
N	Health and veterinary activities, social work
85	Health and veterinary activities, social work
O	Other social activities and services provided to the community; personal services
90	Public health activities
91	Associated activities
92	Recreational, cultural and sporting activities
93	Various personal services activities
P	Households which employ household personnel
95	Households that employ domestic personnel
Q	Extra-territorial organizations
99	Extraterritorial institutions

4.10. INTERVAL OF EMPLOYEES

The interval each bankrupt debtor belongs to is determined by the number of employees that correspond to said debtor in the CCD.

4.11. TURNOVER INTERVAL

The annual turnover interval each bankrupt company belongs to is determined by the information obtained from other INE surveys.

4.12. THE BANKRUPT COMPANY BELONGS TO A CORPORATE GROUP

The number of bankrupt companies that belong to a corporate group is determined by the information obtained from other INE surveys.

4.13. FOREIGN GROUP

Determines the number of bankrupt companies that belong to a corporate group, whether or not it is controlled by a foreign group.

5 Collection method

The information is collected via questionnaire and regular post. The single questionnaire is sent to each court with mercantile competence, which then sends it to the INE monthly after completing the information on all the bankrupt debtors corresponding to the reference month. The questionnaire shall be returned to the INE's Central Services before the 7th day of the month after the data reference month.

5.1. QUESTIONNAIRE

The data requested to perform the statistic are completed in standardised questionnaire Mod. EPC-EM-E-06, compiled by the INE assisted by the General Council of the Judiciary Branch.

6 Tabulation

Once the questionnaires have been recorded, they are processed with computer programmes and undergo filtering methods to correct possible errors. The information is tabulated after completing all the stages. As well as tabulations based on the data obtained directly from the questionnaire, tables based on variables for the classification of bankrupt debtors obtained from crossing companies and other statistical sources are also published.

7 Dissemination of the information

The information will be disseminated every quarter as of 2006 on the date indicated in the **INE's Calendar of availability of short-term statistics**, via the **Press release** of the Statistic which will be accompanied by the **tables of main results** which will be located on the INE website www.ine.es.

Furthermore, with the publication of the first quarter of 2006, all the information corresponding to the last quarter of 2004 (when the Insolvency Act came into force) and all the quarters of 2005 will be disseminated with a retroactive nature.