

**Pre-emption right resulting from the assignment of litigious claims.
The Spanish Supreme Court consolidates its doctrine**

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The Spanish Supreme Court (SSC) has recently issued three rulings “systematizing and updating” its case-law regarding the pre-emption right of a debtor when a claim against it is litigious and has been assigned to a third party¹. These judgments are particularly relevant in the current economic context where the purchase of litigious claims is increasing dramatically.

Under Spanish law, any debtor is entitled to extinguish its litigious debt by reimbursing the assignee of the claim the price it paid to the assignor (rather than the face value of the debt) as well as any costs incurred by the assignee and interest accrued from the date on which the price of the assignment was paid².

According to the SSC, these are the requirements for the pre-emption right to arise:

- (i) The claim must be litigious, i.e. subject to litigation about its existence or enforceability (*exigibilidad*)³. Therefore, the debtor has no pre-emption right when the dispute relates to other circumstances such as the legal nature or the specific terms and conditions of the claim.
- (ii) The claim must have been assigned after the defendant had answered the statement of claim and before the court had issued a final (*firme*) judgment, i.e. while the judicial proceedings are still ongoing.
- (iii) The claim may have been assigned individually or jointly with others (as part of a portfolio) as long as a specific price for that claim has been set. Accordingly, the debtor shall not be entitled to a pre-emption right if the claim has been assigned by means of universal succession or with other claims in bulk⁴ (*en globo*) or for a lump sum price (*a precio alzado*)⁵.
- (iv) The pre-emption right must be exercised by filing a claim before the competent court within a nine-day calendar term following the date on which the assignee has requested payment to the debtor. It is important to note that this term cannot be interrupted and, therefore, there is a very short time frame to prepare and file the court action exercising the pre-emption right.

¹ SSC judgments 277/2021, dated 10 May; 505/2020, dated 5 October; and 151/2020, dated 5 March.

² Article 1,535 of the Spanish Civil Code.

³ The rulings only refer to judicial proceedings; however, we consider that the pre-emption right could also be exercised if the claim is disputed within an arbitration.

⁴ Portfolio of “not listed or detailed” claims that are sold for a sole price.

⁵ Portfolio of claims that, although listed and detailed, are sold for a sole price.