The Restructuring Review

Sixth Edition

Editor
Christopher Mallon

Law Business Research

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EDITOR'S PREFACE

I am very pleased to present this sixth edition of *The Restructuring Review*. As with the previous editions, our intention is to help general counsel, government agencies and private practice lawyers understand the conditions prevailing in the global restructuring market in 2012 and 2013 and to highlight some of the more significant legal and commercial developments and trends that have been evident in recent years, and that are expected to be significant in the future.

Recent trends in the world economy have presented a mixed picture. Positive economic developments in the United States, such as the robust growth in job creation, have been offset by a situation of stasis in the EU, which remains troubled by concerns about the ongoing eurozone debt crisis and political uncertainty. There have also been some indications that emerging markets, which have done much to underpin global growth in the recent past, are set to experience more challenging conditions in the coming years.

Another cause for concern is that the positive economic developments of recent years appear to have been largely predicated on the extraordinary measures taken by central banks in response to the global financial crisis; it is not clear how economies will respond when historically low interest rates and loose monetary policy eventually revert to the mean. It is to be expected that central banks will be reluctant to endanger a fragile recovery through a premature return to orthodox policy, but it is inevitable that a return will have to be made in due course. The markets' negative reaction to the signals given in June 2013 by the US Federal Reserve that it was considering an earlier end to quantitative easing than previously anticipated indicates the stress that may be placed on large parts of the global economy as current policies are reversed.

While the picture is continually changing, and the only accurate economic prediction that can be made is for more uncertainty in the months ahead, most commentators agree that a significant deleveraging at the individual, corporate and governmental levels is likely to be seen in the coming years and may be an essential prerequisite for a return to stability.

This deleveraging and the difficult global economic conditions are widely expected to contribute to a significant increase in restructuring activity in the coming years. As such, this work is becoming ever more relevant and important, in particular because of the international nature of many corporate restructurings.

I would like to extend my gratitude to all the contributors for the support and cooperation they have provided in the preparation of this work, and to our publishers, without whom the completion of this work would not have been possible.

Christopher Mallon
Skadden, Arps, Slate, Meagher & Flom (UK) LLP
London
August 2013

Chapter 25

SPAIN

Antonio Fernández, Borja García-Alamán, Adrián Thery and Juan Verdugo[1]

I OVERVIEW OF RESTRUCTURING AND INSOLVENCY ACTIVITY

During 2012 the euro suffered a crisis of confidence that affected the performance of the world economy. The Spanish economy faced the severe tensions in the eurozone from a vulnerable position. A serious contraction in household and business spending and a sharp increase in unemployment hastened the deterioration in public finances and eroded the balance sheets of the banks most exposed to the real estate excesses of the expansionary years.

As a result, GDP in 2012 shrank by 1.4 per cent on average. The adverse funding conditions and the downturn in confidence exacerbated the fall-off in domestic demand, which dropped 3.9 per cent, owing to the continuing correction in the real estate market, the adjustment in private-sector balance sheets and the impact of fiscal consolidation. All these factors, present since the start of the crisis, bore down on private-sector demand, the determinants of which were in extremely fragile shape.

Against this backdrop, Spain did not have the funds to recapitalise its financial institutions on its own and requested support from the European Stability Mechanism. Of the maximum €100 billion of funds available under the financial assistance programme formalised in July 2012, Spain ultimately needed slightly over €41 billion. €39 billion was used by the FROB[2] to recapitalise the banks that could not meet their capital requirements by their own means and the remainder was earmarked for financing the FROB's stake in SAREB, the company created to manage the distressed real estate

1 Antonio Fernández, Borja García-Alamán, Adrián Thery and Juan Verdugo are partners at Garrigues.

2 Spain's Fund for the Orderly Restructuring of the Banking Sector.

assets segregated from bank balance sheets (see Section IV.i, *infra*, for more details about SAREB, also known as the 'bad Spanish bank').

Unemployment is still running very high, as is borne out by the figures. 2012 ended with an unemployment rate of 26.1 per cent, and by April 2013 this had risen to 26.8 per cent. According to the European Commission, unemployment is expected to keep rising for a little longer, albeit at a slower pace than at present. It has predicted a 26.9 per cent unemployment rate in 2013, although it is expected to dip slightly in 2014 to 26.6 per cent.

As mentioned above, among its other consequences, high unemployment has dampened consumer spending. In the second quarter of 2012, the Bank of Spain reported a decrease in consumption of 1.2 per cent, compared with 0.5 per cent in the previous quarter. Among the qualitative indicators, consumer confidence recovered somewhat in January 2013, according to the European Commission, although it still remains at very low levels. One of the factors considered to have held back the recovery in consumer spending is the increase in the VAT rate, which after the latest government reform in 2012 was raised from 18 per cent to 21 per cent; another is the increase in the CPI with a year-on-year variation of 1.7 per cent in May 2013.

The slowdown in lending has continued, due to both demand factors (in view of the economic climate in Spain and worldwide) and a tightening of supply conditions, in response to the increase in non-performing loans (which reached an all-time high in November 2012, accounting for 11.23 per cent of all loans, but dropped back slightly to 10.78 per cent in January 2013). In 2012 the number of new mortgages continued to decline (51,762 were arranged that year), and in 2013 the trend seems set to continue as only 3,975 were arranged in the first quarter, down 25 per cent on the figure for the same period the previous year.

Due to the adverse situation generally, many of those loans have had to be called in by their lenders. During 2012, 101,034 foreclosure proceedings were commenced, compared with 94,825 in 2011, and 77,854 in 2010, according to data published by the General Council of the Spanish Judiciary, almost three times the number at the beginning of the crisis.

In 2012, the number of formally insolvent debtors increased by 27.1 per cent compared with 2011 (to 8,726). In the first quarter of 2013 alone, 2,854 insolvency proceedings took place, up 22.8 per cent on 2012. There was a particularly sharp rise in the number of creditor-petitioned compulsory insolvency proceedings, which were 25.6 per cent higher in the first quarter of 2013 than the figure for the same period in 2012.[3]

3 According to the most recently available data from the Spanish Survey System (www.ine.es).

II GENERAL INTRODUCTION TO THE RESTRUCTURING AND INSOLVENCY LEGAL FRAMEWORK

i Informal methods to restructure distressed companies and pre-insolvency proceedings.

There has been a well-established international trend over recent years towards offering out-of-court preventative solutions in local insolvency legislation, thereby endorsing the utility of these solutions and defining the terms for the most problematic aspects associated with them. Replacing unanimity with a majority vote, imposing a moratorium on individual actions for these periods and granting immunity for acts performed by the parties are all measures that undoubtedly encourage this type of solution and on which a modern insolvency system, such as the Spanish *concurso* system, should rely.

Some of these goals were achieved by the reform ushered in by Law 38/2011 of 10 October 2011, which introduced a system inspired by the UK's 'schemes of arrangement' or the French 'accelerated sauvegarde proceeding' albeit not so ambitious, named as court validation. Therefore, since January 2012, formal refinancing agreements (ARFs) meeting the requirements established in Article 71.6 of the Insolvency Law may be court-sanctioned in order to extend the scope of the payment deferral approved by majority to dissenting financial institutions. If the ARF is entered into by creditors representing at least 75 per cent of liabilities held by the financial institutions at the time of the ARF, and it is considered that the ARF does not represent a 'disproportionate sacrifice' for dissenting financial institutions – as must be further determined by the commercial court – the ARF may be validated and the scope of the deferral approved by the majority extended to dissenting financial creditors, subject to two limitations: the court cannot, in principle, impose ARF terms requiring a deferral for longer than three years; and deferrals cannot be imposed on creditors holding security interests to the extent of the value of the collateral.

ii Formal insolvency proceedings

For a company in economic and financial difficulty, a formal insolvency proceeding is a powerful corporate restructuring tool, while an arrangement with creditors is one of its key instruments.

Law 22/2003 of 9 July 2003 (the Insolvency Law, or the LC), contemplates two different scenarios in which a debtor can petition for its voluntary formal insolvency:

a where it is unable to regularly meet its debts as they fall due[4] – an event of actual technical insolvency; or

b where it foresees that it will be unable to meet its existing debts regularly as they fall due[5] – an event of imminent technical insolvency.

In both cases, however, the procedure for the debtor to petition for an insolvency order (debtor-petitioned voluntary insolvency proceeding versus a creditor-petitioned

4 Article 2.2 of the LC.

5 Article 2.3 of the LC, *in fine*.

compulsory insolvency proceeding) is the same with regard to its phases, the manner in which it is conducted and its length.

A debtor in a situation of actual or imminent technical insolvency may seek protection from petitions for its compulsory insolvency when negotiating a refinancing agreement or an advanced proposal for a creditors' arrangement (advanced reorganisation plan or PAC). A debtor who notifies the Commercial Court that it has commenced negotiations with its creditors will be granted a four-month period during which it has no duty to petition for insolvency and it is protected against compulsory insolvency petitions.

Common phase

A voluntary insolvency proceeding commences with the debtor filing a petition for an insolvency order. The Insolvency Law obliges directors to petition for such an order when the company is in an actual state of technical insolvency (see Section III, *infra*). In the event of imminent technical insolvency, the debtor can file its petition at any time, since it is not under an obligation to do so.

If, after examining the petition, the judge deems the information to be complete and to constitute sufficient evidence of the debtor's technical insolvency, the judge will make an insolvency order.[6] Creditors must notify their claims to the court within one month of the date on which notice of the insolvency order is published. Insolvency order notices are published in the Spanish Official State Gazette (BOE).[7] Although the traditional (and normally not updated) insolvency registry is still operating,[8] the brand-new public insolvency registry is not yet available online.

At the same time as making an insolvency order, the commercial court will appoint an insolvency manager (in the event of insolvency proceedings of 'special relevance', two may be appointed). The insolvency manager will be responsible for vetting the acts of the insolvent debtor and for drafting a report containing a detailed analysis of the documentation submitted by the debtor (the inventory and list of creditors) and of its financial statements. Prior to the publication of this report, the insolvency manager will send the creditors a draft inventory and list of creditors so as to detect and remedy any mistakes the manager may have made and thus avoid future claims. On publication of the report, each creditor has 10 days[9] in which to object to it. Objections to the report must be made in an ancillary proceeding, the time of which will vary depending on the court's workload (approximately 5 to 15 months after publication).

If no objection is made against the receiver's report, or if all the objections have been resolved, the insolvency manager will submit final versions of both the inventory and the list of creditors and liabilities. The judge will then make an order to commence the creditors' arrangement phase. Note that if the objections to the report affect less than 20 per cent of the total value of assets or liabilities in the proceeding, the court may direct

6 Article 14.1 of the LC.

7 The Spanish Official State Gazette is available online at www.boe.es.

8 www.publicidadconcursal.es, only available in Spanish.

9 Article 96 of the LC.

that the common phase be concluded immediately and that the creditors' arrangement phase or the liquidation phase (see below) be commenced.

Creditors' arrangement phase

A reorganisation plan (proposal for an arrangement) can be filed at different stages depending on the kind of plan.

Advanced proposals (PACs) can be made any time between the filing of the petition for an insolvency order and the deadline for notification of claims. Ordinary proposals can be filed up to 40 days before the creditors' meeting takes place (in the case of more than 300 creditors, the period for filing an ordinary proposal can be shorter).

A proposal will be accepted by the court if it meets the statutory requirements.[10] After it has been accepted, the insolvency manager will prepare a report assessing the proposal and any attached payment and feasibility plans.

In terms of what it can contain, a reorganisation plan:

a will include a detailed repayment schedule;

b will also include the proposed write-off and/or deferral;

c could include debt-for-equity and debt-for-debt swaps;

d must include a viability plan if the repayment schedule is based on the debtor's future cash flow;

e may contain alternative repayment proposals for all or some creditors; and

f may also include the sale of all or part of the debtor's business to a third party.

Approval of a reorganisation plan normally requires the affirmative vote of creditors representing at least 50 per cent of the total amount of ordinary claims. Ordinary creditors are entitled to vote and will be bound by the decision of the majority, regardless of whether they actually vote or abstain. Subordinated creditors cannot vote.

Following the latest legal amendments as regards insolvency claims trading, a purchaser of claims who is subject to financial supervision retains the right to vote the reorganisation plan.

The proposal for an arrangement must be court-approved. The debtor must fulfil the specific terms and conditions of the reorganisation plan. If there is a breach of the terms of the reorganisation plan, the court will make a ruling to this effect and direct that the insolvency proceedings be resumed for the purpose of liquidating the company. Claims incurred after the approval of an arrangement are treated as post-petition claims (specially preferred claims) if the reorganisation plan fails and liquidation starts.

Liquidation phase

The LC offers liquidation as an alternative to an arrangement with creditors.

The liquidation phase will commence automatically if no arrangement is proposed, or if there is a breach of an arrangement, or where liquidation is applied for directly by the debtor at any time.

10 Article 114 of the LC.

The debtor may seek liquidation at any time during the proceedings. If the company has ceased trading, the insolvency manager may make a direct application for liquidation and apply for the termination of insolvency proceedings where there are insufficient assets available to pay post-insolvency order claims, provided that certain conditions are met.

In the event of liquidation, the power to manage its business passes from the debtor and to the insolvency manager, who must prepare a liquidation plan to be approved by the judge. On approval of the liquidation plan, all of the debtor's assets will be sold off and claims paid to the creditors in the statutory order of priority.

Under the Insolvency Law, claims are classified as follows:

a post-insolvency order claims or claims against the insolvent debtor's estate, paid out of the insolvent debtor's estate, normally as they fall due and ahead of pre-insolvency order claims; or

b claims arising before the date of the insolvency order (pre-insolvency order claims), falling into one of the following categories:

- secured claims: claims secured by a specific asset or right;
- generally preferred claims: claims paid ahead of ordinary claims but not secured by any collateral. Some generally preferred claims are for other amounts to be paid to the tax and social security authorities (up to 50 per cent of the aggregate total);
- ordinary claims: claims that are not secured generally preferred or subordinated. Such claims rank *pari passu* and are paid *pro rata*; and
- subordinated claims: claims, the holders of which are not entitled to vote on proposals in a reorganisation plan; such claims forfeit any security interest created to secure the claim; if a reorganisation plan is approved, the holders of subordinated claims will (normally) be subject to the same write-offs and deferrals as ordinary creditors. Some subordinated claims are contractually subordinated to all other claims, claims for interest unless secured, or claims by persons who are 'specially related' to the debtor (as explained next).

The following creditors will be considered to be 'specially related' to the debtor:

a shareholders owning at least 10 per cent of the capital of the company when the claim arose (5 per cent if the debtor is a listed company), but their claims will not be subordinated if they arise from trading activities rather than from financing arrangements;

b *de facto* or *de jure* directors, liquidators, persons to whom the debtor has granted a general power of attorney, and persons who have held such office in the two years immediately preceding the insolvency order; and

c entities belonging to the debtor's group and its common shareholders, if they meet the conditions in (a).

Insolvency assessment phase

The court will assess the debtor's business practices (the assessment phase) if: (1) no reorganisation plan is approved; (2) the reorganisation plan establishes, in the event of all creditors or creditors belonging to one or more classes, a write-off of more than 33 per cent of the amount of their claims or a deferral lasting longer than three years; or (3)

the approved reorganisation plan is not fulfilled and the debtor is forced to liquidate its business.

An insolvency will be considered fault-based where there is a finding of wilful misconduct or gross negligence on the part of the debtor or – as the case may be – of its *de facto* or *de jure* legal representatives, directors, liquidators or general attorneys-in-fact in creating or aggravating the debtor's technical insolvency. As a result of this assessment in a liquidation scenario, the debtor's *de jure* or *de facto* directors may be held personally liable to the extent of their own assets, and required to make good any shortfall in the amount of claims collected by the creditors in the liquidation process.

iii Other issues relevant to insolvency and restructuring

Measures to expedite proceedings and pre-packed sales

The most recent legal reform has introduced measures to encourage fast-track insolvency proceedings. The insolvency judge has been given greater flexibility to choose to conduct a fast-track proceeding from the outset, or switch from an ordinary proceeding to a fast-track proceeding.

Specifically, the court will now conduct a fast-track proceeding when the debtor submits a liquidation plan with its petition for insolvency that contains a binding offer to purchase the operating business unit. The court will then immediately order the commencement of the liquidation phase. The insolvency manager will be given 10 days to analyse the liquidation plan – including the binding offer – and issue a report, and the creditors will be given a further 10 days to make submissions. Finally, the court will make an order approving the sale, regardless of the insolvency proceedings continuing for the purpose of determining the ranking of claims, satisfying such claims, assessing the conduct of the company's directors, etc.

Preserving the value of the business or assets

At any time during the insolvency proceedings, the insolvency manager can directly authorise, without court approval, sales of assets that are essential to ensure the viability of the debtor's business or to meet cash needs, as well as of sales of assets that are not necessary to the business. The sale of moveable and immoveable property that does not meet such conditions will be approved by the court almost automatically if the price offered does not exceed certain discounted limits.

The commencement of insolvency proceedings has the following positive effects on the debtor's estate:

a any pre-existing attachments on the debtor's assets can be lifted and cancelled if they hinder the continuity of the debtor's business;

b administrative enforcement proceedings are generally stayed;

c foreclosure proceedings will be stayed and may only resume if the court finds that the collateral is not used in or necessary for the business; and

d subcontractors are barred from bringing legal action against the owner of the work performed by the debtor.

Secured claims under the Insolvency Law

Claims held by banks and other creditors may be secured by mortgages, pledges or other security interests. If the security in question has been created in compliance with the requisites and formalities established in the legislation specific to it for third-party opposition, the creditors will have specially preferred (i.e., secured) status with the effects envisaged in the LC, including the following:

a the right to separate enforcement of their claim, if they commenced foreclosure proceedings before the date of the insolvency order (separate enforcement may also be initiated between such date and the start of the liquidation phase) and certain additional requirements were satisfied;

b the right to abstain from any arrangement with creditors: in other words, the right not to be bound by any reorganisation plan approved by the majority of the creditors, unless the secured creditors adhere to it voluntarily, and the ability to exercise the rights ordinarily corresponding to them (in the mortgage foreclosure proceedings) if the reorganisation plan has been approved without their participation;

c priority for collecting their claims in the event of the debtor's liquidation, since the LC provides that a secured claim (such as one secured by a mortgage or pledge) must be paid using the proceeds from the sale of the assets serving as collateral for it; if, however, the value of the collateral is insufficient to cover the amount of the specially preferred claim, the shortfall will be treated as an ordinary unsecured claim; and

d while a moratorium on the payment of interest operates generally as soon as the insolvency order is made, interest will continue to accrue for secured creditors, such as mortgagees or pledgees, provided that the value of the collateral is sufficient to repay their claims; furthermore, while interest owed is generally regarded as a subordinated claim, interest accruing for a mortgagee will rank as a secured claim, up to the value of the collateral.

Duties of directors

As regards the duties of directors of companies in financial difficulty, the debtor has a duty to petition for an insolvency order within two months after the date on which it becomes, or should have become, aware of its technical insolvency, unless the debtor has submitted the communication as per Article 5-bis, in which case the debtor has an additional four-month window, as previously mentioned. A breach by the debtor of its duty to petition for insolvency in a timely manner gives rise to a rebuttable presumption of wilful misconduct or gross negligence. In such a case, the insolvency may be held to be fault-based. Furthermore, as a general rule, an insolvency will be assessed as fault-based where there is a finding of wilful misconduct or gross negligence on the part of the debtor or, as the case may be, of its *de facto* or *de jure* legal representatives, directors or liquidators in creating or aggravating the debtor's state of technical insolvency.

Clawback actions

The insolvency manager may challenge transactions that could be deemed to have been 'detrimental' to the debtor's interests, if the transactions took place within the two years

preceding the insolvency order. The 'detriment' does not refer to the intention of the parties, but to the consequences of the transaction for the debtor's interests.

Some Spanish courts have taken the view that transactions that contravene the principle of *pars conditio creditorum* (equal treatment among all creditors) can be construed as detrimental, provided that it can be shown that they prevent, impair or obstruct the collective satisfaction of the claims of the debtor's creditors.

The formal insolvency of a company does not necessarily lead to the formal insolvency of the other companies of its group. If this happens (i.e., if the formal insolvency of a debtor triggers the formal insolvency of one or more related entities), each of the debtors will have its own insolvency proceeding, and each proceeding may be conducted by the same or other courts independently and with the involvement of different insolvency managers.

Nevertheless, any of the debtors, their receivers or their creditors can request that one single court and the same insolvency manager deal with the different proceedings, so as to enhance coordination and thus achieve savings. However, this will not lead to a consolidation of the assets or creditors of the various debtors adjudged to be insolvent; only in exceptional cases may the assets of and claims against different debtors be consolidated (if their assets are intermingled and the ownership of assets and liabilities cannot be unravelled without incurring further costs).

III RECENT LEGAL DEVELOPMENTS

i Restructuring and resolution of credit institutions

Royal Decree-Law 24/2012 on the restructuring and resolution of credit institutions came into force on 31 August 2012. It laid down provisions on early intervention, restructuring and resolution processes for credit institutions, and established the legal rules on the FROB providing public financial support to banks, and the general rules governing its activities. The legislation is aimed at protecting the stability of the Spanish financial system, by reducing the use of public funds to a minimum.

It also makes provision for the incorporation of SAREB (see Section IV.i, *infra*).

ii Loan refinancing and restructuring

On 30 April 2013, the Bank of Spain's Executive Commission approved a letter to be sent to regulated institutions setting out the Bank of Spain's criteria on the application of the provisions of Circular 4/2004 on loan refinancing and restructuring, as regards their definition, documentation, monitoring and review. On the basis of the information obtained following the publication of Circular 6/2012, the Bank of Spain observed differences in institutions' accounting policies with respect to refinanced instruments. This measure is intended to establish general uniform criteria, in order to manage risk with customers undergoing difficulties, provided such difficulties are transitory. Therefore, if a customer's difficulties prove not to be transitory, the institution must recognise such situation and reclassify the loans as doubtful or substandard, according to the severity of the difficulties experienced.

IV SIGNIFICANT TRANSACTIONS, KEY DEVELOPMENTS AND MOST ACTIVE INDUSTRIES

i Out-of-court restructuring processes

Banking

As a part of the roadmap established for the restructuring and recapitalisation of the Spanish banking sector, an asset management company has been incorporated under the name of Sociedad de Gestión de Activos Procedentes de la Reestructuración Bancaria SA (SAREB). It is a key element in the process of cleaning up the banks' balance sheets as it permits the segregation of toxic assets from the balance sheets of banks requiring public assistance, substantially reduces any uncertainty regarding the viability of such banks, and centralises management of the problematic assets so that they can be managed and divested in an orderly manner over a period of 15 years.

For this purpose, a for-profit vehicle has been designed on the basis of prudent valuations, and will not form part of the public sector. SAREB will optimise the levels of preservation and recovery of value, minimise possible market distortions that may result from its activities, use capital efficiently and, as a for-profit company, seek to minimise the use of public funds.

The volume of assets to be transferred initially to SAREB is estimated to be approximately €45 billion. Under no circumstances may the volume exceed €90 billion.

Media

After months of negotiations, Imagina Group – whose financial debt amounted to €355 million – closed a refinancing deal with more than 75 per cent of its financial creditors. The refinancing agreement entailed (1) a brand-new final due date for pending obligations in March 2015, (2) a new repayment schedule, and (3) a standstill commitment as regards the banking guarantees that will all remain in force until March 2015. All the financial creditors bar one signed the refinancing agreement, although the dissenting creditor had no impact on the majority approving the deal. In addition, to support the refinancing agreement, Imagina obtained an independent expert's report on the viability plan, and immediately thereafter applied to the commercial court for approval of the refinancing agreement. After fast-tracking Imagina's application, the court made an order not only to approve the refinancing agreement, but also to extend the scope of application of the agreed rescheduling of repayments to the dissenting creditor.

ii Insolvency proceedings

Energy

Petersen Energía Inversora SAU and Petersen Energía, SAU are two Spanish companies that jointly held shares in the Argentinian company YPF SA. The origin of the insolvency of these two companies can be traced back to the seizure of control by the Argentinian state of REPSOL's shareholding in YPF and the decisions subsequently made by the Argentinian state as a shareholder, most notably the sudden interruption of dividend distributions and the refusal to comply with the by-law requirement to make a tender offer for the shares held by the companies (which caused a loss to the companies, indemnification for which is being sought).

Both the sheer scale of the companies' liabilities (larger than €2 billion) and size of their assets (surpassing €3.3 billion), not to mention the behind-the-scenes complexity of the case, or the multi-jurisdictional component, make *Petersen* one of the most significant insolvency cases in Spain in recent history.

V INTERNATIONAL

The LC faithfully follows the recommendations of the UNCITRAL Model Law and allows a wide variety of instruments to be used to maximise the opportunities for business reorganisation and overcoming financial difficulties. In fact, the decisions of the Spanish courts are wholly consistent with European Court of Justice case law and with the interpretation being followed by other European courts, especially as regards the concept of 'centre of main interests'.

With regard to insolvency matters, Council Regulation (EC) No. 1346/2000 of 29 May 2000 on insolvency proceedings[11] will apply to collective insolvency proceedings that entail the partial or total divestment of a debtor and the appointment of a liquidator. Pursuant to this Regulation, any judgment opening insolvency proceedings handed down by a court of a Member State that has jurisdiction according to the Regulation will be recognised in Spain from the time that it becomes effective in the state of the opening of proceedings.[12]

VI FUTURE DEVELOPMENTS

The government is considering the implementation of a special insolvency regime for entrepreneurs and small enterprises with the goal of minimising the cost and time incurred by them in formal insolvency proceedings. Furthermore, the aim of the amendment is to give individuals a fresh start.

Finally, the latest insolvency reform has established a special regime applicable to situations of insolvency of sports entities. This regime may be introduced in the coming months, although it is causing major disagreements between sports entities that are currently in formal insolvency proceedings and those that are not, with a disruptive effect on the holding of sports competitions.

11 Official Journal, June 2000.

12 Article 16.

Appendix 1

ABOUT THE AUTHORS

ANTONIO FERNÁNDEZ

Garrigues

Antonio Fernández is the partner in charge of the firm's restructuring and insolvency group. As an specialist in restructuring and insolvency law, Mr Fernández has acted in the most significant bank debt refinancing transactions ever seen in Spain, and has handled some of the highest-profile insolvency cases, reaching arrangements with creditors or liquidating distressed companies in an orderly manner. Listed in *Chambers Europe*, *Chambers Global* and *IFLR 1000*. Named as 'Lawyer of the Year' in Spain (*Best Lawyers 2012*).

In the area of refinancing, Mr Fernández and his team acted as advisers in 2011 and 2012 for various real estate and industrial and media groups in Spain with significant foreign and offshore interests. The debtors represented most recently by Mr Fernández in reorganization proceedings had liabilities amounting to €1 billion. Currently, he is acting as a 'top player' in the most significant restructuring cases in Spain and advising leading investment banks, insurance and motor companies in major ongoing court insolvency proceedings, in which he is able to bring to bear his solid experience in cross-border restructuring techniques.

In the area of insolvency law, Mr Fernández has played a pivotal role in key insolvency proceedings, representing debtors with liabilities amounting, on aggregate, to more than €5 billion. Mr Fernández and his team have also acted on behalf of major creditors in the most high-profile insolvency proceedings, defending their claims and maximizing the potential return on their investment or the recovery of debts. A founding member of the Spanish Chapter of the Turnaround Management Association, he is a frequent contributor to *Revista de Derecho Concursal y Paraconcursal* (published by La Ley) and the IBA newsletter.

BORJA GARCÍA-ALAMÁN

Garrigues

Borja García-Alamán is a partner in the firm's restructuring and insolvency group. Based at Garrigues' head office in Madrid, he holds a bachelor's degree in law from Universidad CEU-San Pablo and a master's degree in corporate and business law from Centro de Estudios Garrigues. He has been a partner at the firm since 2008, at which he has spent over 15 years practising in the area of out-of-court restructuring processes in their widest sense (workouts, debt refinancing, operations and turnarounds), as well as in insolvency and pre-insolvency scenarios and related court proceedings. He also has extensive experience in civil and commercial litigation and in arbitration proceedings.

He specialises in providing advice on business distress situations to debtors (in situations of actual or imminent technical insolvency) as well as creditors (defending their claims or interests in a disputed contract in which the other party is or could be affected by insolvency). In this regard, Mr García-Alamán has a wealth of experience in preparing and formal petitioning for insolvency, having participated in many of the highest-profile insolvency proceedings conducted in Spain, often with a cross-border dimension. A significant proportion of his advisory work regularly focuses on directors' liability and on analysing the resistance to and risks of transactions (potentially) featuring an insolvency component. He is also regularly involved in negotiating and preparing refinancing agreements.

His career has been singled out for praise in the most prestigious international directories, such as *Chambers Global* (in which he has been a 'recommended lawyer' since 2010), *IFLR Best Lawyers* (since 2008), and *Legal 500* (2012). He is a regular speaker on courses and at conferences on insolvency law and since 2009 he has taught that subject on the master's degree in business law offered by Centro de Estudios Garrigues. He frequently presents papers at conferences such as the conference on 'Current issues for Secured Lenders in Receiverships and Insolvencies' organised by the Commercial Finance Association (CFA) and held at the Bank of America's London offices in April 2012.

Mr García-Alamán is a member of the Madrid Bar Association and a founding member of the Turnaround Management Association (TMA) in Spain. He was chosen as an 'expert contributor' by the World Bank in *Doing Business 2009* and regularly contributes to Spanish and international publications dedicated to insolvency law matters such as *Revista de Derecho Concursal y Paraconcursal* and Euromoney's *Global Insolvency and Restructuring Review*.

ADRIÁN THERY

Garrigues

A partner in the Garrigues restructuring and insolvency group, Adrián Thery holds a bachelor's degree in law from Universidad CEU-San Pablo, a master's degree in European Community law and a master's degree in corporate finance. Mr Thery speaks fluent French and English, and is based at Garrigues' head office in Madrid. Listed in *Chambers Europe* and *Chambers Global*, 70 per cent of his clients can be divided equally into companies or financial institutions. His in-depth knowledge of the idiosyncrasies of both types of player enables him to anticipate the incentives, deterrents and strategies

the different parties may look for in each case, as well as find the potential leverage that might ultimately lead to collaborative solutions.

The remaining 30 per cent of his clients are distressed operators designing a range of distressed investing strategies (turnaround, distressed debt, non-performing loans, distressed assets, loan to own, etc.).

Acting as a lawyer for various companies subject to insolvency proceedings, he has, to date, secured support for and court approval of seven advanced reorganisation plans under Insolvency Law 22/2003, which is currently in force. Two of the aforementioned reorganisation plans have been singled out for praise at European level at the *Financial Times* Innovative Lawyers Awards in the 2009 ('Industrial lease in an insolvency') and 2011 ('Accelerating a company-saving approval') editions. He is a founding member of the Spanish Chapter of the Turnaround Management Association (TMA) and a contributing member in Spain of the World Bank, Panel of Experts for its *Doing Business* and *Closing a Business* publications.

Mr Thery is also a frequent speaker at seminars and conferences held at the Madrid Bar Association (e.g., special courses on insolvency law), the Business Development Institute, the Spanish employer organisations CEOE/CEPYME, ESIC Business & Marketing School, Centro de Estudios Garrigues, Universidad CEU-San Pablo (master's degree in business insolvency) and at various chambers of commerce and financial institutions.

JUAN VERDUGO

Garrigues

Juan Verdugo is a partner in the Garrigues restructuring and insolvency group. He is currently acting in key restructuring cases in Spain and advising the main players in major court-based insolvency proceedings. Large insurance companies, real estate and private equity firms regularly ask Mr Verdugo for advice on out-of-court restructuring processes and cross-border insolvency issues. In insolvency issues dealing with the corporate finance and M&A fields, Mr Verdugo's reputation is second to none.

Since 2008, Mr Verdugo has regularly featured in the main international legal directories (*IFLR 1000*, *Chambers & Partners*), which have stated that his clients regard him as 'a talented young lawyer who already displays exceptional judgment' (*Chambers Europe 2011*) and 'a valued member' of the restructuring team (*Chambers Global Guide 2012*), while noting that he is 'catching the market's eye' (*Chambers Global Guide 2011*). Touted as a rising star, *Chambers Global 2010* included him in its world guide as one of the three 'associates to watch' in the Spanish legal industry. In 2011 he was selected by *Best Lawyers* in the insolvency and reorganisation practice area. Recently, clients have lauded his 'strong leadership skills and ability to handle complex deals', focusing on his ability to 'fight for the client and is making a name for himself' (*Chambers Global Guide 2013*).

Mr Verdugo lectures on the master's degree course in business law (the Autonomous University of Madrid), the official master's degree course in business insolvency (CEU San Pablo University) and the special course on insolvency law (Madrid Bar Association). He also teaches 'distressed investments' on the corporate finance executive master's degree course offered by Centro de Estudios Garrigues.

He is a founding member of the Spanish Chapter of the Turnaround Management Association (TMA). He also sits on the World Bank Panel of Experts for the annual reports on *Closing a Business* and *Getting Credit*. He regularly contributes to local economic newspapers (*Expansión*) and international publications (*Financier Worldwide*, The *European Lawyer*, *Legal Week*, *Legal Business* and *Euromoney*).

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