Chapter 24

SPAIN

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

I OVERVIEW OF RESTRUCTURING AND INSOLVENCY ACTIVITY

The number of insolvency proceedings declared in Spain has decreased sharply since the last quarter of 2013 in parallel with the stabilisation of the Spanish economy and its return to growth scenarios. According to the latest available statistics, the number of insolvency proceedings declared in the first quarter of 2015 has fallen by 26.6 per cent from the same period of the previous year, reaching 1,560 insolvency proceedings.

According to the latest available statistics, the vast majority of formal insolvency proceedings (*concurso*) commenced in Spain end with the liquidation of the company (around 94 per cent), which is due basically to companies in difficulty petitioning for insolvency when it is already too late – in other words, when they have a critical cash-flow shortage and their regular defaults on payments to creditors have brought their operations practically to a standstill. What is known as the '*concurso* stigma', which prevents managers filing a petition for insolvency proceedings until there is no other alternative and, in most cases, it is too late, remains in the entrepreneurship culture of Spain.

Faced with this scenario, and seeking to prevent insolvency proceedings being the only restructuring option available to companies, in 2013, 2014 and 2015 the government introduced sweeping and innovative reforms with the goal of driving solutions that would help companies avoid formal insolvency proceedings and choose out-of-court restructurings or restructurings with less court involvement.

Some of the key instruments of those reforms were Law 14/2013 to support entrepreneurs and their internationalisation; Royal Decree-Law 4/2014, of March 7

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

(RDL 4/2014) adopting urgent measures on business debt refinancing and restructuring; and Law 17/2014, of September 30 adopting urgent measures on business debt refinancing and restructuring. These reforms improved pre-insolvency business restructuring mechanisms (refinancing agreements and what are known as 'out-of-court payment agreements') the stated aims of which are to avoid the problems that insolvency proceedings wreak, while driving the recovery of business to the maximum extent possible.

Following the 2014 reform of the legislation on refinancing agreements and Spanish schemes of arrangements, a number of companies successfully refinanced their debts, such as Sacyr (€2.27 billion), Grupo San José (€1.53 billion), Galq (€272 million), Amper (€126 million) and Petromiralles (€120 million).

Royal Decree-Law 11/2014 of September 5 (RDL 11/2014) has added further facilities to the purchase of credits, as purchasers will keep the voting rights of the acquired credits. There has been a particular flurry of activity in the acquisition of non-performing loan portfolios by foreign funds, with Bankia being one of the most active sellers with Project Amazona, a portfolio of problematic mortgages of €800 million face value purchased by Starwood and Sankaty in October 2014; Project Castle, which included hotel debt of €400 million face value purchased by Bank of America in May 2015; Project Commander, which included large loans to real estate companies with €513 million face value purchased by Sankaty in May 2015; and Project Wind, which included €900 million of problematic mortgages. Another important transaction was the purchase by Blackstone of more than €6 billion of mortgage debt of Catalunya Bank in April 2015.

There has been huge concern regarding the need for proper restructuring mechanisms, which has led to five reforms of the Insolvency Act from 2014 to the time of writing. Additionally, the government has promoted the Fenix project (formerly the 'Midas' project), an agreement of the most important Spanish banks aimed at saving high leveraged but viable companies through debt capitalisation and other restructuring measures. Despite some initial disagreements, the Fenix project was launched not through a single vehicle but through case-by-case vehicles, with the recent restructuring of GAM, a multinational machinery company, as its first exponent.

Constrained bank lending is also fuelling the appearance of other types of lenders engaging in direct lending mechanisms. Since last year, several debt funds have appeared on the scene, including the Iberian private debt fund, launched by Arcano and Munizich with up to €500 million, Aria Capital, a joint venture of Afi and Renta 4 with up to €200 million and Trea Capital with up to €100 million, while others are close to appearing, such as the debt fund of N+1 with up to €200 million.

Additionally, 2015 saw the first insolvency proceeding involving a bank, Banco Madrid, declared after an administrative intervention, under a very fast process with strong political overtones given its apparently healthy balance sheet prior to the run-away effect that entailed its insolvency declaration.

II GENERAL INTRODUCTION TO THE RESTRUCTURING AND INSOLVENCY LEGAL FRAMEWORK

i In-court restructurings (concurso and preconcurso)

For a company in economic and financial difficulty, a formal insolvency proceeding (*concurso*) is a powerful corporate restructuring tool, and an arrangement with creditors is one of its key instruments. The Spanish Insolvency Law of 9 July 2003 (LC) contemplates two different scenarios in which a debtor can petition for its voluntary formal insolvency: where it is unable to regularly meet its debts as they fall due (Article 2.2 LC) (an event of actual technical insolvency); or where it foresees that it will be unable to meet its existing debts regularly as they fall due (Article 2.3 LC, in fine) (an event of imminent technical insolvency).

The formal insolvency of a company does not necessarily lead to the formal insolvency of the other companies in its group, although any of the debtors, their insolvency managers or their creditors can request that the various proceedings be handled by a single court and the same insolvency manager, to make them easier to coordinate and save on costs.

Pre-insolvency scenario (preconcurso)

A debtor may seek insolvency protection under Article 5-bis of the LC (pre*concurso*) when negotiating a refinancing agreement (for a further explanation of refinancing agreements, see Section II.ii, *infra*) or an advanced proposal for a creditors' arrangement (early restructuring 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 in which it has no duty to petition for insolvency and is protected against petitions for compulsory insolvency proceedings.

RDL 4/2014 has introduced the stay of enforcement action to this insolvency protection mechanism, under which proceedings can be halted temporarily for up to four months from the filing of the pre*concurso* notice. Law 9/2015 of May 25, also amended it, and as result, this stay applies to any court enforcements against the debtor's assets that are needed for the continuity of its business activities; it also halts any enforced collection proceedings regarding rights, and any out-of-court enforcement regarding assets or rights that may prove necessary for the continuity of its activities. As a prior requirement to prevent the commencement of enforcements or stay any that might be in progress, the debtor must indicate any enforcement procedures that are being conducted against its assets, and which of these procedures concern assets it considers to be necessary for the continuity of its professional or trading activity. If 51 per cent of the financial claims have undertaken not to start or continue with individual enforcement action against the debtor while negotiating (stand-still agreement), that undertaking will be binding on all creditors holding financial claims; this means that, although it will not prevent secured creditors from bringing action against the debtor's property, such undertaking means that any proceedings may be halted after they have started.

Concurso 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 an insolvency order

when the company is in actual technical insolvency. In the event of imminent technical insolvency, the debtor can file its petition at any time, since it is not under 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. 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) and on the Insolvency Register, which has been available online since March 2014.[2]

When it makes an insolvency order, the commercial court will also appoint an insolvency manager who will be responsible for vetting the acts of the insolvent debtor as a *concurso* is a pure debtor-in-possession procedure (apart from exceptional cases in which management is removed by the court, likewise when the liquidation phase starts); 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. On publication of the report, each creditor has 10 days in which to object to it. Objections to the report must be made in an ancillary proceeding.

If no objection is made against the insolvency manager'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. All in all, and to speed up the process, where the objections to the report affect less than 20 per cent of the total value of assets or liabilities, the court may rule that the common phase be immediately concluded and that the creditors' arrangement phase or the liquidation phase (see below) be commenced.

Concurso creditors' arrangement phase

A proposal for an arrangement or restructuring plan can be filed at different stages of the *concurso*. PACs can be made any time from the petition for insolvency to the deadline for notification of claims. Ordinary proposals can be filed with the court up to 40 days prior to the creditors' meeting taking place.

The advanced or ordinary proposals for a restructuring plan must first be assessed by the court (to check their compliance with all the legal requirements), and also by the insolvency manager.

Ordinary claims are entitled to vote and will be bound by the decision of the majority of the voting claims, whether or not they vote or abstain. Subordinated claims cannot vote, but are bound by the restructuring plan. Finally, secured claims have the right to abstain from voting (if they do vote, they will be counted as unsecured claims only for the purpose of computing the majorities). Additionally, dissenting secured creditors can be subject to cram down when a certain majority of secured creditors is met.

The restructuring plan can include any of the following proposals:

a soft restructurings:
- write-off not exceeding 50 per cent of the claims;
- stays of up to five years; or

2 www.publicidadconcursal.es.

- the conversion of claims into profit-tied loans (PPLs) for a term of the same length; or

b hard restructurings:
- write-off exceeding 50 per cent of the claims;
- stays of up to 10 years;
- the conversion of claims into PPLs or other re-profiling of the claims for a term of the same length;
- transfers of assets and rights to the creditors in payment of their claims, provided that these assets and rights are not necessary for the continuity of the debtor's business and their fair value is equal to, or lower than, the claim being discharged, without prejudice to the rules governing the transfers of assets guaranteeing secured claims;
- payment-in-kind to the creditor that holds a security over the relevant asset, or a third party appointed by said creditor, provided that the secured claim is fully settled or that the outstanding amount of the claim ranks as an unsecured claim; or
- the sale of all or part of the debtor's business to a third party, who will have to assume, under the terms agreed in the restructuring plan, the obligation to continue with the business activity of the debtor.

The restructuring plan will include a detailed repayment schedule and a viability plan if repayment is based on the debtor's future cash flow. However, the restructuring plan will not include any form of global liquidation of the debtor's assets (with some exceptions), will entail a change in the ranking of claims and will be subject to conditions as to its validity.

The approval of a restructuring plan requires the following majorities:

a for ordinary claims, the amount of the secured claims that exceeds the value of the collaterals and subordinated claims:
- soft restructurings: at least 50 per cent of the voting claims; or
- hard restructurings: at least 65 per cent of the voting claims;

b for the amount of the secured claims that does not exceed the value of the collaterals, the same measures will be applied to dissenting secured claims if the restructuring plan is backed by the following majorities:
- soft restructurings: creditors holding at least 60 per cent of the aggregate value of the collaterals of the same class; or
- hard restructurings: creditors holding at least 75 per cent of the aggregate value of the collaterals of the same class; and

c claims with a general privilege will also be subject to the restructuring plan if they adhere to it or if it is backed by the following majorities within each class:
- soft restructurings: at least 60 per cent of the claims with a general privilege of the same class; or
- hard restructurings: at least 75 per cent of the claims with a general privilege of the same class.

Preferred creditors are divided into four categories or classes that are relevant to determine if a certain majority is met in order to approve a restructuring plan. These classes of

preferred creditors are employment law creditors, public creditors, financial creditors and other creditors.

The restructuring plan must be court-approved, after which, if there is a breach of the plan, the court will commence an ancillary proceeding to evidence that breach and, if the breach is demonstrated, may order that insolvency proceedings be resumed for the purpose of liquidating the company.

Concurso liquidation phase

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

In the event of liquidation, the power to manage its business passes 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 LC, claims are classified as follows:

a post-insolvency order claims or claims against the insolvent debtor's assets are paid out of the insolvent debtor's assets, 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 whose holders are not entitled to vote on proposals in a restructuring plan. Such claims forfeit any security interest created to secure the claim. If a restructuring 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 (with some exceptions).

The following creditors will be considered 'specially related' to the corporate 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;[3] or

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

Concurso assessment phase

The court will assess the debtor's business practices (the assessment phase) if no restructuring plan is approved; if the restructuring plan provides for all creditors a release of more than one-third of the amount of their claims, or a deferral of more than three years; or if the approved restructuring 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, should the case arise, 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.

Other issues related to in-court restructurings

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 sales of assets that are not necessary to the business. Any sales of personal property or real estate that do not meet those 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 assets:

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 necessary for the business; and

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

3 The LC does not allow any creditors who have exchanged all or part of their claims for equity within a refinancing agreement (thus avoiding subordination in relation to the debt exchanged for equity) to be put in the 'specially related' class.

Secured claims under the LC

Claims held by banks and other creditors may be secured by mortgages, pledges or other security interests, which will grant the creditors a specially preferred (i.e., secured) status with the effects envisaged in the LC, including:

a the right to separate enforcement of their claim, if they commenced foreclosure proceedings before the date of the insolvency order and certain additional requirements were satisfied;

b the right to abstain from any arrangement with creditors;

c priority for collecting their claims in the event of the debtor's liquidation; 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.

ii Out-of-court restructurings

Spanish schemes of arrangement

Since the publication of RDL 4/2014, there have been two main reforms of the Spanish Insolvency Act that have affected the regulation of the Spanish schemes of arrangement: Law 17/2014 of September 30 and the Law 9/2015 of May 25.

As a result of these reforms, the current regulation of Spanish schemes of arrangement is characterised by the following issues:

All types of financial claims may qualify, even those held by parties not subject to financial supervision (funds, direct lenders). Although Spanish schemes of arrangement cannot be made to bind creditors holding commercial and public law claims, commercial creditors may decide to be bound by them voluntarily.

The provisions on 'Spanish schemes' allow not just deferrals to be made binding on financial claims (even those properly secured), but also write-offs, debt-equity swaps, debt-for-PPL conversions and also transfers of assets for payments in kind, all subject to the majorities obtained and the 'fair value' of the collateral if the debtor seeks for them to be binding on dissenting or non-participating secured creditors. Put concisely:

a these refinancing agreements (which must be approved by the court) must have been signed by 51 per cent of the financial claims. This 51 per cent majority only secures clawback protection, but is not enough to make them binding on non-participating or dissenting creditors. Public law claims will not be included among the financial claims;

b as regards the binding itself, where a majority of at least 60 per cent of the financial claims is obtained, the court will make binding any deferrals up to five years and conversions of debt into PPLs for the same term. These binding effects only apply to unsecured financial claims or secured financial claims not covered by the 'fair value' of the collateral. If, however, the majority is above a threshold of 65 per cent of the secured financial claims, any such deferrals and conversions will be made binding on secured financial claims even if they are fully covered by the collateral's 'fair value';

c if there is a majority of 75 per cent of the financial claims, the court will make binding deferrals up to 10 years, haircuts without limits, conversion of debt into PPLs up to the same term, debt-equity swaps without limits (or the equivalent write-off if the creditor objects) and, finally, transfers of assets in or for debt payment (payment in kind). Again, these effects will only be binding on unsecured financial claims or secured financial claims not covered by the 'fair value' of the collateral unless a threshold of 80 per cent of financial secured claims is met, in which case those effects will be compulsory for dissenting or non-participating financial claims regardless of whether they are fully covered by the collateral's 'fair value';

d in the case of syndicated debt, whenever 75 per cent of the syndicated debt supports a refinancing agreement, all syndicated lenders will be deem to support it;

e claims from persons especially related to the debtor or those from commercial creditors that voluntarily adhere to the refinancing agreement will not be taken into account when calculating the above majorities, although they might be affected by the refinancing agreement; and

f secured claims will be treated as unsecured claims on their amount exceeding the value of the collaterals. The value of the collaterals will be equivalent to the fair value of the relevant asset; less 10 per cent of the fair value; less the amount of those claims secured with liens on the relevant asset that are senior to the incumbent claim at hand.

Other refinancing agreements

Apart from 'special' refinancing agreements, which address debt-restructuring solutions for financial claims, there is another regime for any 'general' refinancing agreements dealing with all outstanding debt, regardless of its financial or commercial origin. Article 71 bis of the Spanish Insolvency Act sets up two kinds of 'general' refinancing agreements, which can be either multilateral or bilateral. Multilateral refinancing agreements are adopted by three-fifths of the unsecured creditors and made in response to a viability plan. To calculate the majority of three-fifths, it is presumed that in the agreements subject to a regime of syndication, all creditors subject to this agreement will subscribe the refinancing agreement if a majority of 75 per cent affected by the regime of syndication vote in favour of the agreement, unless the rules governing the syndication establish a lower majority. Bilateral separate agreements ('safe harbour' agreements) are those meeting a number of financial requirements that make them clearly beneficial to the debtor's net worth position. None of these 'general' refinancing agreements can be made binding on dissenting or non-participating creditors; they are just intended to gain clawback protection.

III RECENT LEGAL DEVELOPMENTS

i Business debt refinancing and restructuring measures

RDL 11/2014 on urgent insolvency-related matters was published in the BOE on 6 September 2014. This new instrument has changed a number of key elements of

the Spanish Insolvency Act, with the main areas that have been amended being those regarding creditors' arrangements (restructuring plans), liquidation, and other articles related to a greater or lesser extent to both.

Law 17/2014, adopting urgent business debt refinancing and restructuring measures, was published in the BOE on 1 October 2014. This new Law incorporated into the Insolvency Act the wording of Royal RDL 4/2014, in force since 8 March, and introduced deep amendments in the LC, mainly regarding the provisions on refinancing agreements and the binding nature of their terms on dissenting creditors (agreements widely known as Spanish schemes of arrangement).

Royal Decree-Law 1/2015, of 27 February on the mechanism of second opportunity, reduction of financial burden and other social measures was published in the BOE on 28 February. This Law modified the extrajudicial payment agreements, an out-of-court proceeding introduced in 2013 for indebted individuals and small companies, in order to make it operative as an alternative to regular insolvency proceedings. It also included technical corrections of a few articles of the LC.

Law 9/2015 on urgent insolvency-related measures was published in the BOE on 26 May 2015. This Law has transferred to the Insolvency Law the wording of RDL 11/2014, which made fundamental amendments to the LC in relation to the classification of claims, the terms of creditors' arrangements, the majorities needed for approval and the transfer of production units in an insolvency proceeding. The passage through Parliament of RDL 11/2014 resulted in new amendments being added to the LC that were mostly technical enhancements resolving doubts that arose in the application of earlier reforms. Some further significant changes were made that are explained below. Under one such change, the new Law authorises the government to prepare and approve a revised LC to consolidate and harmonise the amendments added in the successive reforms of the LC (2009, 2011 and 2014, principally).

Law 25/2015, of 28 July, on mechanism of second opportunity, reduction of financial burden and other social measures, was published in the BOE on 29 July 2015. This Law has transferred to the Insolvency Law the wording of RDL 1/2015 with further modifications such as the restriction of insolvency managers' fees and some improvements in the mechanism of redemption of defaulted debts.

IV SIGNIFICANT TRANSACTIONS, KEY DEVELOPMENTS AND MOST ACTIVE INDUSTRIES

i Acquisition of the Amazona portfolio, a mixed loan portfolio secured by hotels and corporate loans

Sankaty Advisors, LLC and Starwood Capital Group acquired a Bankia loan portfolio with a par face value of €800 million in October 2014. The portfolio, which was acquired through a majority owned subsidiary, was made up of two distinct types of loans: one was secured against hotel collateral in Spain, with a concentration in resort locations, while the other was a pool of syndicated and bilateral loans secured against Spanish small and medium-sized enterprises, with a mix of collateral including real estate.

ii Refinancing of Petromiralles

The Petromiralles Group is a holding company operating in the oil industry that, in April 2014, succeeded in restructuring its financial debt (€120 million) and securing court approval of the refinancing agreement, with the extension of its effects to dissenting creditors. The dissenting creditors (two banking institutions) objected to that approval, arguing the existence of a disproportionate sacrifice, which was not accepted by the court due mainly to the vast majority (over 95 per cent) having accepted the agreement despite the non-extension of new guarantees to dissenting creditors.

iii Restructuring plan of Jofel Industrial

Jofel Industrial, SA is a company operating in the professional hygiene equipment industry, and was declared insolvent in March 2014. Shortly after, a restructuring plan was proposed and accepted that had the particularity of including a partial spin-off of the company, with the transfer of its real state assets and liabilities to a new company, while retaining the industrial branch of the company.

V INTERNATIONAL

On 25 May 2015, the European Parliament approved the Recast Regulation on Insolvency,[4] which includes a deep reform on the European Insolvency Regulation.[5] Some of its main features are the modification of the rules on the centre of main interests, with some mechanisms to prevent forum shopping; the creation of a European Insolvency Registry; the possibility to reach creditor agreements in secondary proceedings that does not necessarily entail liquidation; and the introduction of a new chapter on international cooperation in insolvency proceedings of a group of companies. The Recast Regulation on Insolvency will enter into force on 26 May 2017.

VI FUTURE DEVELOPMENTS

Following the recent modifications of the Insolvency Act, the eighth additional provision of Law 9/2015, of May 25 enables the government to elaborate a recast text of the Insolvency Act within the next 12 months. The last reforms, aimed at helping highly leveraged companies to restructure their debt, are focused on the simplification and effectiveness of out-of-court agreements as well as on the flexibility of insolvency proceedings. Thus, it is expected that future reforms on restructuring will further aim to help the restructuring of Spanish companies, some of which have been highly damaged following this long period of financial crisis.

4 2015/848.

5 Regulation 1346/2000 on insolvency proceedings.

ANTONIO FERNÁNDEZ

Garrigues

Antonio Fernández is the partner in charge of the firm's restructuring and insolvency group. As a 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*, he was 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 restructuring 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, in 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 maximising the potential return on their investments 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 CEU San Pablo University 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, where he has spent over 17 years practising in the area of out-of-court restructuring processes in their widest sense (workouts, debt refinancing, distressed situations and acquisitions, operations and turnarounds), as well as in insolvency and pre-insolvency scenarios and related court 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 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 for years singled out for praise in the most prestigious international directories, such as *Chambers Global*, *IFLR 1000*, *Legal 500* and *Best Lawyers*. He is a regular speaker on courses and conferences on insolvency law and, *inter alia*, he has taught that subject on the business law master's degree offered by Centro de Estudios Garrigues since 2009. Mr García-Alamán is a member of the Madrid Bar Association and a founding member of the Turnaround Management Association in Spain. He has acted as an expert contributor for the World Bank in *Doing Business* since 2009.

ADRIÁN THERY

Garrigues

Adrian Thery is part of Garrigues' restructuring and insolvency department. He advises debtor companies, credit institutions and distressed investors on out-of-court refinancings and restructurings, as well as on in-court insolvency proceedings, both domestic and cross-border. His in-depth knowledge of the different idiosyncrasies at stake 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.

He has to date secured approval of eight advanced restructuring plans. Two of these have been singled out for praise at a European level at the Financial Times Innovative Lawyers Awards in 2009 edition ('Industrial lease in an insolvency') and 2011 edition ('Accelerating a company-saving approval').

Additionally, the 2013 FT Innovative Lawyers Awards acknowledged his contribution in a leading case in Spain, consisting of 'arguing that a US law applied to Spanish insolvency proceedings, allowing bankruptcy judges to assign contracts in bankruptcy sales'.

In 2013, acting as the attorney of two companies subject to insolvency proceedings that were to be merged through their respective restructuring plans, he petitioned and obtained for the first time in Spain from a commercial court (Madrid) the exclusion of the individual right of opposition that corporate law generally grants to creditors. In practice, this precedent enables classic restructuring tools (haircuts, deferrals and conversions) to be combined in Spanish restructuring plans with other sophisticated tools such as corporate structural modifications.

He has been singled out by *Chambers & Partners* in the 'Restructuring and insolvency' category (from 2011 to 2014), *Best Lawyers in Spain* in the 'Insolvency and reorganisation' category (from 2009 to 2014) and *IFLR 1000* in the 'restructuring and insolvency' category (2012 and 2014).

He has a degree in law (CEU San Pablo University), a master's degree in EU law (CEU San Pablo University) and a master's degree in business and finance (Centro de Estudios Garrigues).

JUAN VERDUGO

Garrigues

Juan Verdugo is a partner in the restructuring and insolvency department. He manages some of the most high-profile insolvency proceedings in Spain, defending the interests

of industrial companies, financial institutions, investment banks, insurers, property developers, construction companies, private equity firms and hedge funds.

He has amassed a wealth of experience in refinancing distressed businesses, the purchase and valuation of consumer and mortgage loan portfolios (NPLs), the acquisition of debt from banking syndicates (distressed trading), the purchase of companies or assets subject to insolvency proceedings and defending clients in asset clawback actions. Also worth noting is his experience in the area of cross-border insolvencies and in advising foreign investors on bids to acquire a controlling stake in distressed companies (loan-to-own). Since 2008, Mr Verdugo has regularly featured in the main international legal directories (I*FLR 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). Since 2011 he has featured in the *Best Lawyers* guide for insolvency and reorganisation practice. More recently, clients have lauded his 'strong leadership skills and ability to handle complex deals', focusing on his ability to 'fight for the client and (…) making a name for himself' (*Chambers Global Guide* 2013). *Chambers Global Guide* 2014 again endorsed Mr Verdugo as 'up and coming' in restructuring and insolvency, gathering positive feedback from clients who reveal that he is 'communicative, and has helped in a way that not many lawyers do. He really lays down the legal landscape for us to understand'.

Mr Verdugo is a founding member of the Spanish Chapter of the Turnaround Management Association. He also sits on the World Bank Panel of Experts for the annual reports on 'Closing a Business and Getting Credit'.

GARRIGUES
Hermosilla 3
28001 Madrid
Spain
Tel: +34 91 514 52 00
Fax: +34 91 399 24 08
antonio.fernandez.rodriguez@garrigues.com
borja.garcia-alaman@garrigues.com
adrian.thery@garrigues.com
juan.verdugo.garcia@garrigues.com
www.garrigues.com