7-2013
December 2013

1. NEW LEGISLATION

Royal Decree 892/2013, of November 15, 2013, regulating the Public Insolvency Register

Royal Decree 892/2013 regulating the Public Insolvency Register was published in the Official State Gazette on December 3, 2013 ("the Royal Decree").

The aim of this piece of legislation is to disseminate and publicly disclose insolvency decisions and registration entries made as a result of the insolvency process, and to lay down coordination mechanisms between the various public registers on which insolvency orders and adverse events must be recorded.

The Royal Decree repeals Royal Decree 685/2005, of June 10, 2005, governing the public disclosure of insolvency decisions. The new Royal Decree will enter into force on March 3, 2014.

The main developments ushered in by the Royal Decree are summarized below:

- The public disclosure of all insolvency decisions will be organized through an internet portal. The physical management of the portal is entrusted to the Spanish Association of Land, Commercial and Movable Property Registrars attached to the Ministry of Justice. All communications will be in electronic format and protection is given to their security and integrity.

- The portal is divided into three sections: Section One covers insolvency notices, Section Two deals with the public disclosure by registration of insolvency decisions, and Section Three concerns out-of-court agreements.

- Section One contains decisions recording the notification of negotiations provided for in Article 5 bis of the Insolvency Law (known as "pre-insolvency") and the other procedural decisions referred to in Article 23 of the Insolvency Law. It will also include decisions that must be disclosed under a court order, as well as all matters relating to the opening of cross-border insolvency proceedings.

- Section Two will include the registration decisions – on insolvent individuals or legal entities – noted or entered on all of the public registers referred to in Article 24(1), (2) and (3) of the Insolvency Law, as well as the registration entries concerning judgments assessing an insolvency to be fault-based and ordering the appointment or disqualification of insolvency managers. The appointment of the insolvency mediator designated in out-of-court payment agreement proceedings will also be registered.

- Section Three will include all matters relating to proceedings to reach out-of-court payment agreements, publicly disclosing their approval and/or annulment, as well as certificates recording the performance or breach of such agreements. This section will also publicly disclose decrees issued by the court clerk admitting the following for consideration: applications for approval of refinancing agreements, court orders granting such applications and judgments ruling on challenges to such approval.

- Access to the Public Insolvency Register will be open to the public, free and permanent, and it will not be necessary to demonstrate any legitimate interest in order to obtain such access.

- On the basis of data protection legislation, provision is made to ensure that the data on the Public Insolvency Register cannot be used for purposes other than those expressly set forth in the Insolvency Law.

- Limits are placed on the time during which the information on the Public Insolvency Register is accessible to the public. Thus, personal data included in insolvency decisions and in registration entries falling within any of the Register's sections must be cancelled within one month of the date on which such decisions and entries cease to have effect.

- Lastly, the Public Insolvency Register may link up with other registers of insolvency decisions in the European Union. Furthermore, the Spanish Association of Land, Commercial and Movable Property Registrars is given powers to prepare insolvency statistics on an annual basis.

Royal Decree-Law 14/2013, of November 29, 2013, on urgent measures to adapt Spanish law to European Union legislation on the supervision and solvency of financial institutions

This Royal Decree-Law was published in the Official State Gazette on November 30, 2013.

Final Provision Four of this Royal Decree-Law amends Article 36(4)(h) of Law 9/2012, of November 14, 2012, on the restructuring and resolution of credit institutions, so that the rules applying to claims assigned to SAREB (*Sociedad de Gestión de Activos Procedentes de la Reestructuración Bancaria*) in the event of an insolvency order being made against the assigned debtor will also apply to parties that, by any means, acquire claims held by SAREB.

However, claims acquired from SAREB will be subordinated if, irrespective of the circumstances in which they were transferred, the acquirer was subject to any of the grounds for subordination provided for in Article 92(5) of the Insolvency Law, in conjunction with Article 93 thereof (i.e. a person having a special relationship with the insolvent party).

For more information on the non-insolvency aspects of this Royal Decree-Law, please see our special newsletter, available here.

Royal Decree 908/2013, of November 22, 2013, establishing special rules and requirements for the direct grant of subsidies designed to respond to situations of urgency and socio-employment need so as to be able to reduce the social consequences of corporate restructuring processes

This Royal Decree was published in the Official State Gazette on November 23, 2013.

It lays down a number of circumstances in which aid may be granted:

- When the agreement reached during the consultation period in a collective layoff procedure includes the establishment of an income plan perfected through collective insurance agreements implementing the income obligations.

- When the employment relationship is terminated in accordance with the provisions of the Insolvency Law or when the company is found to be insolvent in whole or in part and it has been evidenced that the company has not paid statutory severance.

- For an amount equal to the reimbursement of contributory unemployment benefits paid during periods of temporary interruption of contracts or short-time working, provided that there is no entitlement to such benefits under any other legislation.

In addition to the provisions of the Royal Decree, this aid is also governed by General Subsidy Law 38/2003, of November 17, 2003, and by its regulations, approved by Royal Decree 887/2006, of July 21, 2006. In all cases, the grant of aid will be subject to budgetary availability in each financial year.

2. HEADNOTES

Court of Justice of the European Union

JUDGMENT of the Court of Justice of the European Union (Third Chamber) of September 19, 2013

Article 24(1) of Regulation (EC) No 1346/2000.-- Article 24(1) of the regulation provides that where an obligation has been honored in a Member State for the benefit of a debtor who is subject to insolvency proceedings opened in another Member State, when it should have been honored for the benefit of the liquidator in those proceedings, the person honoring the obligation shall be deemed to have discharged it if he was unaware of the opening of proceedings.-- The question raised was how to interpret the expression "*obligation ... for the benefit of a debtor*" set forth in Article 24 of the regulation.-- In this case, a Luxembourg bank made a payment to a creditor of the insolvent debtor, domiciled in Belgium, on the instructions of the debtor.-- The persons protected by Article 24 are the debtors of the insolvent party who, directly or indirectly, honor an obligation for the benefit of the insolvent party in good faith.-- The bank, even if it fulfilled an obligation acquired with regard to the insolvent debtor, did not honor that obligation "for the benefit of" the insolvent party within the meaning of Article 24, since the debtor was not the recipient of

the payment.-- Accordingly, a payment made by a third party to a creditor on the instructions of a debtor subject to insolvency proceedings does not fall within the scope of that provision.

Jurisdictional Disputes Tribunal

JUDGMENT dated October 1, 2013 rendered by the Jurisdictional Disputes Tribunal

Article 55 of the Spanish Insolvency Law (*Ley Concursal* or "LC").-- Positive conflict of jurisdiction between a commercial court and a city council. A question was raised as to whether the city council had jurisdiction to initiate enforced collection proceedings and to order the attachment of specific properties of the insolvent real estate agency following the failure to pay a claim arising from the assessment of development charges (attributable to the insolvent party on account of its status as owner and on the basis of its proportionate share of ownership).-- The city council made the assessment after the insolvency order had been handed down. It considered that it had jurisdiction to adopt enforcement measures in a proceeding that was separate from and not part of the insolvency proceeding.-- Since the city council's assessment took place after the insolvency order, that claim fell within the insolvency proceeding and, therefore, was subject to its *vis atractiva* as regards enforcement and enforced collection proceedings involving the insolvent party's assets with financial content, proceedings which fall to be conducted by the commercial courts alone to the exclusion of all others, irrespective of the body that ordered such enforcement and enforced collection proceedings.-- The Tribunal recognized that the commercial court had jurisdiction and found that no enforcement steps should be taken against the assets of the insolvent party that may prevent the judge in the insolvency proceeding from disposing of the assets available to creditors.

JUDGMENT dated October 1, 2013 rendered by the Jurisdictional Disputes Tribunal

Article 55 LC.-- Conflict of jurisdiction raised by the State Tax Agency (*Agencia Estatal de la Administración Tributaria* or "AEAT") in relation to an attachment of certain claims held by the insolvent party, ordered before an insolvency order , claims that were also subject to a third-party's superior right based on the existence of a third-party pledgee (the "Deportivo Case"). The judge in the insolvency proceeding had ordered the lifting of the attachment in respect of a part of those claims on the ground that the asset subject to enforced collection was necessary for the continuity of the business.-- The AEAT challenged the jurisdiction of the judge in the insolvency proceeding to order the lifting of the attachment.-- Application of the case law of the Jurisdictional Disputes Tribunal which determines the order of preference of the administrative proceeding based not on the date of the order initiating enforced collection, but on whether or not the assets have been disposed of on the date of the insolvency order.-- The Chamber concluded that if the enforced collection proceedings were in progress on the date of the insolvency order, the administrative proceeding would lose its priority status and would become subject to the insolvency proceeding (*vis atractiva* of the insolvency proceeding with respect to enforcement and enforced collection proceedings involving assets and rights with financial content, regardless of the body that ordered them), in which case it would be for the judge in the insolvency proceeding to decide whether the assets subject to enforced collection were necessary for the continuity of the business.-- In the case under examination, and pursuant to Article 165 of the General Taxation Law, a third-party superior right has the effect of staying enforced collection proceedings, which is equivalent to the tax debt

subject to enforced collection not being paid and the obligation not being discharged and, therefore, the continuance of the enforced collection proceedings, with the result that it is for the judge in the insolvency proceeding to determine whether the assets are necessary for the continuity of the business and, based on that decision , he may order the lifting of the attachment of such assets.

Supreme Court

JUDGMENT dated July 9, 2013 rendered by Chamber One of the Supreme Court

Articles 61(2) and 62(1) LC.-- Action to terminate sale and purchase agreements in respect of residential properties entered into before the insolvency proceeding on the defendant vendor.-- Upheld.-- The vendor's breach of its obligation to deliver occurred during the insolvency proceeding, and therefore the purchasers' claim for the sums paid towards the price must be assessed as post-insolvency order claims.-- Irrelevance of the purchasers' breach, before the insolvency order, of their obligation to pay the monthly installments of the deferred price, in light of the obvious future material breach by the seller.

JUDGMENT dated September 5, 2013 rendered by Chamber One of the Supreme Court

Article 61(2) LC.-- Termination of finance lease agreements in the interests of the insolvency proceeding. Classification of claims arising from unpaid installments that fell due after the insolvency order was handed down. In the case examined by the Supreme Court, the Provincial Appellate Court had held that the claims were pre-insolvency order claims, thereby setting aside the decision of the judge in the insolvency proceeding who had initially classified them as post-insolvency order claims.-- Cassation appeal: Upheld: The Supreme Court found that the claims were post-insolvency order claims due to the existence of special circumstances: the insolvent party itself had applied for termination of the agreement "in the interests of the insolvency proceeding" under the second paragraph of Article 61(2) LC, which was based on the premise that when the insolvency order was handed down the agreement contained reciprocal obligations outstanding for performance by both parties. Consequently, the obligations of the insolvent party towards the financial institutions were to be met out of the assets available to the creditors. In the light of these special circumstances, the Supreme Court concluded that the finance lease installments arising after the insolvency order up until the court-ordered termination of the agreement were "post-insolvency order claims".

JUDGMENT dated October 15, 2013 rendered by Chamber One of the Supreme Court

Article 260(1) (4) of the Revised Corporations Law (*Texto Refundido de la Ley de Sociedades Anónimas* or "TRLSA") (now Article 363(1)(d) of the Corporate Enterprises Law (*Ley de Sociedades de Capital* or "LSC")) and Article 142(2) LC.-- Corporate duty to move to have the company dissolved.-- Where losses have occurred that have reduced the net worth to less than half the capital stock, the duty of the directors to apply for dissolution ceases to exist if, on account of the fact that the company is technically insolvent, an insolvency proceeding is petitioned for and granted.-- The fact this corporate duty gives way to the duty to petition for insolvency does not mean that: (1) the insolvency order relieves directors of any potential pre-insolvency liability arising under Article 262(5)

TRLSA, although the insolvency order would have the effect of preventing any action for liability from being brought (Article 50(2) LC) or of staying any action already under way (Article 51(1) bis LC); or that (2) the shareholders' meeting is unable to resolve to dissolve the company, as it is entitled to do so even in the absence of a statutory ground for that purpose (current Article 368 LSC).-- Duty to move to dissolve the company if an arrangement is approved in the insolvency proceeding: during the arrangement phase – even when the insolvency order no longer produces effects – the directors' duty to move to dissolve the company and the consequent liability for failing to do so does not re-emerge: insolvency situations are governed by specific legislation which requires the debtor to apply for liquidation if, during the term of the arrangement, it realizes that it is impossible to make the payments agreed to and perform the obligations entered into after approval of the arrangement (Article 142(2) LC).

Provincial Appellate Courts

DECISION dated July 17, 2013 rendered by Valencia Provincial Appellate Court

Article 37 LC.-- Removal of the insolvency manager with just cause: the insolvency manager removed by the court filed an appeal and requested his reinstatement: Upheld: No just cause for removal: The insolvency manager complied with each and every one of the statutory formalities; his unfavorable assessment of the proposed arrangement was consistent with all of the reports he had submitted, none of which were challenged or contradicted by the parties; his unfavorable report on the proposed arrangement was exhaustive and reasoned and, in addition to being consistent with his previous reports, was not lacking in thoroughness, study or analysis; the criticism levied by the court that he ignored an offer for the sale and lease of industrial buildings did not hold up as that offer did not form part of the proposed arrangement or of the viability plan; the insolvency manager was under no obligation to reach a consensus with the insolvent party on any stage of the insolvency proceeding; the prediction of the judge in the insolvency proceeding that the unfavorable report of the insolvency manager on the proposed arrangement would mean that none of the creditors would vote on it was a mere hypothesis.-- Reinstatement of the insolvency manager to office.

Commercial Courts

DECISION dated July 26, 2013 rendered by Barcelona Commercial Court No. 5

Article 191 ter LC.-- Application for liquidation with a binding offer for the purchase of production units of two insolvent debtors ("Pre-pack").-- The court approved the liquidation plan and authorized the tendering of alternative and competing binding bids ("Aventia Case").-- The bidders offered to purchase the licenses, intellectual property rights, shares of the insolvent debtor in various joint ventures and the debts of those joint ventures.-- Additionally, the bidders offered to be subrogated to a considerable number of employment contracts at the production units being purchased.-- The court authorized the insolvency manager to award the production units to the highest bidder, after determining the cash value of the various obligations undertaken by the bidders: the highest bid was not that accompanying the application, but rather a subsequent bid, which was €361,000 higher.-- Effects of the award: (i) sale free from encumbrances; (ii) no business succession for corporate law purposes; (iii) no business succession for employment law purposes (the

purchaser was not liable for any salaries and severance outstanding before the transfer); and (iv) no subrogation or joint and several liability for social security debts before the transfer.

DECISION dated September 27, 2013 rendered by Bilbao Commercial Court No. 2

Article 181 LC.-- Submission of accounts by the insolvency manager: the Social Security General Treasury challenged the report on the submission of accounts and requested resubmission of the accounts, under the principle that costs follow the event, with the reimbursement of sums paid contrary to the statutory order in which sums fall due. In particular, the Social Security General Treasury requested for the fees received by the insolvency manager to be returned to the assets available to creditors.-- Dismissed: the re-preparation of the accounts and the order to pay sums fall outside the scope of the proceeding for challenging the submission of accounts: the challenging party used the wrong type of ancillary proceeding to file its post-insolvency order claim: according to the case law, the court can only approve or reject the submission of the accounts – all other matters must be subject to the appropriate ancillary proceeding for the payment of post-insolvency order claims and, where appropriate, an action for liability against the directors.

DECISION dated October 1, 2013 rendered by Córdoba Commercial Court No. 1

Article 197(6) LC and Article 528(3) of the Civil Procedure Law.-- Application for provisional enforcement of a judgment handed down in an ancillary proceeding: the court ordered enforcement of the judgment against the financial institution in the amount of €3.2 million and also ordered attachments of its assets.-- Objection to specific enforcement measures: the financial institution applied to have the provisional enforcement stayed under Article 197(6) LC until the cassation appeal filed against the judgment ruling on the ancillary proceeding had been heard and decided on.-- Preclusion: the court held that the financial institution could only apply for a stay upon filing its appeal against the judgment in the ancillary proceeding and it had not done so.-- Objection to the specific enforcement measures upheld: acceptance of the replacement of the attachments with a first-demand guarantee for the insolvent party, which gave the insolvent party immunity and would allow its net worth position to be restored should the Supreme Court overturn the judgment.-- Lifting of the attachments against the financial institution in exchange for a guarantee securing the principal, interest and costs calculated on a provisional basis for the enforcement, to remain in force until a judgment has been handed down in the cassation appeal.

DECISION dated October 7, 2013 rendered by Madrid Commercial Court No. 6

Article 43(2) LC.-- Award of a production unit in an asset sale process ("Marco Aldany Case").-- Subrogation to guarantees for contracts in force and in contracts entered into with third parties in respect of assets transferred with the production unit, which subrogation is binding on contracting third parties.-- Auction by notary: the highest bidder was a company created *ad hoc* by the shareholders and members of the insolvent company.-- Analysis of "derivative" liability in cases of business succession as a result of disposal of a production unit: preferential application of insolvency legislation over employment legislation. General rule: liability cannot shift in either disposals in the liquidation phase, or in sales of units outside that phase; were it any other way, the person who wished to purchase the production unit would suffer detriment during the common phase, besides the fact that the

transaction would be delayed until liquidation, with a significant reduction in the sale value.-- Analysis of the circumstances. Special rule: the court decided not to exempt the purchaser "with a special relationship" from liability after ascertaining that the purchaser was clearly and obviously a continuation of the person and enterprise of the insolvent company: business succession sought and managed by the insolvent company and its managing bodies.-- The members of the new successful bidder, which were the same as those of the insolvent company, preferred to save their financial capacity for the award of production units instead of depositing it and making it part of the financing company, conduct which was lawful from a civil law perspective but which could not prevail over the general good under Article 44 of the Workers' Statute and Article 127 of the General Social Security Law.-- No exemption from liability from an insolvency standpoint for the purchaser "with a special relationship", irrespective of the subsequent decision taken on the matter by the competent administrative bodies.-- Loss of the deposit paid into court by the purchaser "with a special relationship" if it failed to perfect the sale on the conditions authorized by the court.

DECISION dated October 8, 2013 rendered by A Coruña Commercial Court No. 1

Articles 164(1) and 165(1) LC.-- Assessment of the insolvency: Same application filed by the insolvency manager and the Public Prosecutor's Office in order to have the insolvency assessed as fault-based together with a declaration that the persons affected by the assessment were the former directors on a several basis of the insolvent party.-- Grounds: (i) aggravation of the insolvency with serious negligence due to the inclusion of the insolvent party in a single integrated enterprise; (ii) aggravation of the insolvency with serious negligence due to the placement of orders in the preceding three years which were never paid; (iii) petition for insolvency filed late. Dismissed: insolvency held to be fortuitous.-- Assessment of the case law interpretation of a "single integrated enterprise": narrower than a "business group" and does not always entail the pursuit of unlawful aims but rather integrated procedures for the organization of work or the group's interests: the fact that the labor courts have found a "single integrated enterprise" to exist after the insolvency order was handed down, making the insolvent party jointly and severally liable for certain debts, does not in itself demonstrate negligence on the part of its directors: joint and several liability for a debt does not result from the assumption of an obligation with negligence or from unlawful conduct by the directors, but rather from a finding by a labor court and from the legislation protecting workers' rights.-- Analysis of the point in time when the petition for insolvency was filed: from a legal standpoint, failure to comply is not the same as late compliance: insolvency is not equivalent to net worth falling below half the capital stock, or to negative equity. In the case under examination, the largest component of liabilities was a debt owed to a related company that had voluntarily decided not to enforce that debt against the insolvent party, which enabled it to comply with its other enforceable obligations: in any event, the insolvency manager had not proven how the alleged delay in petitioning for insolvency had caused or aggravated the insolvency.

DECISION dated October 17, 2013 rendered by Madrid Commercial Court No. 2

Article 22(1) LC. -- Insolvency proceeding of special importance ("Sniace Case"): the court appointed two insolvency managers as there were more than one hundred employees.-- Appointment of the Spanish National Securities Market Commission, or of a person proposed by it holding the technical qualifications required by law, as the first

insolvency manager.-- Appointment of a financial institution as the second insolvency manager as it did not hold specially preferred status and was among the creditors holding one of the top one-third highest claims.-- Registration of the insolvency order at the Property Registries by means of a certificate sent by the Commercial Registrar to each Property Registry with the contents of the insolvency order (Article 323 of the Commercial Registry Regulations).

DECISION dated October 21, 2013 rendered by Barcelona Commercial Court No. 6

Articles 142 and 188 LC.-- Application to open the liquidation phase and simultaneous application for an urgent proceeding to sell the production unit ("Indo Case"): the insolvent party also requested authorization from the insolvency manager to take out sufficient interim financing until the sale of the production unit had been completed: Authorization.-- Right of first refusal: the insolvent party filed a purchase bid and asked for the bidder to be granted a right of first refusal in the event there was more than one interested party in the sale process.-- Dismissed: the right of first refusal for the bidder could distort the sale process and dissuade other bidders from coming forward, in addition to being at odds with the principles of transparency and equal treatment governing processes involving the sale of production units.-- Other findings: (i) Due diligence: the period that the interested parties had to analyze the documentation was extended to 10 days; (ii) Interim financing: authorization was granted for potential interested parties to take out joint financing in the amount of €2.5 million for a limited period of four months in order to continue the production business.-- Guarantee for repayment of the interim financing: in the event of several bids, the bidders must provide a bank guarantee for the insolvent party in the amount of €2.5 million: the insolvency manager will be responsible for repaying, out of the guarantee provided by the successful bidder, the amounts provided by other bidders as financing.

DECISION dated October 21, 2013 rendered by Donostia Commercial Court No. 1

Article 10 LC and Article 3 of the European Regulation on Insolvency Proceedings (ERIP).-- Joint petition for an insolvency proceeding on a Spanish company and its Irish subsidiary ("Fagor Case").-- Territorial jurisdiction to render an insolvency order on a foreign company: the Spanish commercial court questioned its jurisdiction to entertain the insolvency petition in respect of the Irish subsidiary as the ERIP lays down the presumption that, unless proven otherwise, the center of main interests (COMI) of a company is the place where it has its registered office.-- In the light of the most recent national and Community case law on this topic, and in view of the proposed reform of the ERIP presented a short time ago, that presumption can be rebutted if there is sufficient evidence to show that the real administration, management and control of the company is located in another Member State and if that circumstance is easily perceived by third parties which have dealings with the company.-- There was sufficient evidence to rebut the presumption relating to the location of the registered office as the Irish subsidiary: (i) had neither its own premises nor workers in Ireland; (ii) only had a minimal structure in Ireland through subcontractors in order to meet Irish tax, administrative, accounting and legal requirements; (iii) is nothing more than a license holder in the group and almost all of its customers are group companies; (iv) is in actual fact managed and controlled in Spain; and (v) is actually managed and controlled by the Spanish parent company, which is easily

perceived by third parties (almost all of which are group companies).-- The court held that it had jurisdiction to deal with both insolvency petitions and handed down a joint order for a voluntary insolvency proceeding on the Spanish parent company and its Irish subsidiary.

DECISION dated November 11, 2013 rendered by A Coruña Commercial Court No. 2

Article 101(1) LC. -- Proposed arrangement subject to a condition ("Deportivo Case"). The Government Legal Service filed an appeal for reconsideration against the decision refusing to admit the proposed arrangement of AEAT for consideration, on the ground that it was subject to a capital increase and subsequent capital payments to be made by third parties (the shareholders of the insolvent party). Differences between "condition for enforceability" and "condition for performance" of the arrangement: the court concluded that if the capital increase were not to occur, that fact in itself would entail breach of the arrangement. Accordingly, it must be considered to be a "condition for enforceability" of the arrangement and is therefore prohibited by law. Appeal for reconsideration partly upheld: nevertheless, and as the AEAT had stated in its appeal that it was prepared to forgo linking the enforceability of its proposal for an arrangement to the capital increases and the capital payments, the judge in the insolvency proceeding admitted the AEAT's proposal for consideration on those terms as the "correcting" statement had been made before expiry of the deadline for filing proposals for an arrangement. Conclusion: both proposals for an arrangement (that of the AEAT and that of the insolvent company) must be submitted to the creditors' meeting to ensure that it is the creditors who, by voting, choose which arrangement should govern the fate of the insolvent party.

Directorate-General of Registers and the Notarial Profession

DECISION of the Directorate-General of Registers and the Notarial Profession dated June 4, 2013

Articles 24 and 55 LC.-- The continued existence of a noting of attachment by means of an extension ordered by the competent court does not affect the situation of an insolvency proceeding.-- Where a provisional attachment has been noted in the Property Register and there exists a subsequent provisional noting of an insolvency order, the extension of the former ordered by the court of first instance should be noted in the register.-- The only effects of an insolvency order are to stay the enforcement proceedings initiated before the order and those proceedings continue to exist alongside any preservation measures of attachment adopted therein.-- Notings of attachment deriving from such individual proceedings continue to exist as a result of the insolvency proceeding, provided that nothing occurs in the proceeding that would entail cancellation of the earlier preservation measures.

DECISION of the Directorate-General of Registers and the Notarial Profession dated September 2, 2013

Articles 55(3), 149(1) and 155(3) LC.-- Registration of the direct sale during the liquidation phase of a property owned by the insolvent party with an order for cancellation of the attachments on that property.-- The Registrar gave a negative assessment of the order for two reasons: (i) there was no record of the non-preferred status of the claims relating to the attachments in respect of which cancellation was sought; and (ii) there was no record

that the holder of the attachments had been notified of the sale and had not objected to it.-- The Directorate-General of Registers and the Notarial Profession presumed that the claims were ordinary claims because the insolvency manager had expressly stated in the deed of sale and purchase that the claims were not preferred claims and the court endorsed that affirmation when it handed down the order directing cancellation of the attachments; accordingly, it set aside the negative assessment of the Registrar on the first of the two grounds cited.-- However, the Directorate-General of Registers and the Notarial Profession confirmed the Registrar's assessment and refused cancellation of the attachments because there was no record in the court order to show that the creditor concerned had first been heard, as expressly required by Articles 55(3), 149(1) and 155(3) LC where the sale of encumbered assets in insolvency proceedings is involved.

DECISION of Directorate-General of Registers and the Notarial Profession dated September 20, 2013

Articles 24 and 55 LC.-- Provisional noting of an attachment order issued after the date of the insolvency order. The Directorate-General of Registers and the Notarial Profession confirmed the Registrar's negative assessment.-- Even though, as a general rule, the Registrar cannot take account of documents filed subsequently if doing so would distort the principle of priority, that rule does not apply to documents which only affect the subjective situation of the grantor of the document, such as an insolvency order in respect of it.-- The rules on supervision or on the suspension of the insolvent party's powers are not triggered by the registration or noting on the Register of the insolvency order; they apply from the date on which the insolvency order is handed down, regardless of whether or not it has been publicly disclosed by registration or otherwise as provided for in Articles 23 and 24 LC.-- Thus, as it was not possible to initiate or continue individual enforcement proceedings of a judicial or non-judicial nature under Article 55 LC after the date of the insolvency order, the subsequent attachment order should not be noted.

DECISION of the Directorate-General of Registers and the Notarial Profession dated October 30, 2013

Articles 8, 56 and 57 LC.-- Certificate of ownership and encumbrances requested by the judge in the insolvency proceeding who was entertaining the mortgage foreclosure proceeding in respect of the property.-- The Property Registrar refused to issue the certificate as it had observed that the owner of the property was the subject of an insolvency order.-- The Directorate-General of Registers and the Notarial Profession found that the only ground warranting refusal was that relating to whether or not it was necessary for the judge in the insolvency proceeding to have stated in its order requesting the certificate of ownership and encumbrances that the property subject to foreclosure was used in the business of the insolvent debtor.-- The Directorate-General of Registers and the Notarial Profession revoked the Registrar's assessment on the ground that, since it was none other than the judge in the insolvency proceeding who ordered the issuance of the certificate, it was irrelevant in this case whether or not the property subject to foreclosure was used in the insolvent party's business, as Articles 8 and 57 LC confer jurisdiction on the judge in the insolvency proceeding to entertain such foreclosure. The requirement for an order to state whether or not property is used in the insolvent party's business only applies to orders issued by courts other than the court entertaining the insolvency proceeding.

Directorate-General of Taxes

BINDING RULING V1995-13 dated June 14, 2013 of the Directorate-General of Taxes

Article 67(4)(b) of the Revised Corporate Income Tax Law and Articles 133(2), 137, 139 and 176(1)(2) LC.--Tax group and insolvency proceedings.-- The question raised was whether the approval of the arrangement with creditors marked the point at which the debtor comes out of the insolvency proceeding and whether, as a consequence, the insolvent subsidiary could rejoin the tax group to which it belonged before the insolvency order.-- The reason for excluding a subsidiary from its tax group as a result of it becoming subject to insolvency proceedings is because it loses its capacity to manage and dispose of its assets.-- The Directorate-General of Taxes stated that approval of the arrangement does not mean that the company can be considered to have come out of its insolvency proceeding, as in the event of such approval, the insolvent party does not automatically recover its capacity to manage and dispose of its assets. Accordingly, the subsidiary may only rejoin the tax group from the tax year in which the insolvency proceeding can be considered to be finished, in other words, as from the tax year in which the commercial court hands down the order bringing the insolvency proceeding to an end.

Accounting and Audit Institute

DECISION of the Accounting and Audit Institute dated October 18, 2013

Decision in the context of the financial information that must be observed when the "going concern" principle cannot be applied. It contains rules on: (i) Contents and timing requirements for application of the "going concern" principle to the accounting records; (ii) Recognition and measurement standards for assets and liabilities under the "company in liquidation" principle; (iii) Standards on the preparation of the financial statements of a company "in liquidation": who should draw them up, when and the required contents of the documents that must accompany the financial statements; (iv) Standards on the preparation of consolidated financial statements when prepared by a controlling company or a subsidiary under the "company in liquidation" principle: when the controlling company should continue including the financial statements of the company in liquidation in its consolidated financial statements and when it should not.

3. AWARDS AND ACCOLADES

"Best Lawyers 2013"

Garrigues, with 211 lawyers singled out for praise, claimed top spot in the ranking prepared by the US review of the finest business law practitioners in Spain.

Ten of the "Best Lawyers" come from the Restructuring and Insolvency Department.

4. GARRIGUES PUBLICATIONS

"Ley de Emprendedores: Nueva reforma de la Ley Concursal" (Entrepreneurs Law: New reform of the Insolvency Law), Yánez Gómez, Diario de Mallorca, November 4, 2013.

"El concurso de acreedores y la consolidación fiscal" (Insolvency proceedings and fiscal consolidation), Rendé Pérez, Diari de Tarragona, November 24, 2013.

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