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The International Comparative Legal Guide to:

Corporate Recovery and Insolvency 2012

6th Edition

A practical cross-border insight into corporate recovery and insolvency work

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1 Issues Arising When a Company is in Financial Difficulties

1.1 How does a creditor take security over assets in Spain?

Under Spanish Law, security over assets is created and perfected as an *in rem* right (i.e., with effects *vis-á-vis* third parties) when a security agreement is executed and certain formalities (described below) are met, allowing creditors to enforce their credit rights against those assets with priority over other creditors.

The following are the main types of security under Spanish law:

(i) Pledges ("*prenda*"). The pledgor delivers to the creditor a movable asset (including security) or a credit right (e.g., accounts receivable) owned or held by the debtor, being the possession of the pledged assets transferred to either the pledgor or a third party (e.g., a security agent). The pledge must be granted by means of a public deed in order to be enforceable against third parties and cannot be registered.

(ii) Pledges without displacement ("*prenda sin desplazamiento*"). The debtor pledges certain types of assets owned by it (e.g., harvesting machinery, proceeds of agricultural land and raw materials and warehoused merchandise). This pledge must be executed by means of a public deed before a notary public and registered.

(iii) Real estate mortgages ("*hipoteca inmobiliaria*"). Mortgages can be extended to all ancillary assets (i.e., buildings and factories), construction improvements, indemnities, insurance proceeds and expropriation proceeds and must be executed by means of a public deed granted before a notary public and registered.

(iv) Chattel mortgages ("*hipoteca mobiliaria*"). The debtor creates a mortgage over its title to certain types of moveable assets (e.g., business premises and industrial parts, machinery and industrial and intellectual property) which must be granted by means of a public deed and registered. The transfer of the possession is not necessary.

(v) Retention of title agreement ("*pacto de reserva de dominio*"). If payments are deferred in the sale of chattel and parties include a clause by which the title is retained by the vendor while any payment remains outstanding, the credit of the vendors will rank as privileged in case of insolvency provided the agreement is registered.

1.2 In what circumstances might transactions entered into whilst the company is in financial difficulties be vulnerable to attack?

The Spanish Insolvency Act establishes a claw-back period of two years as from the date on which the insolvency proceedings are declared initiated. Acts of the debtor within this period that are detrimental to the debtor's estate may be revoked, including in the absence of fraud.

Some acts are never subject to claw-back claims which include, among others: (i) acts carried out in the ordinary course of business on standard conditions; (ii) acts included within the scope of the special laws that regulate the payment and clearing and liquidation systems for securities and derivatives; and (iii) guarantees or security created for claims under public law and in favour of the Salary Guarantee Fund in the recovery agreements or conventions foreseen in their specific provisions.

In other cases, the act is presumed detrimental without there being any possibility to provide evidence to the contrary (i.e., acts of disposal have been carried out for no consideration or pre-payment of debts due after the insolvency which are not secured with an *in rem* security). In other cases the presumption is rebuttable (e.g., there is a transfer made with valuable consideration in favour of any person specially related to the insolvent debtor; or *in rem* security has been made to secure (i) pre-existing unsecured obligations, or (ii) new obligations substituting unsecured obligations; or there is a pre-payment of secured debts due after the insolvency).

For acts not included above, the burden of proof of the prejudice to the debtor's estate lies with those exercising the claw-back claim.

The main effect of a successful claw-back claim is making the contested act ineffective and, consequently, the restitution of the consideration received by both parties and their corresponding proceeds and interest.

Parties that entered into an agreement with the insolvent debtor in bad faith according to the findings in the claw-back agreement must pay compensation for any damages and losses caused to the debtor's estate.

The right to the consideration arising in favour of any of the defendants as a result of the claw-back will be considered a claim against the debtor's estate and must be paid simultaneously with the return of the consideration to the debtor and, in case of bad faith, the claim will be deemed subordinated.

The Spanish Insolvency Act grants protection against the risk of claw-back actions (other than in cases of fraud) in connection with out-of-court refinancing agreements (and new security granted in connection with the same). These refinancing agreements are understood to be those agreements entered into by the debtor under which there is at least a significant increase of credit or amendment of its obligations, either through the extension of its maturity or the establishment of other obligations *in lieu* thereof.

Neither such refinancing agreement, nor agreements, payments or

security or guarantees arising under the framework of this agreement, will be subject to claw-back actions given that these are made in compliance with a viability plan that would envisage the continuation of the debtor's business on the short and medium term. The refinancing must be backed by creditors who hold at least 3/5 of the claims against the debtor at the time of the execution of the refinancing agreement. In this context, creditors include not only secured and ordinary creditors but also subordinated creditors (e.g., shareholder loans) and trade creditors. An independent expert appointed by the Commercial Registry must review the plan and consider that it is reasonable and accomplishable and that the security granted is proportional, taking into account the standard market conditions at that time. The Spanish Insolvency Act recognises the possibility for the independent expert to include any class of reservations or limitations, whose importance will have to be assessed by each of the signatories of the agreement. Furthermore, the refinancing agreement and related documents must be notarised.

If the refinancing agreement affects to a group of companies, it must be backed by creditors who hold at least 3/5 of the claims against each of the companies of the group and against the whole group of companies, excluding in both cases intra-group claims. In the case of refinancing agreements affecting a group of companies, only one independent expert may be appointed.

1.3 What are the liabilities of directors (in particular civil, criminal or disqualification) for continuing to trade whilst a company is in financial difficulties in Spain?

Directors may be liable for the following, which may be claimed independently:

(i) Capital impairment situation

Pursuant to the Spanish Corporate Companies Act ("*Ley de sociedades de capital*"), a company will automatically be in a mandatory cause of compulsory dissolution if its net worth is less than 50% of its share capital. Directors must call a general shareholders' meeting within two months of becoming aware (or when they should have become aware) of the situation to decide whether to dissolve or recapitalise the company.

If a general meeting is not held or none of these resolutions is passed, directors must file a claim requesting the dissolution of the company within two months of the general meeting or the date on which the meeting should have been held, being directors held jointly and severally liable.

If the directors fail to comply with these obligations, they will be held jointly and severally liable for the obligations arising after the capital impairment situation. Nevertheless, the directors' obligation to apply for judicial dissolution may be substituted by an application for insolvency if the company is insolvent.

(ii) Liability in the event of a guilty insolvency

The judge hearing the case will decide whether or not the debtor's insolvency should be declared guilty provided that the insolvency proceedings lead to either: (a) the initiation of the winding up; or (b) the approval of a composition agreement establishing (for all creditors or for those of one or several classes) a release of debts involving more than one third of the amount of their claims, or an extension of more than three years.

Insolvency will be considered guilty whenever it has been caused or aggravated due to the debtor's, directors' (including shadow and *de facto* directors) or general attorneys' bad faith or gross negligence (including those being directors or general attorneys in the period of two years before the declaration of the insolvency).

A rebuttable presumption of bad faith or gross negligence thereto arises when directors fail (if legally obligated to keep the accounts) to issue, audit, or, once approved, do not file the annual accounts related to any of the three fiscal years preceding the insolvency declaration. There is also a rebuttable presumption when they do not fulfill with the obligation of filling for insolvency in the period of two months since they become aware or should have become aware of the company's state of insolvency.

Moreover, there are also certain assumptions where, in any case, the insolvency will be declared guilty (e.g.: double accounting; material breach of accounting duties; irregularity defects which affect the understanding of real net worth and financial situation; embezzlement of assets, etc.).

Directors (including shadow and *de facto* directors) and/or general attorneys, which are considered liable of the insolvency or its aggravation, will be disqualified for between 2 to 15 years and will lose any claim and will have to indemnify damages. Additionally, if the insolvency ends with liquidation, the judge may impose a fine on the director and/or general attorney who has held the post during the two years prior to the insolvency, the amount of which may add up to the debts not paid by the debtor's assets.

(iii) Criminal liability

Under the Spanish Criminal Code, directors may be subject to criminal prosecution with the possibility of being sentenced to prison (from two to six years and with penalties from eight to twenty-four months), if they have caused or willfully aggravated the debtor's insolvency.

2 Formal Procedures

2.1 What are the main types of formal procedures available for companies in financial difficulties in Spain?

The Spanish Insolvency Act establishes a single insolvency procedure ("*concurso*") to be applied to every insolvent debtor.

This procedure includes a common phase in which the judge will appoint, as a general rule, a receiver (a lawyer, an auditor or an economist, all of them with 5 years of effective professional experience and with specific knowledge on insolvency).

Nevertheless, the Spanish Insolvency Act establishes that an additional receiver may be appointed (an unsecured creditor whose claim is within the first third in terms of the total amount of creditors) if the insolvency is considered of special significance, which will be decided by the judge, taking into account certain circumstances (namely: the existence of more than 1,000 creditors; an amount of estimated liabilities over EUR 100 million; an annual turnover of EUR 100 million or above in any of the three fiscal years before the opening of insolvency proceedings; or the existence of more than 100 employees in any of the three fiscal years before the opening of insolvency proceedings). In these cases, unions can also be appointed as receivers if the total credit of employees is one third of total debts.

Moreover, if insolvencies are deemed relevant for public interests, the judge may appoint as receiver a Public Administration, although the requirements for the consideration of significant insolvency are not met.

The main function of the receiver is to determine the debtor's estate and outstanding debts and oversee the management of the debtor's business. The receivers will issue a report on the causes of the insolvency alleged by the debtor and its net worth and accounting situation, as well as indicate the inventory of the debtor's estate and a list of creditors.

The common phase has two potential results:

(i) the opening of the composition agreement phase, designed to encourage the debtor and creditors to reach an agreement on the satisfaction of the claims thereby enabling the debtor to restructure its business; or

(ii) the opening of debtor's liquidation, the purpose of which is to wind-up the debtor's assets and satisfy its debts.

The common phase ends once all claims brought by an interested party against the inventory and creditors list drafted by the receivers have been resolved by the judge. Nevertheless, if challenges brought against the receiver's report represent less than 20% of assets or claims, the judge may automatically open the composition agreement or the liquidation phase, in order to reduce the excessive length of the common phase and to avoid the loss of value of assets and of the global business.

The Spanish Insolvency Act foresees the possibility for the judge to apply summary insolvency proceedings in the following cases: (i) the debtor has less than 50 creditors; (ii) estimated liabilities (or the appraisal of assets) do not exceed EUR 5 million; or (iii) if the debtor files a proposal for an early composition agreement or for a composition agreement that includes a corporate restructuring that establishes the assignment of all debtor's assets and claims (see question 7.2).

Likewise, the judge may apply summary insolvency proceedings if the debtor files for insolvency asking for liquidation with an agreed binding purchase offer for the business with a third party or if the debtor has stopped completely its activity and it has no employees (see question 7.3).

The benefits of the application of summary insolvency proceedings are that time periods are significantly shortened. In cases of early composition agreements presented by the debtor at the same time as the filing for insolvency or cases of filing for insolvency together with a binding purchase offer, the judge may request the creditor who opposes the approval of the early composition agreement to provide bail as security of the possible damages caused as a consequence of the delay in the approval of the composition agreement.

2.2 What are the tests for insolvency in Spain?

The insolvency procedure is subject to a *liquidity test*: it will be determined whether or not the debtor is able to regularly comply with its obligations when they become due and payable defined as the current insolvency ("*insolvencia actual*").

The debtor may also apply for insolvency if it foresees that situation in the immediate future (i.e., imminent insolvency).

Directors of a company must file for an insolvency declaration within two months of the date they become aware or should have become aware of the company's state of insolvency.

The two-month period in which the debtor must file for the declaration opening insolvency proceedings may be extended if the debtor notifies the competent court that it has commenced negotiations towards the execution of a refinancing agreement or an early proposal of the composition agreement within the two month-period. The period will be extended by four months to negotiate the terms of the refinancing agreement or the creditors' adherence to the proposal of the composition agreement without (a) the obligation to file for the opening of insolvency proceedings within the negotiation period, and (b) the risk that a creditor files for opening insolvency proceedings.

Any creditor may also request a declaration opening the insolvency proceedings of the debtor ("*concurso necesario*"), basing its claim on a title by virtue of which enforcement or collection proceedings have been dispatched without the seizure discovering sufficient free assets for the payment, or otherwise to provide evidence of any of the following facts (among others): the general suspension of the current payment of the debtor's obligations; or the existence of a general seizure for executions pending with an overall effect on the debtor's estate.

2.3 On what grounds can the company be placed into each procedure?

See questions 2.1 and 2.2.

2.4 Please describe briefly how the company is placed into each procedure.

As mentioned in question 2.2, the debtor or any of its creditors may file for the declaration opening the insolvency proceedings.

2.5 What notifications, meetings and publications are required after the company has been placed into each procedure?

An extract of the statement of the opening of the insolvency proceedings will be made public by placing the corresponding advertisements in the Spanish Official State Gazette and will be registered with all public registries.

The Insolvency Act states that the publication of the insolvency proceedings should preferably be made by on-line means. An online Insolvency Registry ("*Registro Público Concursal*") has recently been created, although it is not updated yet and requires further development.

3 Creditors

3.1 Are unsecured creditors free to enforce their rights in each procedure?

In general, neither singular (judicial or extrajudicial enforcements) nor administrative or tax demands for payment to be collected coercively against the debtor's assets may be started once the insolvency proceedings have been declared opened.

Enforcement of claims initiated before the declaration opening the insolvency proceedings will be suspended as of the date of the declaration. An exception to this rule is administrative or labour claims that are enforced in connection with assets that are not necessary for the continuation of the debtor's professional or business activity.

3.2 Can secured creditors enforce their security in each procedure?

No enforcement of security *in rem* may be initiated or continued against the assets of a debtor assigned to its professional or business activity (or to a productive unit it owns) until whichever of the following occurs sooner: (a) the approval of a composition agreement (insofar as its content does not affect the exercise of that right); or (b) the lapse of one year as from the date on which the declaration opening the insolvency proceedings established that the winding-up phase would not be opened.

Furthermore, the following actions among others may not be carried out against assets assigned to a debtor's business or professional activity:

(i) actions aimed at recovering the assets sold with deferred payments or financed with retention of title by virtue of contracts registered with the Registry of Moveable Goods ("*Registro de Bienes Muebles*"); and

(ii) actions vested under financial leasing formalised in a document involving enforcement or which have been registered with the abovementioned registry.

As an exception to the above, enforcement of security *in rem* may be pursued if the judge of the insolvency proceedings declares that the assets are unnecessary for running the debtor's professional or business activity or are not assigned to its professional or business activity.

3.3 Can creditors set off sums owed by them to the company against amounts owed by the company to them in each procedure?

No set-off can be carried out after insolvency proceedings have been declared opened unless legal requirements for the set-off under Spanish Civil Code are met prior to the declaration, although the judicial or administrative resolution declaring the existence of the requirements for set-off is passed after the declaration of insolvency. Apart from potential claw-back actions, the declaration opening insolvency proceedings will not affect the right of the creditor to set-off if the law governing the reciprocal debtor's claim allows set-off in cases of insolvency.

The accrual of the relevant legal or contractually-agreed interest on unsecured claims ceases to accrue; however, interest on secured claims continues to accrue, up to the value of the collateral.

4 Continuing the Business

4.1 Who controls the company in each procedure? In particular, please describe briefly the effect of the procedures on directors and shareholders.

As a general rule, unless a debtor requests its winding-up (which can be done in any moment from the petition for insolvency), the declaration opening insolvency proceedings does not interrupt the continuation of the professional or business activities performed by the debtor and, until the acceptance of the receiver, the debtor may carry out any commercial transactions in its ordinary course of business given that these are executed under standard market conditions.

Following the declaration opening insolvency proceedings, the directors' faculties will be either subject to intervention or suspension. As a general rule:

(i) if the debtor files for the declaration opening the insolvency proceedings, the debtor shall keep management and disposal powers, the exercise of which shall be subject to intervention by the receiver, via their authorisation or approval; and

(ii) if the creditor files for the declaration opening the insolvency proceedings, exercise by the debtor of the powers of management and disposal of his assets shall be suspended, being substituted therein by the receiver.

Notwithstanding the above, the judge may decide to partially or totally stop the debtor's operations upon the request of the receiver.

4.2 How does the company finance these procedures?

Spanish insolvency proceedings are quite cost-effective in comparison with those in other jurisdictions since (i) steering committees are not established and therefore there are no associated fees, and (ii) the debtor does not pay the legal fees of the creditors or the steering committee.

Nevertheless, fees incurred by receivers and other professionals involved in the insolvency proceedings for the benefit of the debtor are considered credits against the debtor's estate and, therefore, privileged credits.

4.3 What is the effect of each procedure on employees?

Employment contracts remain binding and in force (including those relating to severance payments or golden parachutes of senior executives), although they may be subject to judicially ordered collective reorganisation measures such as including amendments, suspensions and terminations.

In particular, the judge has jurisdiction to rule on labour claims of the debtor's employees and to dismiss senior executives of the debtor and decide on the compensation of such employees.

4.4 What effect does the commencement of any procedure have on contracts with the company and can the company terminate contracts during each procedure?

Contracts with reciprocal obligations for both parties pending to be performed at the time of the insolvency declaration will remain in force and will be financed by the debtor's estate.

The judge may order the termination of such contracts upon the request of the receiver or debtor, including situations in which there is no specific termination provision or default, if the judge considers it appropriate for the insolvency proceedings.

In general, early termination clauses triggered by the insolvency declaration are deemed void and unenforceable and any non-compliance by any of the parties after the declaration opening the insolvency proceedings enables the non-defaulting party to request that the judge terminate the agreement. Nevertheless, the judge may order the compliance of the contract if it is deemed appropriate for the insolvency proceedings. If this is the case, due amounts to the counterparty may be paid on account of the debtor's estate.

Likewise, receivers may request the reinstatement of loans, credits and other financing agreements if any of those agreements were terminated during the three months prior to the insolvency declaration and the creditor had not initiated the enforcement of its credit. Receivers must pay or deposit all amounts owed until the relevant agreement is reinstated and must undertake to pay all future amounts on account of the debtor's estate.

5 Claims

5.1 Broadly, how do creditors claim amounts owed to them in each procedure?

Creditors must submit their claims to the receiver one month after the publication of the declaration opening the insolvency proceedings in the Spanish Official Gazette. Late notice by creditors may cause the subordination of their claims in some cases (not, for example, in cases of secured creditors if security is registered, in cases in which credits appear at the debtor's accounting and in other exceptional cases).

Prior to the issuance of the receiver's report, the receiver or receivers will send a communication to creditors detailing how their credits are going to appear in the report, with the aim to correct possible mistakes before presenting the report before the judge.

Any interested party may bring a claim against the creditors' list or inventory drafted by the receiver within 10 days since the latter submitted their report to the judge.

5.2 What is the ranking of claims in each procedure? In particular, do any specific types of claim have preferential status?

The following ranking applies to the creditors' claims after the insolvency has been declared opened by the judge:

(1st) Claims against the debtor's estate: Certain debts incurred by the debtor following the declaration opening the insolvency proceedings that will be payable when due according to their own terms, which include receivers' fees and debts incurred during the insolvency proceedings in the ordinary course of business, any other obligations approved by the receiver and 50% of the new money granted to the debtor in the framework of a refinancing agreement meeting the requirements explained in question 1.2.

(2nd) Claims with special preference: Claims secured by the assets of the debtor are paid on account of those assets with preference to any other creditor (e.g., claims granted with *in rem* security or security and claims from financial leases and purchase agreements with deferred payments and which imply a retention of title, a prohibition of disposal or a termination condition).

(3rd) Claims with general preference: Claims that are paid with preference to any creditor other than those referred to above. These include, among others: claims for salaries and severance payments, up to a certain amount; tax and social security liabilities (for certain claims up to 50% of the amount owed); and, if a creditor filed for the declaration opening insolvency proceedings, 50% of the amount of the claim of the filing creditor.

The remaining 50% of the new money granted to the debtor in the framework of a refinancing agreement is also considered as a claim with general preference.

(4th) Ordinary claims: Claims that are not classified as with preference (either special or general) or subordinated.

(5th) Subordinated claims: Claims that will only be paid out once all other claims have been satisfied in full including claims for which timely notice was not provided to the receivers, contractual subordination claims, unsecured interests, fines and claims of individuals and companies related to the debtor (e.g., group companies, shareholders with a relevant stake (10% for non-listed companies) or directors, including shadow directors, liquidators or relatives), except for the cases in which credits do not come from financing obligations or with another analogous purpose.

5.3 Are tax liabilities incurred during each procedure?

Other than certain rules on VAT recovery for unpaid claims, there are no specific provisions on tax liabilities or the tax framework for trading while the company is in an insolvency situation.

6 Ending the Formal Procedure

6.1 Is there a process for "cramming down" creditors who do not approve proposals put forward in these procedures?

There is a "cramming down" mechanism to impose the application of part of the refinancing agreements executed before the declaration of the insolvency to financing entities which have not signed them.

This mechanism enables the debtor to request the judge to impose to all unsecured dissenting or non-signing financial entities some provisions of the refinancing agreement already agreed with other financial entities that hold at least 75% of the liabilities with financial creditors at the time the agreement is entered into, provided that it does not impose a "disproportionate sacrifice" to the dissenting financial entities.

The refinancing agreement should meet the requirements established in question 1.2 and it can be only imposed on unsecured creditors. In addition, the only effect which would be imposed on dissenting unsecured financial entities is the extension agreed within the refinancing agreement.

If the judge accepts the application filed by the debtor, it may decide, at the request of the debtor and considering the specific circumstances, to order a stay of enforcements during the extension period established in the agreement for a maximum of three years.

If the company enters into insolvency and reaches an in-court agreement with creditors representing the majority of credits, such composition agreement will be imposed on both ordinary and subordinated creditors. Secured and privileged creditors will be only bound if they vote in favour of the agreement. Subordinated creditors will be paid under the creditors' agreement once all ordinary creditors (and privileged creditors) are paid. If the creditors' agreement includes an extension, the period of the extension for subordinated creditors will be counted as from the expiry of the forbearance period of ordinary creditors. Prior to its entrance into force, an approved composition agreement can be blocked by the debtor filing for liquidation (within the same proceeding).

6.2 What happens at the end of each procedure?

Insolvency proceedings may be terminated: (i) once a judge has declared that an approved composition agreement has been complied; (ii) by the liquidation of the debtor's estate, which implies the dissolution -once the liquidation phase is opened- and subsequent extinction of the debtor once all the assets owned by the debtor (or by any liable third party) have been carried out in order to satisfy the creditors; or (iii) it is presumed that the assets of the debtor will not be enough for the payment of the claims against the debtor's state, unless there are or it is presumed that there will be claw-back actions, third party liability actions and/or the declaration of the insolvency as guilty.

7 Alternative Forms of Restructuring

7.1 Is it common to achieve a restructuring outside a formal procedure in Spain? In what circumstances might this be possible?

The decision to structure a corporate rescue through out-of-court negotiations with creditors or through formal insolvency proceedings depends significantly on the specific circumstances of each case. The main legal considerations for following an out-of-court restructuring are:

(a) the agreements obtained as a result of out-of-court negotiations do not bind the creditors not party to the agreements (who therefore may accelerate debt or commence legal proceedings to recover the delinquent debt), unless the "cram down" mechanism exposed in question 6.1 may be applied to dissenting financial unsecured creditors;

(b) formal insolvency proceedings interrupt the accrual of interest or the enforcement of rights; and

(c) out-of-court restructuring is not so lengthy.

Out-of-court negotiations normally keep the process confidential and are more flexible as to the content of the restructuring conditions. An out-of-court restructuring would be the normal outcome if secured creditors hold the majority of the debt or the debt is held by a reduced number of creditors. See question 1.2 about protection against claw-back of out-of-court refinancing agreements if they meet certain conditions.

7.2 Is it possible to reorganise a debtor rather than realise its assets and business?

A composition agreement in the insolvency may provide for reorganisation measures including, for instance, mergers or other corporate measures as well as the sale of the debtor's business.

There are two types of in-court composition solutions between the debtor and creditors: the early composition agreement (*convenio anticipado*); and the ordinary composition agreement (*convenio ordinario*).

An ordinary composition agreement can only be submitted to the creditors' meeting once the common phase ends. Early composition agreements can be submitted to approval by creditors during the common phase but, even if approved, it would not come into force until the common phase ends.

Only the debtor can file a proposal for an early composition agreement. To present such proposal, the debtor will need the support of creditors (of any type) representing (individually or in aggregate) at least 20% of the overall amount of the claims included in the list of creditors (only 10% if the proposal is filed with the application of insolvency).

As a general rule, a composition agreement cannot establish a release of credits higher than 50% or an extension for more than 5 years. However, the limits may be exceeded in some cases with the judge's authorisation and other alternatives would be available (debt for equity swap, conversion into subordinated loans, etc.).

7.3 Is it possible to achieve an expedited restructuring of the debtor by means of a pre-packaged sale? How is such a sale effected?

There are some ways to achieve that result.

Firstly, the Spanish Insolvency Act sets forth that summary insolvency proceedings are applicable when debtors file for insolvency asking for liquidation with an agreed binding purchase offer for the business with a third party.

If this is the case, the judge is obliged to apply a summary insolvency proceeding with certain specialities and open the liquidation phase immediately to facilitate a quick sale. Moreover, in case of challenges against the list of creditors and the inventory of assets, the Spanish Insolvency Act foresees the possibility for the Judge to require bail as security of the damages caused as a consequence of the delay in the approval of the liquidation.

Secondly, in the standard liquidation phase, the Spanish Insolvency Act establishes that the business of the debtor (or part of it) will be sold as a going concern.

Finally, a sale of the debtor's business may be carried out as a part of a composition agreement (including an early proposal of a composition agreement as a manner or pre-packaged deal) if: (i) the purchaser commits to continue to run the business of the debtor and pay the creditors according to the composition agreement and by the funds generated from the business; and (ii) a viability planning is filled with this respect.

8 International

8.1 What would be the approach in Spain to recognising a procedure started in another jurisdiction?

The EU Insolvency Regulation establishes a set of rules for determining the competent jurisdiction and how assets and creditors of insolvent EU companies are treated in each case.

With regard to international insolvencies that are not governed by the EU Insolvency Regulation, the private international law system is very similar to the EU Insolvency Regulation, which enables the recognition of international insolvency rulings through *exequatur* proceedings if certain conditions are met.

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Alberto has also been active in M&A transactions involving insolvent companies within their restructuring process.
Alberto has been recognised as a leading Restructuring and Insolvency lawyer by Chambers, IFLR and PLC Which Lawyer.
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Ángel has advised on matters relating to a wide range of economic sectors, including, real estate, financial services hotels and catering, and technology.
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URÍA MENÉNDEZ

Uría Menéndez ("UM") is an independent law firm founded in the 1940's by Professor D. Rodrigo Uria Gonzalez. The firm currently has 14 offices in Spain, Portugal, Europe, Beijing and The Americas. UM specialises in providing legal advice to Spanish, Portuguese and European Community-based businesses. The firm also provides support to its clients through its network of offices and through its relationships with equally prestigious international law firms.

The comprehensive legal advice provided by UM covers all areas of Commercial Law.

With regard to insolvency matters, UM provides advice to all the parties that may be involved in a company crisis, covering all kinds of situations. These include, amongst others, company or group restructuring procedures, refinancing of debts, acquisition of distressed assets and debt, protection of creditors' rights, directors' duties and liabilities, protection of assets, claw-back actions, design of security structures, corporate recovery as well as general advice on insolvency proceedings and related litigation. UM's high level of expertise in insolvency matters covers a broad range of economic sectors including, amongst others, industrial companies, banks, financial and insurance institutions, technology, construction and real estate. This expertise enables UM to deal with insolvency situations with an intricate knowledge of the practical business issues and cross-border consequences in foreign insolvency cases.

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