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# Banking & Finance 2022

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**Spain: Law & Practice**
**and**
**Spain: Trends & Developments**

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# SPAIN

## Law and Practice

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# 1. Loan Market Panorama

## 1.1 Impact of the Regulatory Environment and Economic Cycles

During 2021, Spain's GDP grew by 5.1%, which did not compensate for 2020's 10.8% decrease. In 2022, the expectation is that the economy will grow around 4.2%, significantly less than what was first expected (7%), but a good sign nonetheless given the three major issues faced during the first half of 2022: the war in Ukraine, the energy crisis and the effect of ramping inflation of interest rates. However, Spain will not recover its pre-COVID-19 GDP until 2023.

Tourism has certainly been the main driver of Spain's economy in recent months, as the country received some 9.7 million foreign tourists in the first quarter of 2022 (an exponential increase when compared to Q1 2021's 1.2 million). The energy sector has been very active in terms of the number of deals.

Yet companies face a challenging future given:

- ramping inflation, which rose to 10.7% in July 2022, well above the 9.1% of the Euro area as a whole;
- the increase in the minimum wage (now fixed at a gross EUR1,000 per month); and
- the steady rise of the EURIBOR, used in the vast majority of financing agreements, and the credit crunch that some are already anticipating will occur in the months to come.

All these indicators are likely to translate into a higher cost of funding for companies, which will face higher costs and have little room to pass that increase on to their customers.

## 1.2 Impact of the COVID-19 Pandemic

The health crisis resulting from the COVID-19 pandemic may be slowly fading, but the economic hardships that resulted from it are still present. Two of the measures implemented by the Spanish government in the wake of the pandemic have had an important impact on the market.

### ICO Loans

As a means to help Spanish companies and self-employed individuals affected by the economic effects of COVID-19 obtain new financing, the Spanish government approved two lines of guarantees for an aggregate amount of up to EUR140 billion. These guarantees were managed by the Instituto de Crédito Oficial, a public bank that verified compliance with the eligibility requirements for benefiting from this extra liquidity. Approximately 198,000 companies with more than ten employees were able to raise new banking debt with this measure. However, these companies are restricted from prepaying any pre-existing debt whilst the amounts of this new financing are outstanding, thus making debt restructuring more difficult in cases where creditors required a reduction in their exposure as a condition for re-profiling a company's debt.

### Insolvency Moratorium

From March 2020 until 30 June 2022, the obligation of debtors to file for insolvency was suspended, and they received protection against potential insolvency petitions by creditors, effectively reducing the number of companies entering bankruptcy even if they were cash insolvent. Leaving aside the potential liability of directors for not voluntarily filing for insolvency (for making the insolvency situation worse and causing greater damage to third-party interests), there is no clear way to determine how many companies should have been liquidated or restructured during those 28 months. It is reasonable to expect

that the coming months will see a surge in the number of bankruptcy proceedings.

### 1.3 The High-Yield Market

The high-yield market continues to grow at a steady pace. However, it is still a secondary source of financing, not posing a credible threat (both in number and volume of deals) to the lending market. A reason for this is the cost of implementing a structure of the type typically used for these transactions, where the private placement documentation is governed by the laws of New York and the securities are traded in the Luxembourg or Irish alternative stock exchanges. This substantially increases the transaction costs and requires a significant minimum issue amount to be efficient.

### 1.4 Alternative Credit Providers

Direct lending continues at a steady pace in Spain, making it the fourth most active jurisdiction in all of Europe according to the Deloitte Alternative Lender Deal Tracker. They are not bound by capital requirements applicable to banks, so direct lenders can craft tailor-made structures. However, they do have certain constraints, such as the following:

- the capital-call structure of these funds typically requires the full amount of the facility to be disbursed and deposited in a restricted account, which may not be economically advantageous to the borrower;
- accounts need to be opened, and specific mechanics need to be agreed, with a bank licensed to operate in Spain, which adds a layer of complexity to the structuring of the deal; and
- non-banking lenders will not benefit from certain advantages granted by law to banks (see below).

### 1.5 Banking and Finance Techniques

Uncommitted facilities have experienced a revival in the context of project finance of renewable energy generation facilities, due to the possibility of increasing the generation capacity, including by means of a hybridisation of technologies.

### 1.6 Legal, Tax, Regulatory or Other Developments

In addition to changes in regulated or semi-regulated sectors (eg, the energy sector), the most relevant legal development is Law 16/2022 (*Ley 16/2022, de 5 de septiembre, de reforma del texto refundido de la Ley Concursal*), which transposes Directive (EU) 2019/1023 of the European Parliament and of the Council of 20 June 2019 into Spanish law. The resulting insolvency law came into effect on 26 September 2022 and introduces significant flexibility for companies to restructure their financial indebtedness without the need to file for insolvency.

### 1.7 Developments in Environmental, Social and Governance (ESG) or Sustainability Lending

Sustainable financing has increased substantially, amounting to c. EUR47 billion according to the Spanish Sustainable Financing Observatory. Both the sustainability-linked loan principles of the Loan Market Association and the Equator Principles are widely used to validate the sustainability of financings, and the proposal for an EU regulation on European green bonds will undoubtedly impact a market that in 2021 totalled c. EUR18 billion from all types of issuers (including the Spanish Treasury). Important players in this market include Repsol, Iberdrola, Acciona, Telefónica and Pikolin.

## 2. Authorisation

### 2.1 Authorisation to Provide Financing to a Company

Lending is an unregulated activity in Spain, which means that any company (whether national or foreign) is entitled to lend money and charge interest on the outstanding amounts.

Without prejudice to the foregoing, banks enjoy certain benefits not available to unregulated lending vehicles, such as:

- Floating mortgages – only financial entities (as defined under Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013) are entitled to benefit from these charges, which are further described below.
- Financial collateral – Royal Decree-Law 5/2005 transposed Directive (EU) 2002/47 on financial collateral into Spanish law, thereby providing for a swift and very efficient enforcement procedure compared to those available for other types of security, including the right to appropriate the collateral (which is otherwise prohibited under Spanish law). Financial collateral is only available when at least one of the parties is a public entity, a central bank or other monetary authority such as the International Monetary Fund or a credit or financial entity.
- Stamp duty exemptions – Spanish law provides for a full exemption from stamp duty arising from certain amendments to mortgage-backed loans (further described below) granted by financial entities, which is not available to non-banking lenders.

## 3. Structuring and Documentation Considerations

### 3.1 Restrictions on Foreign Lenders Granting Loans

There are no restrictions on foreign lenders granting loans under Spanish law. However, any person intending to notarise a document in Spain must first obtain a tax ID number.

### 3.2 Restrictions on Foreign Lenders Granting Security

There are no restrictions on foreign lenders benefiting from security governed by Spanish law.

### 3.3 Restrictions and Controls on Foreign Currency Exchange

There are no specific restrictions or controls on foreign currency exchange.

### 3.4 Restrictions on the Borrower's Use of Proceeds

There is no general restriction on the use of proceeds from loans or debt securities for a Spanish borrower, other than the financial assistance limitations that are described below.

### 3.5 Agent and Trust Concepts

The concepts of trusts and security trustees do not exist under Spanish law, and Spain has neither signed nor ratified The Hague Convention of 1 July 1985 on the Law Applicable to Trusts and on their Recognition.

Furthermore, security interests are construed as ancillary to the core obligation (ie, the facility); thus, legal title over a security interest must be held by the creditor of the secured facility. These circumstances decrease the probability of a security trust being recognised in Spain as a valid scheme to create a beneficiary of Span-

ish security interests securing the facility agreement.

The legal concept of a trust is of dubious compatibility with certain core principles of Spanish law, including the following.

- Spanish law does not contemplate the possibility of splitting the legal title (belonging to the security trustee) from the equitable right of the beneficiaries (ie, the creditors) in a way that binds all third parties. The parties are also not entitled to split legal title in the above manner through a private agreement.
- Spanish law would not qualify the assets held in trust as a segregated, separate estate that is immune from other creditors of the security trustee.
- The creditors of the facility would have no rights under Spanish law against bona fide third parties acquiring the assets held in trust from the security trustee even if the creditors (as the ultimate beneficiaries of the assets held in trust) had not consented to the sale.

## 3.6 Loan Transfer Mechanisms

### Assignment under a Facility

A transfer of a creditor's interest under a facility governed by Spanish law may be carried out by any of the following.

*Assignment of credit rights (cesión de créditos)*

This assignment implies the transfer of the credit rights from one creditor to another, but not of the contractual obligations. Thus, the debtor's consent is not required (unless there are additional obligations of the creditor that remain outstanding), but notifying the debtor prevents the latter from being discharged of its obligations vis-à-vis the assignee by either (1) paying the former creditor instead of the assignee; or (2) setting off the payment obligation with a credit right held by the debtor against the former creditor prior to the assignment.

*Assignment of agreement (cesión de contrato)*

Although not expressly established in the Spanish Civil Code, both Spanish courts and legal scholars recognise, on the basis of the freedom of the parties to contract, that a party may freely decide to assign its contractual position under an agreement to a third party and, thus, assign the corresponding rights and obligations, without extinguishing the prior obligation by itself.

Unlike the assignment of credit rights, the debtor's consent is required (although, generally, facility agreements establish permitted transfers whereby consent is deemed to be granted in advance).

This is the most common option to assign the creditor's interest in order to ensure full subrogation of the new creditor into the position of the former creditor (including obligations). In contrast, it is fairly standard in large sales of portfolios of loans to carry out a global assignment of credit rights (especially if it is not feasible to review the assignment clauses of each of the credit rights being assigned).

### Assignment of Security

Given that security interests are construed as ancillary rights to the primary obligation and are thus created in favour of the underlying creditors, any transfer of an interest under a secured facility entails the pro rata assignment of the benefit in the relevant security interest (although some types of security interests are only available to certain categories of creditors, as explained above). Naturally, the ancillary assignment of the security interest as a result of the assign-

ment of the secured rights may be contractually excluded or limited. Lastly, since registration of a mortgage is required for the valid creation of the in rem right, registration of the assignment with the corresponding registry is required so that the latter discloses the new creditor's entitlement to the mortgage.

### 3.7 Debt Buy-Back

Debt buy-back is permitted under Spanish law, although appropriate consideration should be given to the consequences it may have in terms of equitable subordination (see below).

### 3.8 Public Acquisition Finance

The prospectus of a takeover bid must state whether external financing is required, and if so must provide details on the identity of the creditors and the bidder's assumptions to pay the debt service (including whether the bidder is relying on the target company's financials). Similarly, any guarantees and security interests securing the bid must be disclosed and identified.

## 4. Tax

### 4.1 Withholding Tax

Payments of principal are subject to withholding tax in Spain. Interest payments by a Spanish company are generally subject to a withholding rate of 19% if made:

- to a Spanish lender that is not a Spanish bank (or a registered branch of a foreign bank) or a Spanish securitisation fund, as these entities are expressly exempt from Spanish CIT withholding; or
- to a non-Spanish lender (in which case the borrower acts as withholding agent on account of the non-resident tax payable by the lender for the interest received from a Spanish source), unless certain requirements are met in order to be exempt from it (namely, that the beneficial owner of the interest, according to the criteria set by the Court of Justice of the EU in the so-called Danish cases, is an entity tax resident in the EU or a permanent establishment located in another EU member state of an EU-resident company).

Likewise, withholding rates may be reduced (or the interest payments may be exempt from withholding) if the payment is to a lender with tax residency in a jurisdiction that has a double tax treaty (DTT) in force with Spain providing for an exemption or reduced rates on interest payments.

These tax benefits should apply when, cumulatively:

- the Interest and Royalties Directive or the relevant DTT applies;
- the lender can provide the borrower with a certificate of tax residence issued for the purposes of the applicable DTT by the relevant tax authorities in its jurisdiction of residence during the 12 months prior to the date when the relevant interest payment is due or made; and
- the lender does not obtain the interest income through a permanent establishment in Spain or in a country or territory that is not an EU member state, nor through a country or territory included in the list of tax havens published by the Spanish tax authorities.

Spanish law also provides for an exemption from withholding with respect to:

- coupons paid on listed bonds, provided that the bond is eligible for the special tax regime (which must be assessed on a case-by-case basis and will depend on the fulfilment of certain requirements relating to, among other things, the listing venue and the supply of a payment statement certificate by the paying agent to the issuer on a recurring basis);
- coupons derived from public debt; and
- interest on "bank accounts for non-residents" held in Spanish banks.

Finally, Spanish law does not regulate the tax treatment of fees received by a non-Spanish lender in the context of a financing, and there are no clear guidelines issued by the Spanish tax authorities. Common market practice distinguishes between fees similar in nature to interest (eg, ticking or commitment fees) and service-related fees (eg, structuring fees), which could be subject to withholding (unless any of the exemptions described above applies).

### 4.2 Other Taxes, Duties, Charges or Tax Considerations

#### VAT

Financing agreements are generally exempt from Value Added Tax (VAT) and not subject to transfer taxes in Spain. Security documents are also exempt from VAT and transfer taxes if documented in a Spanish public document (*escritura pública* or *póliza*).

#### Stamp Duty

As described above, stamp duty will accrue on transactions—namely, security interests such as a mortgage—documented in a public deed (*escritura pública*), with valuable economic content, and that are eligible for registration with a Spanish public registry (such as the Land Registry or the Movable Assets Registry). General rates may range between 0.25% and 2% depending on the autonomous region where the document is to be registered. Even though the taxpayer is the beneficiary (ie, the lender), the practice is to pass this cost on to the borrower.

Pledges and other types of security interests should not trigger stamp duty unless they comply with the requirements above; for instance, non-possessory pledges trigger stamp duty if documented in an *escritura pública*, but not if documented in a *póliza*.

### 4.3 Usury Laws

Spanish law on usury dates from 1908 and renders null any agreement with an interest rate that is "notably higher than the normal interest rate", a concept that is subject to interpretation by the courts.

Specific protections apply to consumer loans.

## 5. Guarantees and Security

### 5.1 Assets and Forms of Security

#### General Remarks

Before describing the different types of security available to lenders under Spanish law, it is worth highlighting some guiding principles.

- As stated above, guarantees and security interests are ancillary to the main obligation, which needs to be clearly identified in the relevant guarantee or security agreement. Therefore, the guarantee or security interest follows the underlying obligation in such a way that the nullity of the underlying obligation entails the nullity of the guarantee or security, and the termination of the underlying obligation entails the termination of the guarantee or security.

- As a general rule, security may be created only over liabilities that are determined or capable of being determined upon the creation of the security interest.
- The collateral itself also needs to be clearly identified in the agreement. Under Spanish law, this cannot comprise all the assets of a company.
- Security interests become in rem rights upon the satisfaction of their perfection requirements. In certain cases (eg, mortgages), this may be achieved through registration, while in others (eg, possessory pledges) the perfection requirements may vary (and even be freely determined by the parties if the collateral is not a physical object).

### Forms of Security

The security interest to be created varies depending on the nature of each asset.

#### *Shares*

Shares in a company may be charged by means of a possessory pledge. The perfection requirements will vary depending on the corporate type of the company (private limited liability companies – *sociedades limitadas* or SLs – have shareholder registries where the pledge must be annotated, while public limited liability companies or public limited companies – *sociedades anónimas* or SAs – may have issued share certificates – whether nominative or bearer shares – both of which are subject to annotation or endorsement, respectively), and specific perfection requirements apply to listed securities. The annotations typically operate as a de facto transfer of possession, whilst the bearer shares require their physical transfer to the secured creditor.

#### *Credit rights*

Credit rights arising under contracts, including account opening agreements, are also charged by means of a pledge, which may be in turn:

- *possessory*, in which case the notice to the credit right's debtor (ie, the bank in the case of bank accounts, or the contract counterparty in the case of contracts) is not required per se but is commonly made in any case to avoid said debtor from being discharged of its obligations in contravention of the agreement between the pledgor and pledgee; or
- *non-possessory*, in which case they must be registered with the Movable Assets Registry. Non-possessory pledges are not customary for charging credit rights arising under bank accounts, but may be particularly suited to contracts that generate stable receivables for the debtor (eg, lease agreements of a shopping centre, season tickets of a sports club, or car/truck leases).

#### *Real estate assets*

Real estate assets are charged by means of a mortgage, which requires registration with the Land Registry with territorial competence over the particular plot(s) of land, and thus must be documented in a Spanish public deed (*escritura pública*), which will in turn trigger stamp duty, as explained above. This makes this type of security expensive, as stamp duty may accrue in following amendments of the mortgage.

#### *Vehicles, aircraft, vessels, machinery and equipment and IP/IT*

Theserequire a chattel mortgage (*hipoteca mobiliaria*), which must be registered with the Movable Assets Registry. With only the exception of mortgages over vessels, these mortgages also trigger stamp duty as a result of having to

be documented in a Spanish public deed (*escritura pública*).

## 5.2 Floating Charges or Other Universal or Similar Security Interests

### Floating Mortgage

As an exceptional deviation from the general rule that a security interest may only secure one underlying obligation, Spanish law allows floating mortgages (*hipotecas de máximo flotantes*) for real-estate assets (although floating pledges are also used in the market for other assets), but only when the secured parties are financial institutions.

Note therefore that the multiplicity only applies to the secured liabilities, not to the encumbered assets. Future assets not identified when the mortgage is created (other than those to which the mortgage extends by operation of law, such as buildings over the relevant land, amendments, etc) will not be covered by this security.

### Mortgage over Business

In addition to the foregoing, a chattel mortgage over the business (*establecimiento mercantil*) may be created as a single asset. In this context, "business" includes the business premises and its facilities, its commercial signs and the lease and transfer rights.

This is not a floating charge in itself, as it only covers the asset being mortgaged (and identified, as well as the relevant mortgage deed). However, it does include by operation of law the right to lease, trade names, commercial signs, distinctive trade marks and any other industrial and intellectual property rights, machinery, movable assets and other equipment linked to the business, provided that they are owned by the mortgagor and their price has been fully paid.

Despite its wide scope, this type of security is seldom used, due to the high cost associated with it (given that it is a mortgage, it triggers stamp duty).

## 5.3 Downstream, Upstream and Cross-Stream Guarantees

Spanish law imposes on directors the obligation to perform their duties loyally and diligently in accordance with applicable law and the company's by-laws, and by giving preference to the interests of the company itself (*interés social*).

While our legal system acknowledges the existence and legality of groups and intra-group transactions, Spanish law prioritises the independent existence and functioning of individual companies and requires their management bodies to pursue the individual company's corporate interests, at the risk of otherwise incurring liability.

This being the general spirit of the law, the group's interests may in some cases justify the provision of downstream, upstream or cross-stream guarantees. However, the directors of the guarantor should analyse the benefit received by the guarantor and, through that analysis, verify that such actions are neither detrimental nor contrary to the interests of the guarantor itself. The conclusion will vary from case to case, and cannot rely on prior or similar transactions.

- For *downstream guarantees*, the existence of a corporate benefit (or at least of compensation for the granting of the guarantee) may be easier to evidence, as the parent company can maintain that providing a guarantee or security in favour of its subsidiary may have a positive impact upon future dividend flows and will allow the subsidiary to continue with

its business, thus preserving or increasing the stake the parent has in that company.
- For *upstream or cross-stream guarantees*, the existence of a corporate benefit may be harder to demonstrate, and will in all cases require effective compensation, which does not necessarily need to have a quantitative nature or to be received at the exact time when the guarantee is granted.

In all cases, having a resolution from the shareholders – in addition to the one from management – helps to evidence that adequate consideration has been given to the company's interests.

### 5.4 Restrictions on Target

Spanish law – which has not been amended to implement the flexibility granted by EC Directive 2006/68 – prohibits Spanish companies from advancing funds, making loans, or providing guarantees, security or any kind of financial assistance to a third party for the acquisition of:

- the company in question's shares;
- shares in its controlling company; and
- only with respect to private limited liability companies (*sociedades limitadas* or SLs), the shares in any other company of its group.

These rules do not establish a time limit on the prohibition nor "whitewashing" mechanisms such as refinancing the acquisition debt.

There are very limited exceptions contemplated by Spanish law, only available to employees of public limited companies (*sociedades anónimas* or SAs) buying shares of their employer, as well as credit institutions.

The consequences of breaching the prohibition of financial assistance are essentially twofold:

- fines may be imposed on the Spanish company's directors up to the nominal value of the shares acquired in breach of the financial-assistance prohibition; and
- most importantly, the financial-assistance transaction (the loan, guarantee, security, etc) will be rendered null and void.

### 5.5 Other Restrictions

In addition to the legal restrictions and limitations described above, there may be other restrictions set out in the constitutional documents of the company or in its contractual commitments, which might prevent the company from granting guarantees or security for its and other borrowers' financing or that might impose additional formalities on the relevant company.

For instance, private limited liability companies (*sociedades limitadas* or SLs) can only grant financing or give guarantees, security or any other type of financial assistance to their shareholders or directors with the prior approval of their general shareholders' meeting, unless the company receiving the financial assistance belongs to the same group. Note that this restriction applies regardless of the purpose of the assistance (and is not related specifically to acquisition transactions).

### 5.6 Release of Typical Forms of Security

Being ancillary to the main obligation, security and guarantees are automatically extinguished upon the satisfaction of the secured obligation. However, certain formalities may be required to remove all existing references to the security. For instance:

- in the case of mortgages (whether over real-estate assets or chattel) and non-possessory pledges, the release should be filed with the competent registry (for which purpose the

parties will need to execute a public document); and
- in the case of possessory pledges, possession of the collateral must be returned to the chargor.

Note in addition that powers of attorney granted in favour of the secured party in the context of the security may also need to be revoked through a public document.

### 5.7 Rules Governing the Priority of Competing Security Interests

Spanish law stipulates a timing preference (*prior in tempore, potior in iure*), based on the date of creation (and with respect to a registrable security, the registration) of the security.

Subordination can be achieved contractually, as is typically the case, thereby binding the parties to that subordination agreement.

Legal preference and/or subordination exist in an insolvency situation (see below).

## 6. Enforcement

### 6.1 Enforcement of Collateral by Secured Lenders

#### General Remarks

Enforcement of security is available to lenders that have accelerated the main obligation. However, and despite Spanish contractual law being based on the *pacta sunt servanda* principle, Spanish courts are reluctant to uphold loan acceleration (and subsequent enforcement of security) if the default is not considered sufficiently material, by reference to the main obligation of the breaching party under the facility agreement.

In addition, appropriation of the collateral is not available to secured parties, who must instead launch a sale of the asset to ensure that fair value is obtained. There are two exceptions to the foregoing.

- Financial collateral – If the financial collateral is composed of securities or another type of financial instrument, the secured party may appropriate the assets in payment of the amounts owed.
- Liquid assets – Liquid assets such as cash can be set off against the amounts owed.

#### Enforcement Methods

Spanish law provides for two different types of proceedings.

- Judicial enforcement – Judicial enforcement may be executive (swifter) or declaratory (longer as the judge is required to opine on the merits of the acceleration itself). Executive proceedings are available if certain requirements are met: (i) an executive title (a Spanish public document with executive effects) with, in the case of real-estate assets, an appraisal value; (ii) a settlement certificate evidencing the amounts owed, according to the calculation methodology agreed in the facility; and (iii) prior notice is given to the debtor.
- Out-of-court enforcement – This enforcement is carried out before a Spanish notary (one with competence in the location of the collateral) and mainly consists of the sale of the collateral through a public auction, with the asset being sold to the highest bidder. The secured party can, at any time and provided that there are no successful bids, acquire the asset as full payment of its credit in the first auction, or at the initial value in subsequent auctions. Spanish law does not stipulate in detail the process for this enforcement so the

parties will need to regulate it in detail in the pledge agreement, ensuring that these rules include: (i) the appointment of representatives of the pledgor (this could be the secured party); and (ii) the rules governing the choice of notary.

### Financial Collateral

Certain requirements must be met in order to benefit from the financial collateral regulations.

- Collateral – The assets that are eligible for the security interest to qualify as financial collateral and thus have access to the special enforcement procedure set out in Royal Decree-Law 5/2005 are:
  (a) cash;
  (b) securities and other negotiable financial instruments; and
  (c) credit rights arising under a contract by virtue of which a credit entity grants financing in the form of a credit or a loan.
- Parties – As stated above, at least one of the parties to the financial collateral must be a public entity, central bank or other monetary authority such as the International Monetary Fund or a credit or financial entity (in this last case, none of the remaining parties may be an individual).
- Underlying obligation – The secured obligation must qualify as a financial obligation (eg, obligations that give rise to a right to request payment in cash or other similar financial instruments).
- Formalities – The relevant agreement must have been formalised in writing (without any further formality being required in this regard) and the collateral asset must be transferred to the secured party as provided by law in light of the nature of the relevant asset.

Financial collateral benefits from an expedited enforcement mechanism (which allows for appropriation, as explained above) and protection in the event of insolvency (ie, the enforcement is not suspended by the insolvency of the chargor), among other advantages.

## 6.2 Foreign Law and Jurisdiction

### Choice of Law

The choice of a foreign law as the governing law of a contract is valid under Spanish law, pursuant to Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I), which applies to contractual obligations in civil and commercial matters irrespective of whether the law in question is that of a member state. Such foreign law must be evidenced to the Spanish courts for them to uphold it in court, and the choice will not restrict the application of the "overriding mandatory provisions" (as defined in Rome I) – both those of Spain and, in certain cases, of the law chosen.

### Choice of Jurisdiction

Similarly, submitting to a foreign jurisdiction is generally valid under Spanish law, but only in so far as the choice has been validly made according to Spanish law. However, the Spanish courts have exclusive jurisdiction over the following:

- the incorporation, validity, nullity and dissolution of companies or legal entities domiciled in Spain, and any decisions and resolutions of their governing bodies;
- the validity or nullity of any recording in a Spanish registry; and
- the recognition and enforcement in Spain of any judgment or arbitral award that has been obtained in a foreign country.

Non-exclusive jurisdiction clauses are seen in the market and should be recognised by courts based on the foregoing. However, there is no case law of note validating clauses where the option is granted to one party only.

**Immunity**

Spanish law does not grant immunity from legal proceedings or the enforcement of judgments to Spanish companies generally. The transfer of certain assets (eg, public concessions) may require a prior administrative authorisation in the context of the enforcement of a security.

### 6.3 A Judgment Given by a Foreign Court

A judgment duly issued by the courts of a foreign State, or an arbitral award, is generally enforceable in Spain, although the legal basis (and the conditions to be complied with) vary.

- Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 20 December 2012 applies in cases where the court issuing the decision is from an EU member state.
- International treaties (eg, the Lugano Treaty) may apply if the court issuing the decision is from a state that is party to that treaty.
- Law 29/2015 of 30 July on international co-operation in civil matters is the fall-back regulation, and provides for recognition through the exequatur procedure when certain conditions are satisfied, including:
  (a) that the judgment is final and not incompatible with another earlier judgment issued in Spain or in another country (provided in this latter case that the earlier judgment fulfils the conditions to be recognised in Spain);
  (b) that there are no prior proceedings on the same matter pending in Spain;
  (c) that the judgment does not infringe public policy or the rules of due process; and
  (d) that the relevant matter does not fall under the exclusive jurisdiction of the Spanish courts.

### 6.4 A Foreign Lender's Ability to Enforce Its Rights

The concept of security agent does not exist under Spanish law. Therefore, if a contract is enforced by a security agent, it must be able to prove that it is duly empowered for such purpose by means of a power of attorney granted to the security agent by each of the applicable creditor(s), duly notarised and, if necessary, bearing the Apostille of The Hague Convention of 5 October 1961.

Any document that is not in Spanish must be accompanied by an official sworn translation into Spanish for it to be admissible by a Spanish court or authority.

In Spanish procedural law, the rules on the burden of proof in judicial proceedings cannot be modified by agreement of the parties.

## 7. Bankruptcy and Insolvency

### 7.1 Company Rescue or Reorganisation Procedures Outside of Insolvency

Debtors may implement restructuring plans (*planes de reestructuración*) that may provide for alternative methods to successfully restructure viable businesses (including haircuts, extensions, debt-for-equity swaps, debt-for-asset deals, sales of assets, third-party releases, effects on reimbursement claims of guarantors, etc), affecting most of a debtor's claims (except for ones concerning employment, tort, family-maintenance, and future claims under existing

contracts), which will be grouped into classes (based on a common interest shared by all the creditors of a given class).

Cram-down is possible within a class, across classes and in respect of the shareholders of the debtor, in each case subject to specific requirements (including the appointment of a restructuring expert to validate cross-class cram-down, as well as the court's approval in certain cases).

## 7.2 Impact of Insolvency Processes

### Reinstatement of Agreements

Financing agreements that have been accelerated due to non-payment in the three months prior to the commencement of the insolvency may be reinstated (*rehabilitados*) by the insolvency administrator (acting either unilaterally or at the request of the debtor), subject to certain requirements.

### Set-Off

Set-off is prohibited after the commencement of the insolvency proceedings, unless the legal conditions to benefit from a set-off right (mutual claims that are specific and quantifiable, and have become due and payable) were complied with before that commencement.

### Enforcement

Enforcement proceedings will be suspended as from the commencement of the insolvency proceedings and, if they affect assets that are necessary for the continuity of the business activity (a case-by-case assessment carried out by the court), until the earlier of:

- approval of a composition agreement; or
- one year since the declaration of insolvency without the liquidation phase having been initiated.

As an exception, the enforcement of financial collateral will not be suspended.

### Lodging of Claims

The insolvency administrator will file a list of creditors identifying all the debtor's claims. If a creditor does not appear in that list, it must lodge its claim in a timely manner to be considered in the proceedings (delay in lodging the claim may transform it into a subordinated claim).

## 7.3 The Order Creditors Are Paid on Insolvency

Creditors of an insolvent debtor are grouped in two categories: insolvency creditors (*acreedores concursales*) and creditors against the insolvency estate (*acreedores de la masa*) – the latter including certain salary claims, fees and expenses of the insolvency proceedings, amounts becoming due under reciprocal agreements surviving the insolvency, claims from reinstated financing agreements or claw-back actions (unless there was bad faith on the part of the creditor) and new money up to certain amounts, among other things. While the creditors against the insolvency estate (*acreedores de la masa*) are paid from the insolvency estate as the claims fall due, the insolvency creditors (*acreedores concursales*) are listed by order of priority pursuant to the law, as follows.

- Specially privileged claims *(créditos con privilegio especial),* benefiting from a security interest over a specific asset, which shall be privileged up to 90% of the "reasonable value" of the collateral and after deducting senior-ranking charges and encumbrances over that same asset. The "reasonable value" will be determined by appraisal reports unless there is a regulated market where the asset is traded (as is the case for listed securities).

- Generally privileged claims *(créditos con privilegio general)*, which are paid before ordinary claims and include certain salary and employment-related payments, certain claims held by tax and social-security authorities, the new money not categorised as a claim against the insolvency estate, and up to 50% of the unsubordinated claims of the creditor that filed the request for insolvency of the debtor.
- Ordinary claims *(créditos ordinarios)*, which are those that are neither privileged nor subordinated, and which rank pari passu and are paid pro rata.
- Subordinated claims *(créditos subordinados)*, which are unsecured, not counted for voting purposes and paid last in the following order:
  (a) claims lodged after the time to do so;
  (b) contractually subordinated claims;
  (c) claims for interest accrued before the commencement of the insolvency proceedings;
  (d) claims for fines and sanctions;
  (e) claims held by persons specially related to the debtor (equitable subordination);
  (f) claims resulting from a claw-back action where the creditor is considered to have acted in bad faith; and
  (g) claims from reciprocal or reinstated agreements where the creditor is considered to have obstructed the normal performance of the obligations.

## 7.4 Concept of Equitable Subordination

Claims of persons considered "specially related" to the debtor will be treated as subordinated claims. The concept of "specially related" is regulated by insolvency law, discriminating based on whether the debtor is an individual or a legal person. With respect to the latter, the following will be considered "specially related":

- shareholders holding, directly or indirectly, a stake of 10% or more of the debtor's share capital (or 5% or more if the debtor's stock is traded) at the time the claim originated (therefore, creditors becoming shareholders after the origination of the claim will not be covered by this, and even in certain cases where new money is subsequently provided by such creditors);
- directors, as well as liquidators and general representatives (*apoderados generales*), holding any such positions at any time during the two years prior to the commencement of the insolvency proceedings, and irrespective of the date on which the claim originated; and
- entities belonging to the same group and common shareholders meeting the thresholds set out in the first bullet point above.

Recent decisions by the Spanish Supreme Court have narrowed down the concept of shadow directors to cases where management tasks reserved by law to directors are consistently (as opposed to occasionally) and independently performed by a person other than a director. The law specifically excludes from this concept lenders monitoring covenants assumed by debtors in restructuring plans, unless special circumstances exist.

## 7.5 Risk Areas for Lenders

In addition to the consequences described above with respect to the potential reinstatement of terminated agreements and the suspension of enforcement proceedings, lenders should be mindful of the following.

### Termination of Agreements

The commencement of insolvency proceedings does not per se give the right to terminate the contracts executed with the debtor. Early termination clauses based on this trigger will be

considered void and unenforceable, unless the law specifically provides otherwise (which is the case for financial collateral). Termination of existing contracts is only available in the event:

- the debtor or the insolvency administrator requests from the court the termination of a bilateral agreement in the interest of the insolvency estate (regardless of there being grounds for termination); or
- the debtor materially breaches a bilateral contract with outstanding obligations following the commencement of the insolvency.

### Pre-insolvency

A debtor may make a pre-insolvency filing with the court to notify it of the commencement of negotiations with its creditors in order to reach an agreement on a restructuring plan, if the debtor is either insolvent or will be in the short term (three months). The latest reform of the Insolvency Law has included a concept of "likelihood of insolvency", which is a forward-looking projection for the following two years. The pre-insolvency filing may be treated as confidential, and will grant a three-month term to the debtor to reach an agreement with its creditors (extendable for an additional three months if backed by certain majorities of creditors), with the following consequences:

- agreements with the debtor cannot be terminated based on this pre-insolvency (see above), unless they qualify as financial collateral;
- enforcement proceedings will be suspended and no new proceedings may be initiated during the three months following the pre-insolvency filing, subject to certain exceptions; and
- the debtor will not be required to file for insolvency or initiate winding-up actions based on equity impairment.

### Claw-Back

The Insolvency Law allows the rescission (claw-back) of any transaction or action carried out, or agreement entered into, by the insolvent debtor in the two years preceding the commencement of the insolvency proceedings, if that transaction, action or agreement is considered "detrimental" to the insolvency estate. Although the law does not define "detrimental", courts have interpreted the concept as meaning an "unjustified sacrifice" to the insolvency estate taken as a whole. While certain actions (eg, transactions for no consideration or prepayment of unsecured claims maturing after the commencement of the insolvency) will be considered detrimental in all cases, others are presumed to be but may be rebutted by the affected creditor (eg, transactions with persons specially related to the debtor, creation of new security interests securing pre-existing debts or prepayment of secured claims maturing after the commencement of the insolvency).

## 8. Project Finance

### 8.1 Introduction to Project Finance

Project finance is a very active market in Spain, notably in the renewables sector. The feed-in tariff enacted in 2007 attracted numerous investors until the remuneration structure was substantially changed in 2014. Since then, the market has boosted with the help of power purchase agreements that provide stability to the cash flow of the projects, an essential element of this type of financing.

In 2021 and in view of the exceptionally high prices in the spot market, the Spanish government enacted a regulation aimed at reducing the proceeds obtained from the sale of electricity and deemed to derive from the surge of gas prices. This regulation (which has been extended until December 2022), does not, however, apply to facilities obtaining regulated remuneration, nor to energy contracted under a power purchase agreement (subject to certain requirements).

### 8.2 Overview of Public-Private Partnership Transactions

Public-private partnerships are not expressly regulated under Spanish law. This notwithstanding, certain regulations may have a significant impact, as follows:

- public contracts, regardless of the level of administration contracting, are subject to Spanish law 9/2017 (*Ley 9/2017, de 8 de noviembre, de Contratos del Sector Público*);
- concessions over public assets may have specific regulations that are applicable in addition to the foregoing (eg, roads, ports or railways), and which may be regulated at national, regional or local level; and
- claims against the public sector are subject to the applicable regulations (*Ley 39/2015, de 1 de octubre, del Procedimiento Administrativo Común de las Administraciones Públicas* and *Ley 40/2015, de 1 de octubre, de Régimen Jurídico del Sector Público*).

### 8.3 Government Approvals, Taxes, Fees or Other Charges

Financing a project in Spain does not generally require a governmental approval, nor trigger a specific tax, fee or charge.

However, the construction, commissioning and operation of energy generation facilities in Spain is subject to obtaining a series of permits, licences and authorisations from the different levels of the Spanish public administration (national, regional or municipal), which may be categorised as follows.

- Sector-specific permits – described below for a sample of sectors.
- Environmental permits – regional authorities are competent to assess the environmental impact of a project (with respect to impact on wildlife and vegetation, waste, polluted soils, water intake and discharge, air emissions, etc) and the compensation measures required to be implemented in order to mitigate such impact.
- Land permits – if the project is located on public domain, it will require authorisation from the competent public administration (ie, the holder of the asset).
- Local permits– municipalities are competent to issue permits for all constructions undertaken within the city limits, and assess the environmental and urban planning suitability of the construction and the activity carried out thereafter.

### 8.4 The Responsible Government Body

#### Oil and Gas

The oil and gas sectors are regulated at a national level under Law 34/1998 (*Ley 34/1998, de 7 de octubre, del sector de hidrocarburos*), which identifies the national authorities (currently, the Ministry of Ecological Transition and Demographic Challenge) as the responsible government body for the vast majority of sector-specific matters. The gas market is also subject to Royal Decree 984/2015 and related regulations affecting its remuneration, as well as other norms (including circulars from the regulator) relating to the transportation, distribution and storage.

### Power

Determining which public administration is competent to issue permits particular to the electricity sector is based on different factors, contained in Law 24/2013 (*Ley 24/2013, de 26 de diciembre, del sector eléctrico*), with the following result:

- regional authorities (varying across the different regions) are competent to issue PLAs in favour of energy generation facilities that either:
  - (a) have a projected installed capacity equivalent to or lower than 50MW; or
  - (b) are located within that region; while
- national authorities (currently, the Ministry of Ecological Transition and Demographic Challenge) will be competent for energy generation facilities that either:
  - (a) have a projected installed capacity higher than 50MW; or
  - (b) are located within two or more regions. Note that the transmission grid is operated by the transmission system operator, which also acts as the manager of the Spanish electrical system. The current operator is Red Eléctrica de España, SAU, a private company where the Spanish state ultimately holds a minority stake.

### Mining

Mining is essentially regulated under Law 22/1973 (*Ley 22/1973, de 21 de julio, de Minas*) and its implementing regulation (*Real Decreto 2857/1978, de 25 de agosto, por el que se aprueba el Reglamento General para el Régimen de la Minería*). The responsible government body is once again the Ministry of Ecological Transition and Demographic Challenge.

## 8.5 The Main Issues When Structuring Deals

Among the many issues that are key to this type of financing, we could highlight the following.

### Cash Flow

Given the non-recourse or limited-recourse structure of the project finance, the source of income and its stability is key to being able to size the debt and produce a base case that ensures long-term survival of the project (which is typically monitored through a debt service coverage ratio). A feed-in tariff or governmental payment will raise certain topics that are not shared by a project obtaining proceeds from the market or relying on a single source of income (eg, the buyer of electricity in a power purchase agreement). In addition, the waterfall of payments must be clearly set out to ensure that the funds available are used to pay operating expenses and essential costs (eg, taxes) and debt service before they are freely distributable to the sponsor (and certain deposits may be required to be made in anticipation of known or likely contingencies in the future).

### Perimeter

It is often seen in the renewables market that the finance benefits a group of projects, which in turn provide the lenders with a diversified risk. Defining the perimeter of the transaction and agreeing on the terms of the cross-collateralisation is fundamental in these cases. A related topic is the potential existence of consolidation groups for Corporate Income Tax and/or VAT purposes, which may comprise entities both within and outside the perimeter of the project finance.

### Intercreditor Arrangements

If multiple layers of debt are injected into the project, one must be especially mindful of the

relationship between the different sets of creditors and the concerns each of them may have.

## 8.6 Typical Financing Sources and Structures for Project Financings

Project finance in Spain almost invariably relies on the existence of a special purpose vehicle (SPV), owned by the sponsor of the project who, together with the creditors, inject the necessary funds to complete the project. The structure is non-recourse or with limited recourse, either by reference to the cost overruns that may arise or as a limited guarantee of the amounts disbursed by creditors.

In the recent years, the European Investment Bank has been particularly active in fostering project finance relating to renewable energy generation facilities, whether acting alone or in conjunction with banking lenders. Similarly, direct lending funds are approaching the market in cases where traditional lenders may not be as competitive, such as mezzanine or equity loans.

Finally, project bonds are used although not as frequently as loans, perhaps due to the flexibility that a limited pool of creditors gives to the sponsor when having to amend or waive a specific term of the financing.

## 8.7 The Acquisition and Export of Natural Resources

Spain produced around 80,000 tons of oil in 2021, a residual amount of the oil that was used in Spain during that year. Similarly, the gas is imported from other countries (mainly Algeria and other African countries). As a consequence, Spain's export of natural resources remains minimal.

## 8.8 Environmental, Health and Safety Laws

Environmental regulations are largely issued by regional authorities (*comunidades autónomas*), and will therefore be case-specific based on the location of the project.

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URÍA MENÉNDEZ

# Trends and Developments

**Contributed by:**
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**Uría Menéndez see p.27**

## Spanish Market Overview

Spain, like many other countries, is being generally affected by upward pressure, both in terms of prices and interest rates.

Even though the consequences of this changing environment have not yet been widely felt, the major lenders, which up to now have mainly been local banks – although some other players, such as funds and other non-banking entities, have been quite active over the past few years – are expecting further interest rate, credit margin and transaction cost increases.

In light of the change in financial circumstances, during the last semesters Spanish banks have been trying to clean up their balance from non-sustainable debt. However, it would appear that in the short term the main challenge lenders are likely to face will be in passing these costs on to the borrower, at the risk of disturbing a financial dynamic that has lately been relatively harmonious.

## Main Sectors

### *M&A*

As background, the M&A sector has been affected not only by the health crisis driven by the COVID-19 pandemic but also by regulatory measures approved to mitigate its impact: a screening mechanism was introduced whereby specific acquisitions by non-EU investors of Spanish companies operating in some sectors – seen as critical – required prior authorisation from the Council of Ministers. This indirectly affected the timing of M&A deals and, consequently, acquisition financing transactions.

Although some sectors (telecom for instance) maintain resilience in the face of the new conditions, large M&A transactions are still on standby mode following the uncertainty during the first half of 2022 – and so, as a result, in acquisition finance. Activity in the M&A mid-market is still quite vibrant, although there has been a hardening in access to finance as a consequence of the new market conditions.

### *Project finance*

By contrast, project finance, where renewable energy remains the trending topic – being perceived by investors as a safe harbour – is still performing well. However, this market is currently facing challenges that may hinder its access to financial sources: the construction costs increase and volatility generally affecting facilities under construction in Spain as a consequence of supply chain disruption is already impairing the base case of such projects and is bringing uncertainty to new transactions.

Similarly, the volatility of energy prices that we experienced during the first half of 2022 and the related regulatory changes may hamper the execution of Power Purchase Agreements (PPAs). Due to the imperative need that the energy sector is facing, some lenders that have not traditionally been responsive to financing pure merchant projects are addressing this risk, albeit in many cases for short or medium-term financings in the form of “bridge to PPA” transactions, envisaged for “ready-to-build” projects which require upcoming funding for a short period of time, with a view to refinancing such construction debt once a PPA is entered into.

*Real estate*

Although, as in many other countries, the real estate sector was deeply affected by the global spread of COVID-19, it saw a gradual recovery during 2021. Nowadays it is seen as a relatively safe investment and the market was quite active during the first half of 2022. In contrast to the 2007 financial crisis, the LTV levels have been restrained since then and, therefore, it is not expected that this sector will experience the decrease in its activity as it did during the 2008–12 period.

During the last few years, investors' interest has evolved from hotels, shopping centres and commercial sectors and offices to less traditional types of assets that have not been, traditionally, strengthened in our country, such as logistics, healthcare, student and nursing homes and, more recently, data centres and optical fibre, which combine features from the real estate and the telecoms sector, setting out as a hybrid of the two. Real estate development in the dwelling sector, which was deeply affected by the 2007 crisis, has steadily gone up in the last few years.

## ESG Finance

We have noticed a progressive increase in ESG finance. Although until now this rise has been driven by lender commitments, these kinds of transactions may garner future interest due to the margin benefits that will be introduced for compliance with specific KPIs. In exchange for these benefits, a higher level of control in determining when a project may qualify as "green" is expected to be introduced, together with penalties in the event of non-compliance with KPIs.

## Restructuring Transactions and New Insolvency Law

*Insolvency moratorium*

Restructuring transactions have been on hold since the health crisis started in 2020, due to the government moratorium that released companies and debtors from the obligation to file for insolvency even when they were, in fact, facing insolvency.

This moratorium was initially envisaged to finish on 31 December 2020, but it was extended three times, up to 30 June 2022. Therefore, despite the health crisis, restructuring transactions have not recently played a key role in the financial landscape.

The end of the moratorium has overlapped with the end of the vesting period of the COVID-19 credit lines – in some cases secured by a guarantee issued by the Spanish government – so it is expected that the default ratio will increase during the months to follow.

*New insolvency law*

On 5 September 2022 the new insolvency law (*Ley 16/2022, de 5 de septiembre, de reforma del texto refundido de la Ley Concursal*), which transposed into Spanish law Directive (EU) 2019/1023 of the European Parliament and of the Council of 20 June 2019 on preventive restructuring frameworks, on discharge of debt and disqualifications, and on measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt, and amending Directive (EU) 2017/1132 was approved, introducing several amendments to the former regimen, with a view to increasing flexibility and providing creditors with useful pre-insolvency tools in order to restructure business that have proved viable instead of applying for

bankruptcy. The new law will enter into force on 26 September 2022.

In this sense, the new concept of "likelihood of insolvency" has been introduced to describe the objective expectation that the debtor will not be able to meet its liabilities in the following two years. This new term has been added to the traditional concepts of "actual insolvency" and "imminent insolvency", which remain. By including this new term the legislator is trying to provide potential solutions to the insolvency at a prior stage, when the economic situation is not as severe as it may be if no restructuring action is put in place.

The three-month pre-insolvency period could be, in accordance with the new regime and subject to court authorisation, extended by up to three additional months at the request of the debtor or creditors representing at least 50% of the debt. Furthermore, the new law allows creditors representing at least 50% of the debt to suspend a voluntary insolvency request filed by the debtor by submitting a draft restructuring plan for approval. The extension of the pre-insolvency period and the suspension of such request are measures to foster out-of-court restructurings.

With the aim of facilitating the implementation of pre-insolvency agreements, once the negotiation of the restructuring plan has commenced, interim financing and new money may be protected against claw-back risk if the restructuring plan is approved by the court (*homologado*). A stay of enforcement action has also been hardened to protect the main business of the debtor and mainly affects assets or rights essential to the company's activity.

In terms of creditors, for the first time they will be grouped into different classes (similar to the scheme of arrangement structures), owing, as a general rule, to their "common interest" and the voting rights will be exercised within each of the classes. The majorities regimen has been adapted to this new class regime.

- Ordinary majority: favourable votes of creditors representing, at least, ⅔ of the total debt of a relevant class.
- Reinforced majority: favourable votes of creditors representing, at least, ¾ of the total debt in case of secured credits.
- There are some special applications of majorities in the context of syndicate cram-down.

As mentioned, the new insolvency law introduces a high degree of flexibility into the agreements to be included in the restructuring plans: haircuts, swaps, extensions, sales both of assets and businesses as a "going concern". Such proposals may be approved by the court, through the judicial approval (*homologación*), allowing applicants to validly cram-down dissenting creditors, cram-up shareholders or terminate agreements in the interest of the debtor.

As quite relevant novelty, the effects and scope of the restructuring plan could cram-up shareholders, even in the event that the plan foresees capital increases with no pre-emptive rights for the shareholders.

The new insolvency law also foresees the cross-border application of specific stays regulated under Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on Insolvency proceedings and of the public restructuring plans.

Finally, the grounds for creditors to challenge judicial approval, which until now were quite limited, have significantly increased, giving the

creditors a toolset to fight against any breach that might take place during the process.

### Non-performing Loan and Real Estate Owned Asset Transactions

The non-performing loans (NPL) ratio for Spanish banks has progressively declined during the last few years as a consequence of the steady default rate decrease, followed by the high number of large transactions of both NPLs and real estate owned assets (REOs) closed during 2017–19.

Even though 2019 was also quite an active year in terms of large transactions, some difficulties were faced in transferring individual secured loans since there were some divergences in establishing whether an early default could be considered as abusive. However, all the concerns were addressed with the publication of Law 5/2019 of 15 March on real estate credit agreements (*Ley 5/2019, de 15 de marzo, reguladora de los contratos de crédito inmobiliario*) which, despite moving the goalposts, set out a plain regulatory framework. The court ruling issued by the Supreme Court on 11 September 2019 complemented the applicable regime to loans entered into before the new law entered into force.

Since the publication of the new law and the mentioned court ruling, the largest transactions involving granular individual secured loans were relaunched to the market and, due to the new early termination provisions, many of them have been structured by the issuance of mortgage bonds (*participaciones hipotecarias*) or mortgage transfer certificates (*certificados de transmisión de hipoteca*), subscribed by Spanish private securitisation funds. This structure implies stamp duty savings and simplifies the procedural succession, but it requires a higher co-ordination between the lender of record and the investor.

We have noticed that, from 2020 onwards, new players – not only new investors but also new advisers focused on specific niches – have joined the market, giving rise to new types of transactions. Since then, reduced portfolios segmented by types have been launched in order to address the needs and expectations of these new players.

During the first half of 2022, due to new economic perspectives and as a consequence of the imminent termination of the insolvency moratorium, Spanish banks made efforts to clean up the NPL balance. In this sense, the firm has been involved in the sale of old large unsecured debt and early default unsecured portfolios. Performing and re-performing loan transactions have also been carried out – through the sale of the economic rights arising from the mortgage loans – with a good response by investors who are looking for moderate risk investments.

Last but not least, REO transactions have evolved during the past few years to more granular transactions, grouping the assets by type and location. The sale processes are now aimed at investors skilled in specific sectors.

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