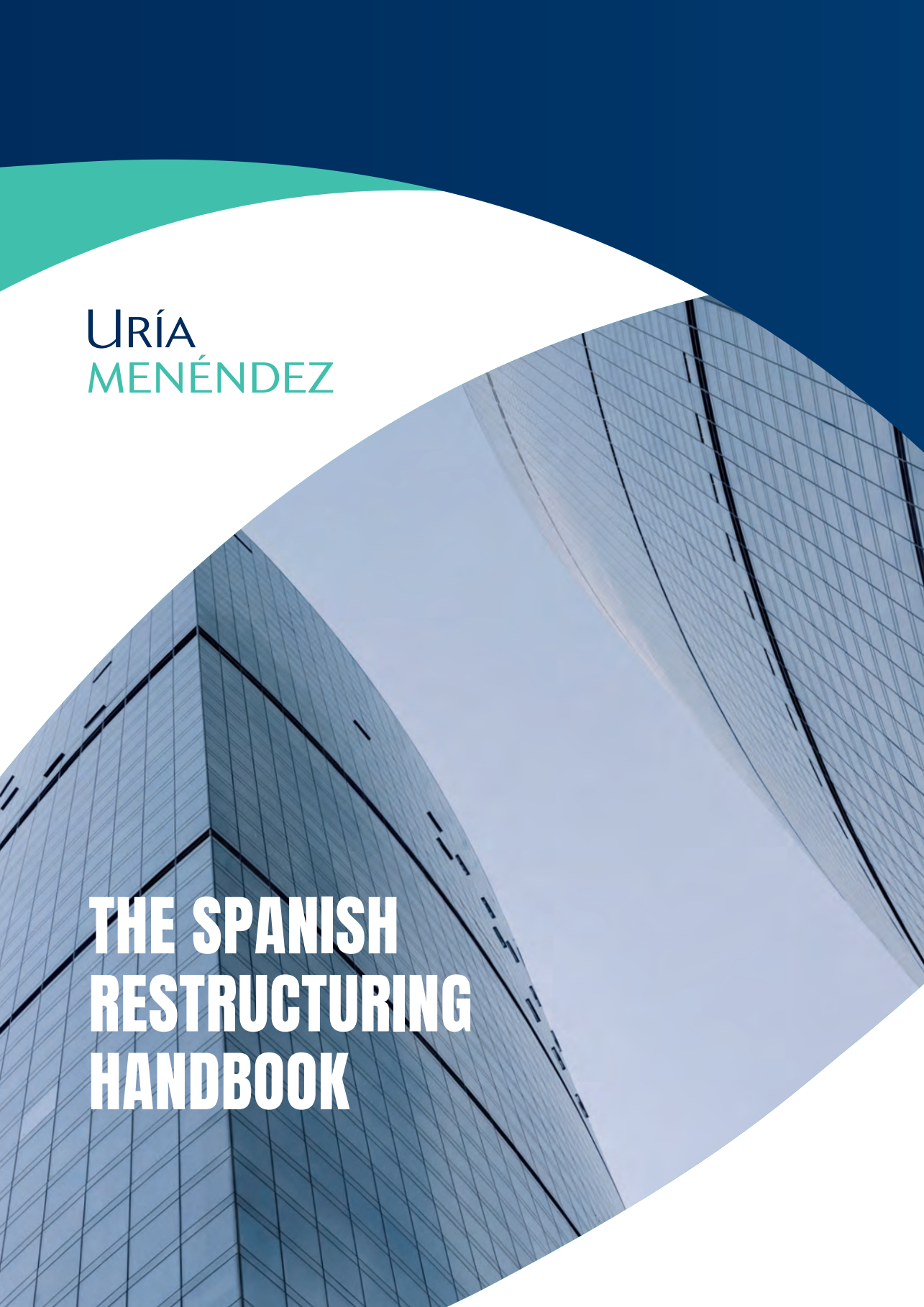




URÍA
MENÉNDEZ

THE SPANISH RESTRUCTURING HANDBOOK

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The Spanish restructuring handbook

Purpose

This Handbook describes the restructuring regime of **Royal Legislative-Decree 1/2020 of 5 May** (the “**Insolvency Law**”) as developed by practice and interpreted by Spanish courts as of June 2026. The Insolvency Law sought to improve the previous insolvency framework and to transpose Directive (EU) 2019/1023 of the European Parliament and of the Council of 20 June 2019 (the “**Restructuring Directive**”). Its main goal was to modernise Spain’s pre-insolvency restructuring and debt discharge procedures. The deep crisis in which Spain was immersed after the Great Recession provided a valuable experience that was not ignored by the law maker. As a result, Spain now has one of the most progressive restructuring frameworks in Europe.

This Handbook focuses on the practical realities of advising a wide variety of clients (e.g. from lenders to borrowers, its shareholders and others stakeholders).



**Seek professional advice before
navigating this minefield.**



Disclaimer

Although we have made every effort to be as accurate as possible, the Handbook is not a substitute for legal advice. Rather, it provides an overview of key aspects of Spain's pre-insolvency system. For case-specific issues or an in-depth analysis, Uría Menéndez will be pleased to provide specific advice upon request.

The information in this Handbook is provided as at June 2026 and is not applicable to natural persons, small enterprises, or entities governed by special insolvency regimes (financial institutions, insurers, investment firms, etc.). Uría Menéndez has no obligation to update the information contained in this Handbook absence of a specific, mutual agreement to do so.

Madrid, June 2026





The Spanish pre-insolvency **landscape**

1

1

The Spanish pre-insolvency **landscape**

Before the new Insolvency Law was enacted, refinancing agreements were Spain's main pre-insolvency tool, although they were generally limited to financial creditors and had limited capacity to avoid subsequent insolvency proceedings. Insolvency proceedings have also historically been seen as a last-resort mechanism because most companies that entered them ultimately ended up in liquidation, regardless of whether a creditors' agreement had been approved.

The more recent introduction of a broader set of pre-insolvency tools – especially fast-track mechanisms such as restructuring plans and pre-pack business sales – offers more flexible and effective alternatives for preserving business value. Success in such restructuring processes depends not only on this new legal framework but also on the ability to reconcile the diverging interests of debtors, shareholders, creditors and directors.

1.1 Stakeholder dynamics in the vicinity of insolvency

1.1.1 Debtors and shareholders: delays and dilemmas

Debtors and shareholders often delay engaging in restructuring or insolvency discussions either because they are in a state of denial or do not want to open “Pandora's box”. They will argue that their problems are of a transitory nature, expecting that lenders will continue to extend credit and will not be willing to enforce. These delays often cause the debtor's business to deteriorate, sometimes irreversibly.

The Spanish restructuring regime does **not** always require shareholders' consent.

Directors, in turn, face growing legal pressure to act before the company becomes technically insolvent as their personal liability is at stake.

Customers, suppliers, credit insurers and banks will often withdraw support as soon as they are aware that the debtor faces financial difficulties.

Restructuring processes are rarely quick because they involve multiple steps (forming creditor committees, engaging advisors, preparing independent business reviews, drafting complex documentation, etc.), all of which create friction and time pressure.

Once key stakeholders have acknowledged the company's financial distress, a key challenge will arise: determining the enterprise value of the debtor and how the post-restructuring value should be distributed among such stakeholders. Shareholders might argue they remain partially “in the money”, and creditors may agree to leave some value on the table to secure their cooperation, but this is not always possible and plans sometimes need to be unilaterally imposed to the debtor.

In any event, even when they retain an equity stake, shareholders' control is typically diminished as creditors impose extensive constraints. A chief restructuring officer (or CRO) is sometimes appointed to oversee the implementation process.

1.1.2 Creditors: diverging interests

Restructuring efforts tend to fail when creditors with widely varying interests are treated as a monolithic group. In fact, creditors with a sufficient commonality of interest should be grouped in classes according to the Insolvency Law.

The following is a practical breakdown of creditor types and factors influencing their role in restructurings:

Trade creditors		Unsecured but sometimes critical to the business. Can be crammed down under restructuring plans.
Secured creditors		Their collateral must be appraised to distinguish the secured and unsecured portions of their claims. They typically control the process but in some cases they can be crammed-up and may even opt-out of the restructuring.
Bilateral - facility lenders		Typically unsecured. Coordination among unrelated lenders adds a layer of complexity.
CDS-protected lenders		May have incentives to trigger default; this may conflict with unhedged lenders seeking to preserve value.
Junior creditors		Can be crammed down, even if not contractually subordinated.
Special - situations funds		Increasingly active, with "loan-to-own" strategies or interim and new-money contributions.
Cross-border creditors		Coordination of different legal frameworks is key.
Interim financiers		Often essential to the success of the process. Determining who provides this financing and on what terms is also key. Prior approval of senior creditors is likely to be necessary.

1.1.3 Directors: duties and liability

Under Spanish law, directors play a critical role because while they are required to act diligently and in the best interest of the company, at the same time, they must avoid taking actions detrimental to the interest of creditors, especially in the vicinity of insolvency. According to the Restructuring Directive,

directors must have “due regard” for all stakeholders, especially creditors who are likely to recover value, taking steps to avoid insolvency and avoiding deliberate or grossly negligent conduct that threatens the viability of the business. Prudent directors should, among other things (Recital 70 of the Restructuring Directive):



Seek legal and financial advice from insolvency and restructuring specialists.



Protect the company's assets to maximise value and avoid loss of key assets.



Continue to trade where it is appropriate to maximise going-concern value.



Avoid transactions that may be vulnerable to claw-back actions unless there is an appropriate business justification.



Prepare credible and feasible restructuring plans.



Negotiate with the company's creditors.



Explore and prepare fallback solutions such as pre-pack sales or early court-led compositions.



Reduce expenditure.



Design a backup plan should negotiations fail.

While this set of obligations has not been specifically included in any Spanish law, it is somehow implicit in Spanish corporate law. In any event, it provides a useful framework of what should be expected from directors of

a company facing financial difficulties and how they can seek to discharge their duties and avoid personal liability. Directors may also be legally required to file for insolvency as we discuss in **section 2.1** below.



Late insolvency filing can result in **negligent insolvency** and in the directors' personal liability.





Types of **distress**

2

2 | Types of **distress**

2.1 Insolvency – cash-flow test

A debtor will be deemed to be facing **actual insolvency** if it is unable to pay its debts as they fall due (**cash-flow test**). In such cases, directors must request a court declaration of insolvency within two months of becoming aware (or from the moment they should have been aware) of this situation. This duty meets the minimum harmonization requirements of Directive (EU) 2026/799 of the European Parliament and of the Council, of 30 March 2026, harmonizing certain aspects of insolvency law (the “**Insolvency Directive II**”). As two months is usually insufficient time to solve financial distress, the Insolvency Law allows debtors to make a pre-insolvency filing when restructuring negotiations with creditors have either begun or the debtor has the intention to engage in them. Among other effects, a pre-insolvency filing will extend the two-month timeframe that directors have to file for insolvency.

Creditors can file for insolvency when the debtor is in a state of actual insolvency.

If the debtor is in a state of actual insolvency while actively negotiating with its main creditors, it must file for insolvency unless such creditors agree to extend the maturity of their claims, sign a standstill or the debtor files a pre-insolvency communication with the competent court.

A debtor is deemed to be facing **imminent insolvency** when it foresees that it will not be able to regularly pay its debts as they fall due in the following three months. In this scenario, the debtor may – but is not required to – file for insolvency if it expects to become insolvent imminently. Creditors cannot file for the debtor’s insolvency when the debtor is in a state of imminent insolvency.

Finally, to encourage directors to take preventive action, the Insolvency Law introduced the concept of “**likelihood of insolvency**”. A debtor is in this state when it is objectively foreseeable that, in the absence of a plan with its creditors, it will be unable to regularly fulfil obligations that fall due in the next two years.

If directors fail to file for insolvency within two months of the debtor being in “**actual insolvency**” and the debtor finally ends up in insolvency, the insolvency will be deemed to be “negligent” unless proved otherwise, and, if the company is subsequently liquidated and the creditors cannot collect their claims in full, the court may hold the directors personally liable for any shortfall between the value allocated to the assets of the insolvency estate in the inventory prepared by the insolvency trustees and the amount of unpaid claims.

- Liability applies to directors (including shadow or *de facto* directors), general managers, and others involved in management in the two years preceding insolvency.
- Directors may prove that they acted diligently and that the debtor's financial situation was not generated by their delay in filing for insolvency or did not worsen during such delay (e.g., arguing that they were involved in active and substantive negotiations with its main creditors).



Directors' dilemma

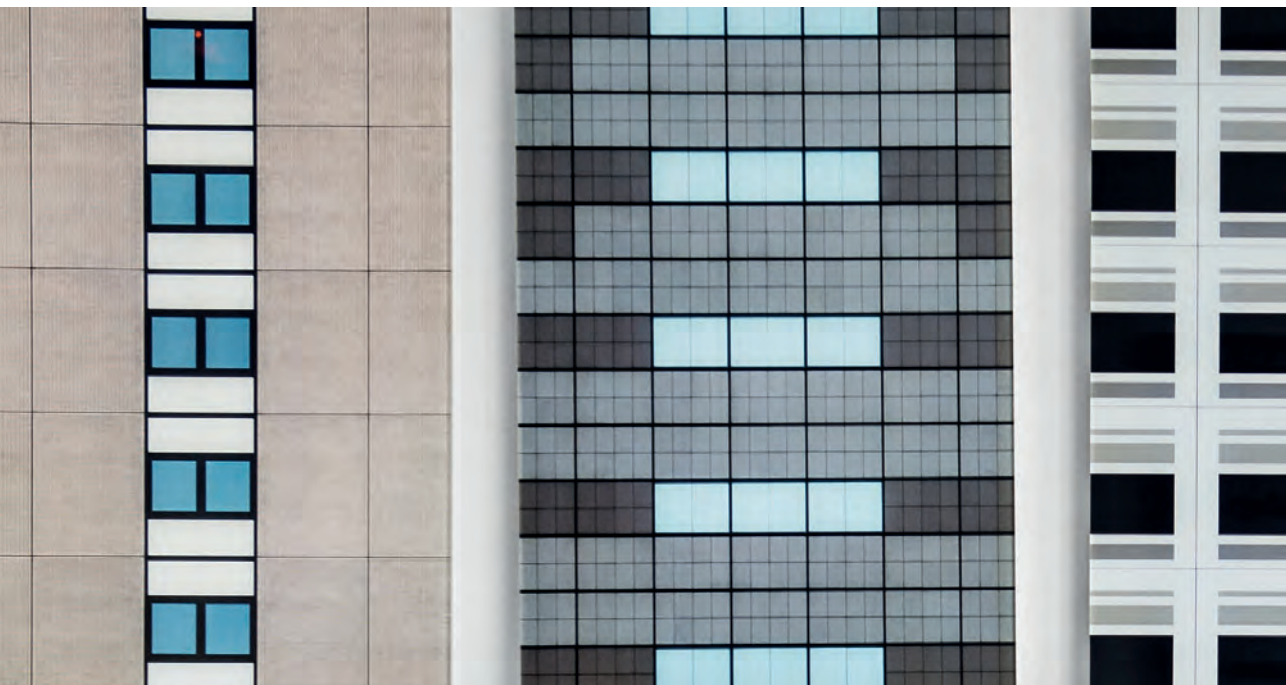
- Late insolvency filing may trigger personal liability.
- Early filing may disrupt ongoing business and negotiations with creditors.



According with the Spanish Supreme Court, *de facto* directors are those who, without formally holding the appointment of director, exercise that function as if they were duly authorised, disregarding such formalities.

The notion of *de facto* director presupposes: (a) the absence of a formal appointment as director, regardless of whether the person previously held, or subsequently came to hold, such appointment, and (b) that the *de facto* director carries out management activities in respect of matters inherent to the role of a director, in a systematic and continuous manner, and independently, that is with autonomous decision-making authority, with the backing of the company.

Sole shareholders, the parent company of a group, or even creditors in very extreme cases, can be targeted as *de facto* directors if they do not operate with caution.



2.2 Capital impairment – balance-sheet test

“A company is deemed to be facing capital impairment if its net equity falls below 50% of its share capital due to accumulated losses. The company must then either implement corrective measures (e.g., increase its capital, reduce its capital to off-set losses, receive a participative loan (“*préstamo participativo*”)) or be dissolved. Unlike insolvency, capital impairment is determined by making a **balance sheet test**.”

Directors of a company in a capital impairment situation have the following obligations:

- Call a shareholders’ meeting within two months of becoming aware of

the impairment situation to address it unless, within such timeframe, they either file for insolvency or make a pre-insolvency communication, as described in **section 3** below.

- If unresolved, file for judicial dissolution within two months of the meeting.

Failure to comply with these obligations results in personal liability for debts incurred after the directors became aware of the capital impairment situation; a legal presumption applies that this liability covers all existing debts, unless proven otherwise.



Where both insolvency and capital impairment arise, the duty to file for insolvency prevails. Liability claims related to capital impairment are suspended during both the pre-insolvency period and the insolvency proceedings.



The pre-insolvency **communication**

3

3

The pre-insolvency **communication**

3.1 The pre-insolvency period. Extension

As discussed above, the debtor's duty to file for insolvency within two months of being in a state of actual insolvency will be suspended during the so-called pre-insolvency period, which has an initial duration of three-months but can be further extended under certain circumstances. To benefit from this extension, the debtor must file with the competent court, within the above mentioned such two-month period, a communication informing that it has begun, or has the intention to begin, negotiations with its creditors with a view to enter into a restructuring plan. Therefore, the main features of this pre-insolvency period are the following:

- A debtor facing likely, imminent or actual insolvency (in the latter case only if the court has not yet approved a creditor's insolvency request) may notify the competent court that it has begun, or has the intention to begin, negotiations with its creditors to enter into a restructuring plan.
- The communication will afford the debtor an additional three-month period during which the goal should be to enter into a restructuring plan.
- The three-month pre-insolvency period may be extended for an additional three-month period (that is, up to a

total of six months), if the debtor or creditors representing over 50% of potentially affected claims request the extension. If the court grants the extension, it will be published in the Public Insolvency Registry (even if the initial pre-insolvency communication was filed as confidential). The extension must be supported by a favourable report issued by the restructuring expert (if it has been appointed). The extension may be lifted before it elapses at the request of the debtor, the restructuring expert, or creditors representing over 40% of the affected claims if they no longer support the negotiations.



Keynote: Case law on the duration of the pre-insolvency extension

Although the Insolvency Law provides for the possibility of a single three-month extension, some courts are applying this rule flexibly in complex restructurings, accepting consecutive extensions on the basis of a purposive reading of the Insolvency Law alongside the Restructuring Directive. The main judicial positions are the following:

- **A second extension is permissible since** is not expressly forbidden by the Insolvency Law and the Restructuring Directive contemplates a maximum overall period of up to twelve months for complex restructurings.
- **Consecutive extensions are exceptional and subject to rigorous judicial scrutiny.** Courts condition further extensions on the debtor demonstrating extraordinary and unforeseen circumstances, genuine negotiation progress, and adequate procedural transparency.
- **Extensions will be refused where genuine negotiations are not under way or the required creditor support is absent.**

Practical note: Debtors and their advisers should not rely on this case law as a planning assumption. Courts accepting a second, third or even fourth extension have done so on an exceptional basis and with express warnings against any automatic further extensions.

- If no plan has been agreed at the end of the pre-insolvency period, the debtor must file for insolvency within one month of the end of the grace period, unless it is no longer insolvent.



In summary, a debtor may delay filing for insolvency for a total of up to 9 months after being in a state of actual insolvency: 2 months from being in a state of actual insolvency to file for pre-insolvency + 3 months of initial pre-insolvency period + 3 additional months if an extension is granted + 1 additional month after the end of the extension to effectively file for insolvency.

- The obligation to call a shareholders' meeting to approve the debtor's dissolution due to capital impairment is suspended during the pre-insolvency period.
- Once the pre-insolvency communication has been filed, no further petition may be submitted by the same debtor within one year of the date of the first submission, regardless of when it took effect or when its effects ceased.



3.2 The pre-insolvency communication and process

1.

Debtor notifies the court that it is involved in, or will be undergoing, pre-insolvency negotiations providing information on:

- Insolvency status.
- Creditors involved and their claims.
- Business information: activity, net worth, etc.
- Key assets, material contracts and enforcement claims.
- Whether the appointment of a restructuring expert is requested.
- Evidence of public claims, if affected.

2.

Court acknowledges and publishes the notice (unless confidential):

- Creditors can appeal the court's jurisdiction or the pre-filing decision, but challenges are limited.

3. A

Debtor undergoes the restructuring process as negotiated with creditors

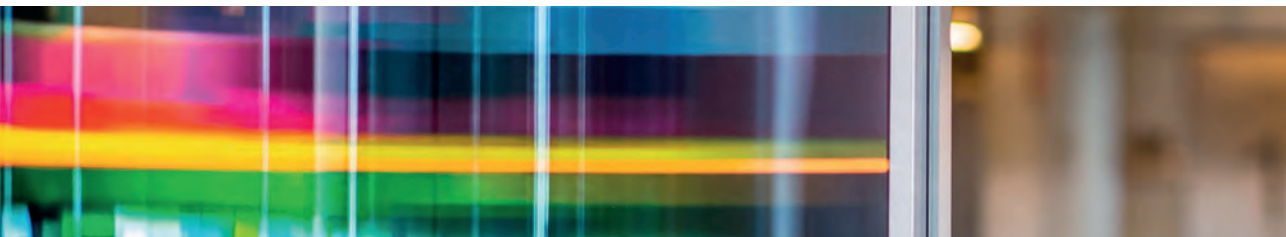
or

3. B

Debtor files for insolvency within one month of the end of the pre-insolvency period (unless it is no longer insolvent).

Keynote: Debtor's notification may affect jurisdiction and future insolvency filings. Therefore, careful assessment is essential before making that notification, to avoid jeopardising subsequent restructuring strategies.

In addition, the debtor may request the confidential status of the pre-insolvency communication.



3.3 Effects of the pre-insolvency filing

3.3.1 Debtor-in-possession

A pre-insolvency filing will have no effects on the debtors right to manage its business. The debtor will remain “in possession”.

3.3.2 Effects on insolvency filings

- As discussed above, the pre-insolvency filing temporarily suspends the duty to file for insolvency.
- Courts may also suspend the debtor’s voluntary insolvency filing for one month if a restructuring expert or creditors holding over 50% of the affected claims support a plan, preventing premature insolvency filings by the debtor with the intention of pressuring creditors.
- Creditors’ insolvency filings made during the pre-insolvency period (but not yet admitted by the court) will not be processed; after the pre-insolvency period has expired, creditors’ insolvency filings will only be processed if the debtor fails to voluntarily file for insolvency within one month.
- Creditors’ insolvency filings admitted by the court before the pre-insolvency filing cannot be suspended.
- After the pre-insolvency period ends, the debtor must file for insolvency unless it has successfully restructured its debts or is no longer insolvent. The end of the pre-insolvency period does not trigger automatic insolvency proceedings.

3.3.3 Stay on enforcement

- Enforcement proceedings initiated before the pre-insolvency period are stayed.
- Other enforcement actions against “necessary assets” cannot be initiated during the pre-insolvency period.
- Enforcement of security in rem over “necessary assets” may be initiated, but it will be automatically stayed.
- Courts may extend stays to other assets (i.e. assets that are not deemed to be “necessary”) if beneficial to the restructuring, subject to the restructuring expert’s consent.
- Enforcement of public claims is generally not stayed, except during a three-month period if they affect necessary assets.
- Stays do not apply to creditors that cannot be legally affected by the plan (e.g. mainly workers and tort creditors).



Courts assess whether an asset is necessary on a case-by-case basis. Assets such as cash and receivables are considered necessary.

Exception

This suspension should not affect either financial collateral governed by RDL 5/2005 or security interests located in another Member State (other than Denmark).

3.3.4 *No acceleration of claims*

Pre-insolvency filing will not trigger the acceleration of claims and any contractual provisions contemplating the amendment of a claim or its acceleration for this or analogous or related reasons (like the stay in enforcement or the initiation of expedited enforcement proceedings) will be null and void.

3.3.5 *Guarantees*

Creditors can demand payment from third-party guarantors. However, enforcement of guarantees issued by group companies may be suspended if requested and justified, where enforcement would force both the guarantor and the debtor itself into insolvency.

3.3.6 *Contract continuation*

- Pre-insolvency filing does not per se terminate or suspend bilateral contracts with pending mutual obligations. Clauses that intend to trigger the suspension, amendment, termination or acceleration of any such contracts as a result of a pre-insolvency filing or analogous or related reasons (like the stay in enforcement or the initiation of expedited enforcement proceedings) will be null and void.
- Contracts necessary for business continuity cannot be suspended, amended, terminated or accelerated, due to breaches occurring prior the pre-insolvency filing and during the pre-insolvency period. The debtor's counterpart can request that the court determine whether a contract is necessary.
- Hedging, energy, services, or goods contracts traded in organised markets

can be terminated or accelerated despite the pre-insolvency filing.

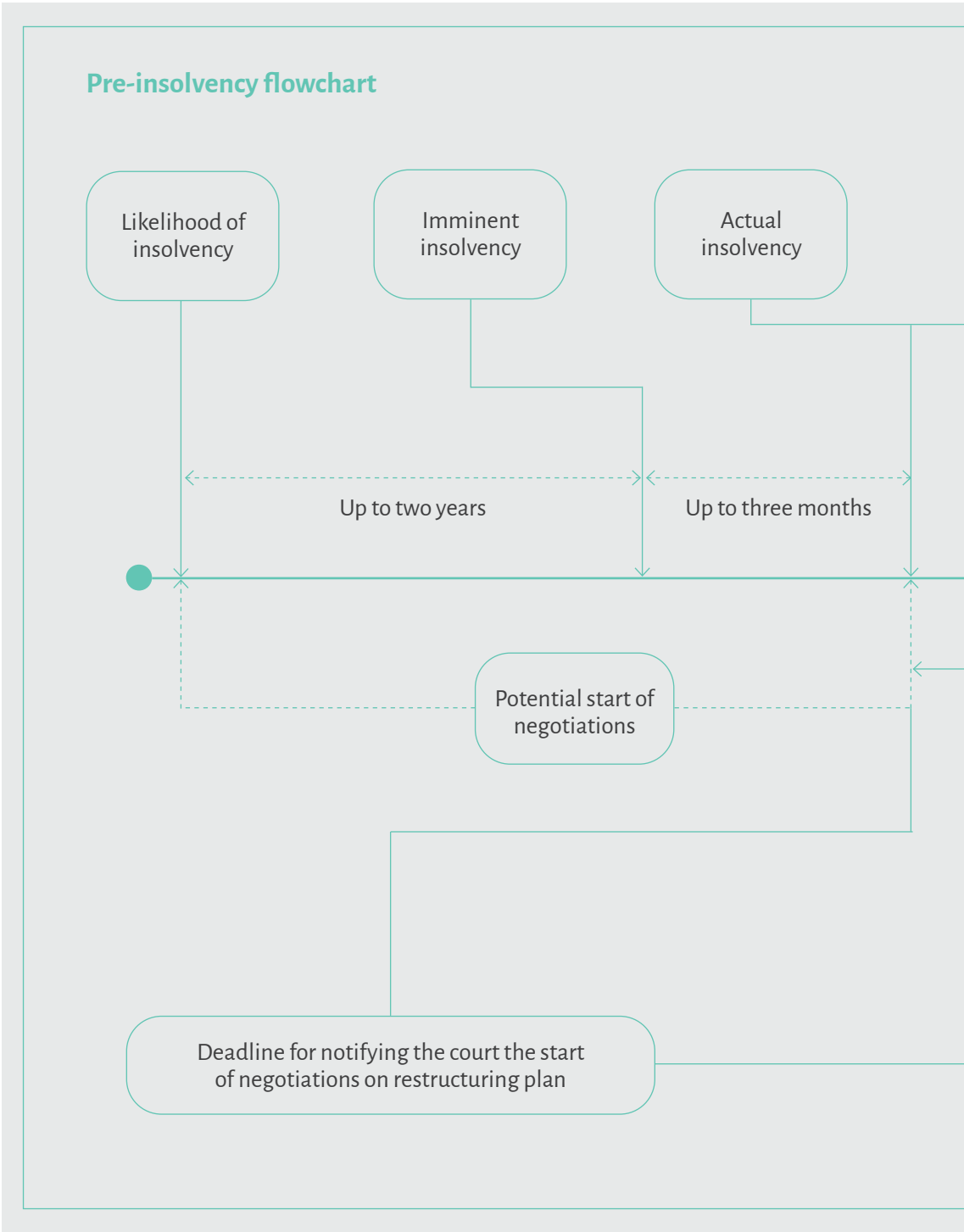
- In practical terms, most debtors will make a pre-insolvency filing either because:
 - they are already in actual insolvency and want to protect their directors from the liability that would arise from a late insolvency filing, or
 - because creditors have started, or threatened to start, enforcement proceedings against the company's assets.

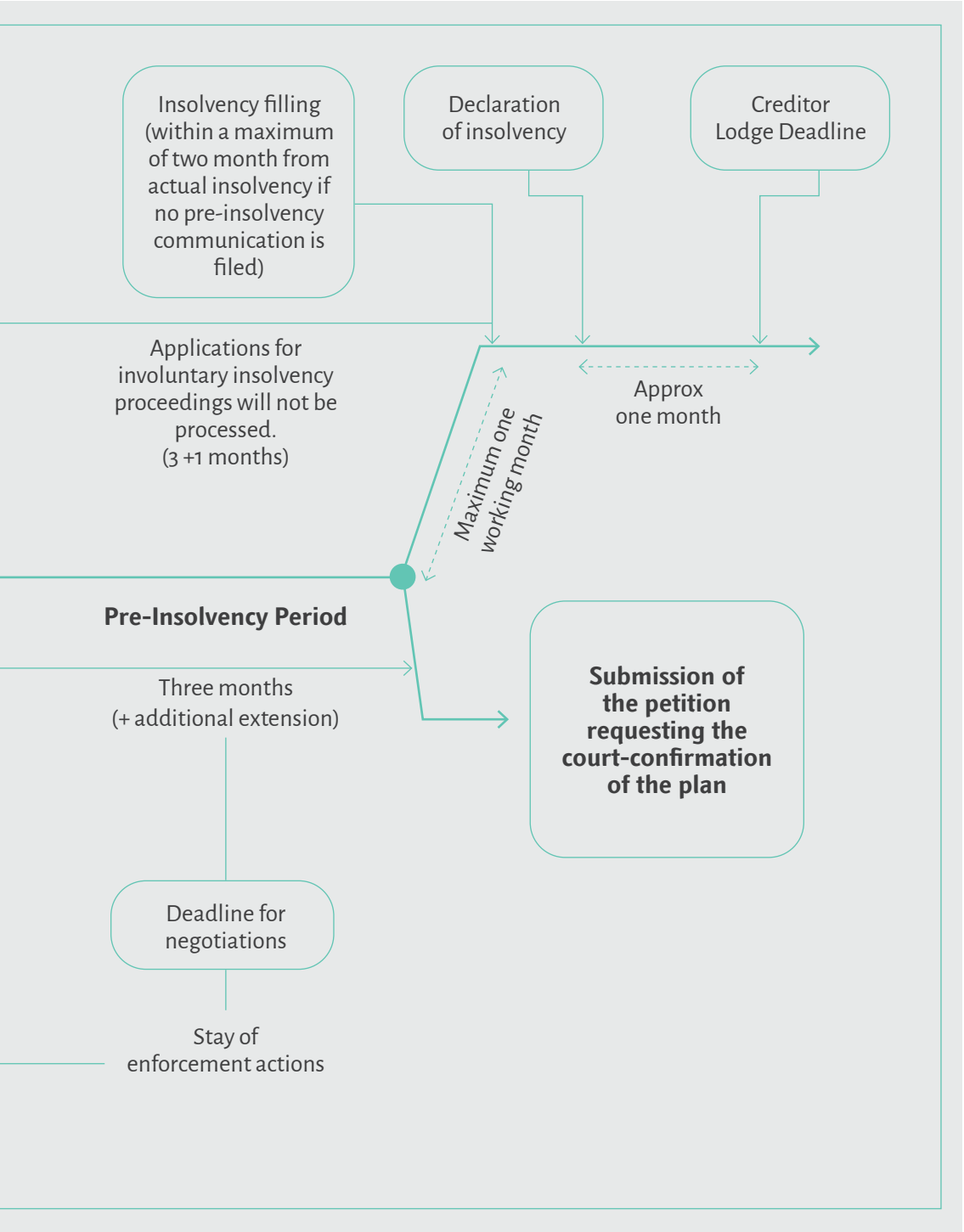




Even if a pre-insolvency filing has been made, when the debtor has incurred in other breaches, a contract may be suspended, amended, terminated or accelerated.









Restructuring **plans**

4

4

Restructuring plans

4.1 Underlying principles

The transposition of the Restructuring Directive into Spanish law led to a major reform of the Spanish pre-insolvency institutions, the core principle being that debtors should be able to address their financial difficulties at an early stage, when it appears likely that insolvency can be avoided, and the business' viability ensured.

After the reform of the Insolvency Law, debtors facing actual or imminent insolvency, or even "likelihood of insolvency", can enter into a restructuring plan. Therefore, not only does this framework apply to situations in which the debtor is already facing financial distress, but it also allows for early intervention to prevent the debtor from falling into insolvency. In practice, most debtors filing for pre-insolvency or negotiating a restructuring plan are either in actual or imminent insolvency.

The Spanish pre-insolvency framework is underpinned by guiding principles that permeate the entire system and constitute a limit that courts are gradually defining. Breaching these principles will justify challenging a restructuring plan as discussed in detail in section 4.10 below.

The following three rules encompass the principles underpinning the entire Spanish pre-insolvency system.

(A) First rule: horizontal treatment

This rule applies to creditors within the same class (intra-class equity) and to creditors of different classes but of the same rank (inter-class equity). The rule is therefore broken down in two principles:

1) Principle of equal treatment

Claims included in the same class (which assumes there is sufficient commonality of interests among them and, therefore, that the class is correctly formed) must receive equal treatment under a plan (post-restructuring treatment). It is deemed that creditors of the same ranking in order of payment in insolvency have a common interest.

2) Non-discrimination rule

Pursuant to the non-discrimination rule, no class may receive a less favourable treatment than any other class of the same rank. For instance, this will typically apply to claims of unsecured lenders and commercial creditors, both being ordinary creditors but often grouped in different classes.

1) Principle of equal treatment

For treatment to be equal under a plan, claims belonging to the same class must: **(i)** have the same recovery rate; **(ii)** be satisfied in the same manner; and **(iii)** be satisfied within the same timeframe.

Equal treatment of claims within the same class is a requirement for a plan's approval, whether or not consensual. Therefore, courts may review *ex officio* if the principle of equal treatment is satisfied.

In addition, if claims have not been treated equally any dissenting creditor may challenge the plan, whether consensual or non-consensual.

The courts have ruled that the principle of equal treatment is not compromised when a plan offers creditors of the same class alternative consideration in payment of their claims (e.g., when they can freely choose between two or more methods of payment of equivalent value) (Iberian Resources, Telepizza and Rator cases) or when the different nature or characteristics of the claims justify a different treatment while not requiring the formation of different classes (e.g., the same class may include long-term lenders and issuers of letters of credit if there is a commonality of interests but the different nature of their claims will entail different post-restructuring treatment) (Lavandería Industrial Cano Servicios Textiles, Novoline Majadahonda Inmuebles, among other cases).

2) Non-discrimination rule

In **consensual plans**, inter-class equity is presumed from the moment that the classes are correctly formed and all the classes approve the plan by the required majorities. Therefore, the non-discrimination rule only applies in the context of **non-consensual plans** and constitutes a ground to challenge the plan.

The challenge may be exercised by any dissenting creditor belonging to a dissenting class. The non-discrimination rule is therefore configured as a class – and not an individual – right and it is not subject to review by the court *ex officio*.

The non-discrimination rule does not require equal treatment of claims of the same rank that are grouped in different classes; rather it only requires avoiding discrimination. This means that claims of the same rank but belonging to different classes may lawfully receive different instruments under the plan and be paid in different timeframes (as required to ensure the viability of the debtor). However, the recovery rate of all of them should be the same. This will require a valuation of the different instruments.



(B) Second rule: vertical treatment

Vertical equity requires comparing the treatment received by creditors of different ranks. The rule can also be broken down in two rules:

1) Absolute-priority rule

This first rule states that a class of creditors cannot maintain or receive under a plan, rights with a value lower than the amount of its claims if a lower-ranking class -or the shareholders- receive any payment or retain any right under such plan.

The absolute-priority rule aims to replicate the value distribution that would apply in an insolvency proceeding with subsequent liquidation.

A dissenting creditor of a dissenting class bears the burden of challenging a plan based on the breach of the absolute-priority rule (it is a class – and not an individual – right).

The absolute-priority rule applies by default in the absence of a consensual plan; it does not apply to consensual plans which are presumed to be fair as they are approved by all classes of creditors.

2) Prohibition of expropriatory conducts

The second rule prohibits expropriatory conducts and is essentially a corollary to the absolute-priority rule, the other side of the same coin. The rationale behind this is to ensure that no class maintains or receives rights with a value exceeding the amount of its claims.

Obviously, the company's valuation will be key to determining whether a class of creditors is being expropriated: they may be if they are "in the money"; they will not if they are "out of the money". This is almost entirely a valuation issue.

The rule prohibiting expropriation also applies by default in the absence of a consensual plan; it does not apply to consensual plans which are presumed to be fair as they are approved by all classes of creditors.



It is important to note that such value distribution does not apply to creditors that are not affected (are excluded) from the plan. Non-affected creditors should continue to collect pursuant to their respective contracts (e.g. no haircuts or payment extensions would apply to them).



Practical note:

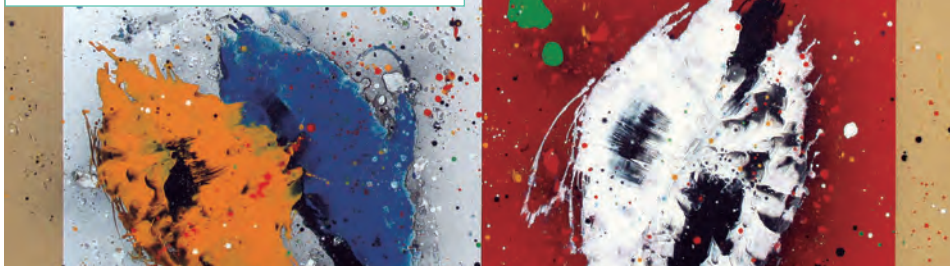
The Insolvency Law has opted for the absolute-priority rule, with some exceptions. In line with the Restructuring Directive, the Insolvency Law allows confirmation of the plan even if the absolute-priority rule is not met, provided that doing so is (a) necessary to achieve viability and (b) the plan does not unfairly prejudice the rights or interests of any affected creditors.

The interpretation of this rule by Spanish courts varies. Some courts tend towards a permissive approach (e.g. *Transbiaga I*, *Group SEHRS*, *Julián Martín* and *Vilaseca*, among other cases), allowing shareholders to retain substantial value without strict justification, effectively transferring value away from creditors in favour of equity holders who were, in many cases, already “out of the money.” Other courts have adopted a stricter interpretation in line with the spirit of the Insolvency Law (*Avanza Food*, *iCube*, *Real Murcia CF*, among other cases).



Keynote

The absolute-priority rule and the expropriation prohibition are two manifestations of the vertical dimension of the same principle. While under the absolute priority rule, senior creditors look “downwards” to ensure that lower ranking classes do not maintain or receive any rights under the plan if the former are not fully paid, under the expropriation prohibition rule it will typically be shareholders and junior ranking creditors looking “upwards” to ensure that senior creditors are not receiving more than they are owed.



4.2 Defining a restructuring plan. Content

Restructuring plans are the cornerstone of the Spanish preventive restructuring framework. Unlike the previous legal framework, a restructuring plan may contain almost any restructuring measure (financial or operational) that is deemed necessary to effectively restructure a debtor's business.

A plan may involve changes in the composition, conditions or structure of the debtor's assets, liabilities or any part of its capital structure, including the transfer of assets, business units or even the entire business as a going concern.

The plan must include the following information:



A plan must explain why it has a reasonable prospect of avoiding the insolvency of the debtor and ensuring the viability of its business in the short and medium term. This is an essential aspect that the court will review when receiving a plan for confirmation (*homologación judicial*).



Identification of:

- the debtor;
- the restructuring expert, if appointed.



Business, economic and financial figures:

- summary of the debtor's financial and employment situation and a description of the causes for financial distress;
- total assets and liability figures.



Scope of the plan:

- list of affected creditors;
- if shareholders are affected, the face value of their shares;
- list of creditors or shareholders excluded from the plan's measures and the reasons for their exclusion;
- list of contracts to be terminated.



Restructuring measures approved by the plan:

- detailed description of all operational, financial and corporate measures to be approved under the plan;
- description of the reasons why the plan's measures ensure viability in the short- and medium-term.



Employees situation:

- information and consultations with workers.

Public creditors:

- if public creditors are affected, proof that the debtor has complied with tax and social-security obligations.

The Insolvency Law requires that the plan and all documents attached to it be executed as a public deed before a public notary. The plan must be supported by a certificate issued by either the restructuring expert (if appointed), or by the debtor's auditor, who will provide evidence that the required majorities for the plan's approval have been achieved.

4.3 Affected and excluded claims

Under the previous legal framework, pre-insolvency tools could only affect financial claims. One of the most significant changes introduced by the current regime is that restructuring plans can now affect almost all types of creditors (and shareholders), subject to specific exceptions.

It will be deemed that a claim is "affected" by a plan when:

- its terms and conditions are changed by it, including its maturity, its principal or interest;
- it is converted into a subordinated or participative loan, into shares or any other instrument the terms and conditions of which differ from those of the original claim;
- its guarantees or security are released or changed;
- there is a change in the debtor; or
- there is a change in the law applicable to the claim.

The plan can also affect contingent or conditional claims. Recovery or subrogation claims (i.e. those held by to the guarantor or the provider of collateral following enforcement of the guarantee or security interest) will be affected in the same way as the guaranteed or secured claims, if the plan so provides.

Affected claims are entitled to vote the plan. Excluded claims are not.





The discussion on the perimeter

The party proposing the plan (i.e. the debtor or its creditors) has discretion to determine the perimeter of the plan provided that the reasons for excluding specific creditors are not arbitrary and are properly justified in the plan.

This stance has been backed by most Spanish courts (Xeldist, Das Photonics, Torrejón Salud, Vilaseca, Iberian Resources, Asistencias Carter, Avanza Food and Pharmex, among many other cases) following a judicial discussion regarding the extent of judicial control over the perimeter of affected claims provided by the party proposing the plan.

The prevailing position is that judicial control of the perimeter of affected claims set out in the plan (and therefore, the possibility for dissenting creditors to challenge this perimeter) must be limited to the court's supervision over the correct formation of creditor classes and the necessary majorities to obtain court confirmation of the plan. Therefore, the party proposing the plan has discretion to determine the scope of affected claims and to group them into classes, provided that classes are not artificially formed to achieve the class majorities that are necessary to approve the plan.

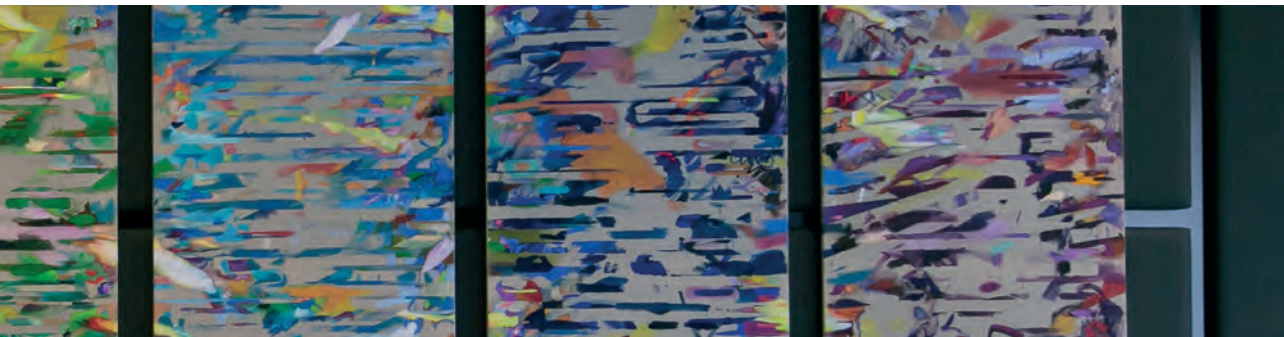
Exclusions must be clearly justified to reduce the risk of the plan being challenged.

The Insolvency Law provides that some specific claims **cannot be affected by the plan or can only be affected with certain limitations:**



Legally excluded creditors

- Family maintenance claims (*créditos por alimentos*).
- Tort or extracontractual claims.
- Ordinary employee claims, excluding senior executive compensation.
- Financial collateral arrangements governed by RDL 5/2005, including netting arrangements. The plan cannot restrict the creditor's ability to accelerate secured claims up to the value of the collateral (unless consented by the secured creditor).
- Future claims arising from hedging agreements that remain in force after the plan's approval.



Affected creditors, subject to limitations

- **Public claims** arising in the two years preceding the pre-insolvency filing can be deferred up to 6 months (if an agreement was previously reached to defer payment obligations) and otherwise up to 12 months, if they are grouped in a separate class and the debtor is current on its tax and social-security payments. In any event, public claims must be fully repaid within 18 months from the start of the pre-insolvency period.
In practice, public claims are excluded from most plans.
- **ICO-guaranteed loans** are loans granted by financial institutions with a guarantee from the Instituto de Crédito Oficial ("**ICO**"), a State-owned entity. These loans pose challenges because primary lenders *(i)* cannot vote in favour of plans with restructuring measures that are forbidden for public claims (such as changes in the applicable law, change of a debtor, amendment and release of guarantees, conversion of their claims into shares or into participative loans or any other type of instrument the terms and conditions of which differ from those of the original claim); and *(ii)* require prior approval from the Spanish tax authority to vote in favour of plans that include reductions or deferrals.

This significantly complicates restructuring when these loans represent a significant part of the debtor's liabilities. As alternatives, the parties may consider (a) carving out these loans from the scope of the plan, (b) lenders accepting the risk of losing the ICO guarantee, or (c) achieving the required majorities without the vote of the ICO lenders. If the ICO lenders hold other claims against the same debtor (i.e. claims that do not benefit from the ICO guarantee), they are free to vote as they see fit with this portion of their claims, even if doing so results in cramming up the ICO guaranteed loans.



ICO-COVID Guarantee Line

The ICO-COVID Guarantee Line is a measure adopted by the Spanish government in order to mitigate the impact of COVID-19 on the economy. The purpose of the ICO-COVID Guarantee Line is to cover new loans and other forms of financing granted by banks to companies and self-employed workers in order to meet the financing needs arising, among others, from the payment of salaries, supplier invoices, working capital, or other liquidity needs, including those arising from the maturity of financial or tax obligations.

Under the ICO-COVID Guarantee Line, the Spanish Ministry of Economic Affairs and Digital Transformation grants an irrevocable, unconditional, on demand guarantee, which is managed by the **ICO**. This aid, therefore, involves no direct financing from the State. The banks themselves are ultimately responsible for deciding whether or not to grant the financing, and, where appropriate, use the ICO-COVID Guarantee Line if certain requirements are met.

The guarantee covers between 60 and 80% of the principal sum that is unpaid by the client in each financing transaction, expressly excluding ordinary and default interest, commissions or other costs and expenses inherent to the transaction.

The ICO-COVID Guarantee Line scheme has been subsequently used by the Spanish Government in other situations, like as a result of the Ukraine war.





4.4 Effects of restructuring plans on the debtor's contracts with reciprocal obligations

A pre-insolvency filing or an application for a restructuring plan's court confirmation will not affect the continuation of the debtor's bilateral contracts, which shall remain in force. Accordingly, the general rule is the **principle of contract-continuation**, which has several implications:

Clauses allowing for the suspension, amendment or termination solely due to the approval of a plan, its submission for court-confirmation or any other analogous or related reasons, are null and void.

Changes of control resulting from the plan will not constitute per se sufficient grounds for the suspension, amendment, termination or acceleration of contracts necessary for the continuation of the business.

In addition, bilateral contracts with mutual pending obligations can be amended or terminated at the request of the debtor if necessary to ensure the success of the restructuring process and to avoid insolvency. If the parties do not reach an agreement as to the terms of such amendment or the consequences of termination, the plan may provide the termination of the contracts and any compensation due as a result thereof will be an affected claim under the plan (e.g., subject to any haircuts or extensions).

4.5 Valuation of claims

The claims of creditors affected by the plan will be valued pursuant to certain rules set out in the Insolvency Law. Each claim will generally be valued as the sum of its principal amount plus accrued and unpaid interest up to the date the plan is formalised in a public document, although specific rules apply:



Contingent, litigious claims or claims subject to any condition precedent will be valued at their maximum amount, unless the plan includes them for a lower amount. If the claims finally crystallise, they will only be affected by the plan up to the maximum the amount included therein and any reminder will be deemed an unaffected claim.



Claims in a foreign currency will be converted into euros at the official spot rate on the plan's formalisation date.



Secured claims will be grouped in a separate (secured) class up to the value of their collateral (the "**Security Value**", as defined in **section 4.8.3** below). Any shortfall (i.e. any part of the claim that is not covered by the Security Value) will be considered an unsecured claim and, consequently, included in a separate class (ordinary or subordinated, as applicable). The valuation of the collateral must be submitted together with the plan.



Facility agreements will be valued in the amount drawn on the plan's formalisation date.

4.6 Formation of creditor classes

A fundamental premise when negotiating and preparing a restructuring plan is that creditors must be grouped into different classes although plans with a single class and even a single creditor have been accepted by the courts (e.g. Torrejón Salud). This step is absolutely key for the plan's success given that all affected creditors are entitled to vote on the plan and, therefore, the way in which creditor classes are formed will determine whether creditors supporting the plan reach the voting thresholds required within each class.

The party proposing the plan has some discretion on class formation provided that certain rules are complied with. Creditors that have a sufficient **common interest**, according to objective criteria, can form a separate class. It is deemed that claims that would have the same ranking in order of payment in an insolvency scenario share a common interest.

However, claims that have the same ranking in order of payment in an insolvency scenario may nevertheless be grouped in separate classes (what is called "desaggregation") if there are justified reasons. For example:

- financial claims and commercial claims can be in separate classes even if they rank *pari passu*;
- creditors that have a conflict of interest with other creditors may also be grouped in a separate class despite ranking *pari passu* among them;
- creditors may be separated into different classes depending on the post restructuring treatment of their claims (in this case, subject to the rule of non-discrimination among creditors of the same ranking as discussed above); and
- claims of small and medium-sized entities must form a separate class if they suffer a reduction greater than 50% under the plan.

Claims that are collateralised against any of the debtor's assets must form a single separate secured class unless *(i)* they do not rank *pari passu* (e.g., a first and a second mortgage are both secured claims but do not rank *pari passu*), or *(ii)* the nature of the collateral justifies that they are grouped in separate classes (Spanish courts have considered, for example, that claims secured by mortgages and pledges may be allocated to separate classes given that a mortgage and a pledge encumber assets of a different nature).



According to the Insolvency Law, there are two types of privileged claims:

- **Specially privileged claims:** they are secured claims, that is, claims secured by rights in rem over specific assets or rights (typically, pledges and mortgages) that can be enforced – subject to certain conditions – separately from the insolvency proceedings and with priority over other creditors, including creditors of the bankruptcy estate (*créditos contra la masa*).

- **Generally privileged claims:** they are claims paid from the debtor's assets rather than from an entitlement to any specific asset. Generally privileged claims will be paid after specially privileged claims but before ordinary claims, in relation to the secured assets. They include:

- Insolvency claims for wages, severance payments and compensation for the termination of employment contracts up to a specific amount.
- Claims for amounts relating to unpaid withholding taxes and social-security contributions.
- Claims for other amounts due to the tax authorities and

social security authorities not included above up to 50% of their amount.

- Some claims for tort liability.
- 50% of interim and new money provided under a restructuring plan provided that the claims affected by the approved plan represent at least 51% of the total liabilities of the debtor (or more than 60% of the total liabilities if the interim and new money is provided by parties specially related to the debtor).
- Claims of the creditor who filed the request for insolvency, up to 50% of the aggregate amount of such creditor's unsubordinated claims.

Among claims that benefit from a general privilege, these rank in the order outlined above, so if assets are insufficient to pay one of the subclasses, creditors of the same subclass will be paid pro rata to the amount of their claims.

When the Insolvency Law requires claims collateralised against any of the debtor's assets to form a separate class, it is referring to the first group of secured creditors, that is, specially privileged claims.

If public claims are going to be affected by the plan, the Insolvency Law also requires that they form a separate class with other public claims that rank *pari passu*.

As mentioned, forming creditor classes is key to achieving intra-class cram-down (of claims pertaining to the same class) and cross-class cram-down (of claims belonging to separate classes) when it is foreseeable that not all affected creditors will support the plan.



Only affected creditors – **not shareholders** – are organised in classes (although shareholder consent is required in some specific cases).



Practical note: It is important to strike the right balance to avoid creating too many classes as it is likely to increase the risk of the plan being successfully challenged. Some court precedents have upheld challenges on the basis that classes were artificially formed in order to achieve a majority of classes approving the plan (among many other cases, SAT Naturchar, Comercial Pernas, Move Art Mission).

The court will carefully review class formation before deciding to confirm the plan; potential dissenting creditors who intend to challenge the plan will also pay close attention.



Practical note: To afford some legal certainty on class formation, the Insolvency Law allows the debtor and creditors holding over 50% of the affected claims under the plan to file a petition requesting that the court review and confirm the correct formation of the classes before submitting the plan to the court for confirmation.

If the party negotiating the plan initiates this *ex ante* confirmation procedure, all affected creditors may submit allegations opposing the proposed class formation and the court will ultimately decide on the matter.

Once class formation has been confirmed, creditors will not be able to challenge the plan based on incorrect class formation unless additional classes have been created when the plan is submitted to the court for confirmation. Other legal grounds for challenge remain available to the creditors.

A petition for this *ex ante* class confirmation may not always be an option as it will delay the court's confirmation of the plan until the court confirms the class formation. It may be inevitable, however, when creditors are providing new money under the plan or the plan includes measures that cannot be easily unwound like debt-to-equity swaps.

4.7 Voting the plan

Once the classes have been formed and the plan has been notified to all affected creditors in the manner established in the Insolvency Law, affected creditors will be entitled to vote the plan. Voting will take place within each class.

If a claim is guaranteed or secured by *in rem* security, the main obligor, not the guarantor, will be the party entitled to vote.

The plan will be considered to have been approved by a class of creditors if:



More than two-thirds of the value of total liabilities in that class vote in favour of the plan.



If there are secured claims, three-quarters or more of the value of such secured class vote in favour of the plan.

The value of the claims is what matters; no “headcount” majority applies.

In other words, if these thresholds are met, dissenting creditors within a class will be crammed down (intra-class cram down) and the plan will be deemed to have been supported by the entire class. The restructuring expert or auditor will verify that thresholds of supporting creditors within each class (more than two-thirds or at least three-quarters, as applicable) have been met in order to determine which (and how many) classes of creditors approved the plan.



The Syndicate Voting Rule

The Insolvency Law provides specific voting rules for creditors bound by a **syndication agreement**. All creditors holding an interest in a syndicated claim will be deemed to have approved the plan if creditors holding the required voting majority set out above, or the lower one contemplated in the syndicated facility, if applicable, vote in favour of the plan.

If the required majorities are not reached, the vote of each creditor in the syndicate will be counted separately to verify whether the class to which it belongs has approved or rejected the plan. However, if the syndicated claims have formed a class of their own, the plan will be rejected by that separate class.

The Insolvency Law does not require approval from the company's shareholders undergoing a restructuring process, as they are generally out of the money and tend to resist dilutive measures such as debt-to-equity conversions. Shareholder approval will nevertheless be required if *(i)* they are

personally liable for the company's debts; *(ii)* the debtor is an SME; or *(iii)* the debtor is still in a state of likelihood of insolvency.

The Insolvency Law sets out three measures that limit shareholders' blocking power in connection with the plan's approval:

A.

Restricting consent requirements and veto rights

- Shareholders are not required to approve a plan if the company is in a situation of actual or imminent insolvency, even if the plan includes measures that in normal circumstances would require shareholder approval like capital increases or decreases, transfer of essential assets or mergers.
- The court's final decision on the plan's confirmation (*auto de homologación*) replaces the shareholders' consent. Directors or court appointees can implement directly any approved measures.



B.

Facilitating the approval of the plan at the shareholders' meeting

- Shorter notice periods (including for listed companies) to call a shareholders' meeting apply.
- Shareholders' meetings may be held even after the plan has been submitted to the court for confirmation.
- Plan approval must be the only item in the agenda of the meeting.
- The plan will be approved by an ordinary majority. No reinforced majorities included in the by-laws or provided by corporate law will apply.
- Shareholders will have no pre-emption rights over newly issued shares under the plan if the company is in actual or imminent insolvency.
- The right of creditors to oppose certain corporate transactions, like mergers and certain share capital reductions, will not apply.

C.

Challenging the plan

- If the plan was approved at the shareholders' meeting, dissenting shareholders may challenge the plan based on any of the reasons specifically provided to such effect in the Insolvency Law. Therefore, the ordinary corporate-law procedure to challenge company resolutions will not apply.



4.8 Court-confirmation of the plan

4.8.1. Submitting the court petition

Once the plan has been approved and executed as a public deed, the Insolvency Law allows the debtor or any interested creditors to submit a petition to the court requesting the plan's court confirmation (*homologación judicial*).



When is court confirmation necessary

- When shareholders, dissenting creditors or classes of creditors need to be crammed down under the plan.
- When contracts need to be terminated in the interest of the restructuring process.
- When interim or new money has been provided under the plan and (i) protection from claw-back actions, and (ii) payment priority is sought.



When can it be requested

- When the debtor is in the state of likelihood of insolvency.
- When the debtor is in the state of imminent insolvency.
- When the debtor is in the state of actual insolvency, provided that no petition for insolvency has been filed in court by a creditor and admitted for processing.



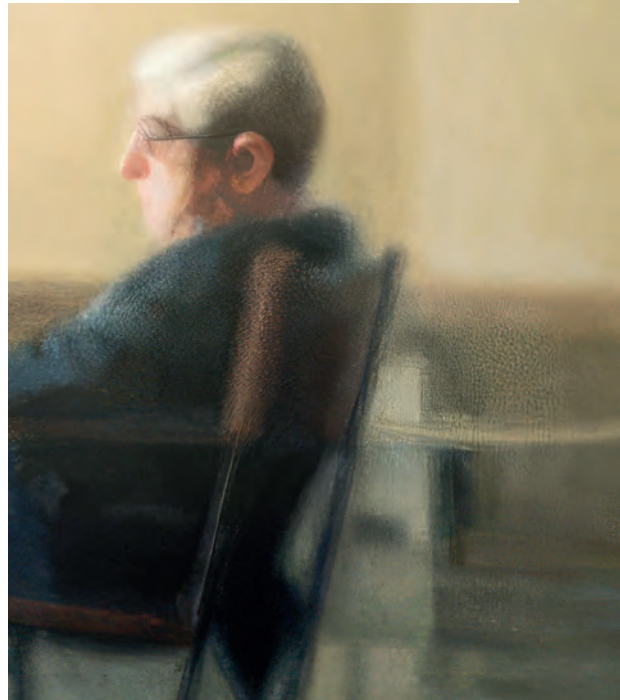
Keynote

If creditors are negotiating a plan and the debtor files a voluntary insolvency petition with the court, the petition can be suspended at the request of the restructuring expert or creditors holding over 50% of the claims that would be affected by such plan. The suspension will be lifted if the creditors have not filed a plan within one month. This will give them some time to finalise the plan and submit it for court-confirmation without the pressure of an insolvency petition.



Who can file the petition

- The debtor, provided that its board has approved the plan, or any supporting creditor.
- Plans involving multiple group companies can be submitted individually or jointly, but the court will separately assess each debtor's plan.



The petition for confirmation is submitted to the **commercial court with jurisdiction over the debtor's declaration of insolvency** or the commercial court before which the debtor declared the initiation of negotiations with its creditors (if applicable). If the court considers that it has jurisdiction to process and approve the petition, it will issue a **decision declaring that the petition has been admitted** for processing and this decision will be published in the Public Insolvency Registry. From this moment, judicial or out-of-court enforcement proceedings against the debtor's assets will be prohibited and those already in progress will be suspended until a decision on the plan's confirmation is issued.

The parties can challenge the court's jurisdiction to confirm the plan within 10 days of the decision admitting the request for processing (*providencia de admisión*) being published in the Public Insolvency Registry.



Practical note: One of the most controversial topics in the first months of the new Insolvency Law's implementation was that of "**competing plans**", i.e. where multiple plans involving the same debtor are submitted for court confirmation, one of which is usually filed by the debtor and the other by the creditors. Spanish courts have opted for a temporary criterion: the court will confirm the first plan to be submitted, provided that it meets applicable legal requirements (Single Home, Transbiaga I and Inparsa II cases).



Procedural notes: The party filing the petition for court confirmation can simultaneously request that the court process the petition via a **pre-emptive challenge** (*contradicción previa*), in which dissenting creditors can submit pleadings opposing the plan's court confirmation. After pleadings are submitted and a public hearing has been held, the court will decide on the confirmation of the plan. This decision cannot be appealed.

If the plan is submitted to, and confirmed by the court, the parties cannot submit a petition regarding the same debtor within the following 12 months.

4.8.2. Court confirmation

The court must decide whether or not to confirm the plan within 15 days of admitting the petition.

If the plan is confirmed, the court will:

- Rule that *(i)* all enforcement proceedings initiated by affected creditors (previously suspended) are terminated and *(ii)* enforcement proceedings initiated by non-affected creditors can resume.
- Identify the secured dissenting creditors that belong to a class that has not approved the plan.
- Enforce the restructuring measures approved by the plan on all affected creditors, the debtor and its shareholders, even if the plan's confirmation is challenged.
- Approve all corporate transactions to be executed under the plan, provided that applicable corporate-law requirements are met.
- Protect all documents and actions under the plan, including any interim or new financing contemplated therein, against claw-back actions, provided that applicable legal requirements are met.
- Authorise the restructuring expert to sign all documents and carry out all transactions for the plan's implementation.
- Order the publication of the court decision in the Public Insolvency Registry.



The Insolvency Law establishes different requirements for the plan's court confirmation depending on the support that it receives:

COURT-CONFIRMATION REQUIREMENTS FOR PLANS SUPPORTED BY ALL CREDITOR CLASSES: CONSENSUAL PLANS

1. The debtor must be in an actual, imminent or in a state of likelihood of insolvency and the plan must offer a reasonable prospect of avoiding the company's insolvency while ensuring the business' short- and medium-term viability, meaning in practice from one to three years according to some court decisions (Avanza Foods, Transbiaga III, Vilaseca).
2. The plan must have the minimum content provided in the Insolvency Law and meet all formal requirements.
3. **The plan must have been approved by all creditor classes**, by the debtor or, where applicable, its shareholders.
4. Creditors within the same class must be treated equally (principle of equal treatment).
5. The plan must have been notified to all affected creditors in the form required by the Insolvency Law.

If the plan submitted does not meet all of these requirements, the court will deny confirmation. Although it is controversial matter among courts, these will generally not review other matters (e.g. if classes have been correctly formed) beyond the five items listed above, unless it is manifest that the plan does not meet applicable legal requirements. Any party (shareholder or creditor) that believes that the plan does not meet all legal requirements has the burden to challenge the plan.

COURT-CONFIRMATION REQUIREMENTS FOR PLANS NOT SUPPORTED BY ALL CREDITOR CLASSES: NON-CONSENSUAL PLANS

If the plan is not supported by all creditor classes, the court can nevertheless confirm it if one of the following two conditions is met:

- A. a simple majority of creditor classes (e.g. two of three, three of five) has voted in favour of the plan, provided that at least one of those classes is a privileged claim class (with either a special or general privilege), or failing in that,
- B. at least one class that is “in the money” has voted in favour of the plan. A creditor class is in the money if it can be reasonably concluded that, as a result of a valuation of the debtor as a going-concern, it would have received any payment. This must be supported by a specific valuation report prepared by the restructuring expert and attached to the plan. Therefore, the court can confirm the plan even if it is supported by a single creditor class (regardless of how many classes have been formed) or even by a single creditor if such creditor makes up the whole class and is in the money.

Notes:

- The ability to approve a plan based on a simple majority of classes led in the first months of application of the Insolvency Law to artificial class formation and to plans that were approved by a very small part of the company’s liabilities, sometimes by claims of the shareholders or related parties. The courts are now wary of these situations and it is safe to say that court scrutiny will be greater when the plan is supported by a minority of creditors and will tend to be lighter when it has ample support.
- Plans approved by a class that is in the money can cram other creditor’s classes that are “downstream” (junior) or “upstream” (senior); that is, there can be a cram-down or a cram-up.
- Although the Insolvency Law only requires a valuation report when the plan is approved by a class of creditors that is in the money, there are court precedents requiring this report also when the plan is approved by a majority of classes (Masía Industrial Médica, Balneario Ariño, Pools Consulting, among others). In other cases, courts have not required the independent expert report when the plan was approved by a majority of classes (Turner Publicaciones, Werlinco, among others).
- There is at least one court precedent (Wewi) where the court has argued that a plan approved by all creditor classes, but not by the shareholders, is a non-consensual plan and, accordingly, must be approved by a class that is in the money plus expert report.

4.8.3. *Opt-out for dissenting secured creditors in cross-class cram-downs*

If a secured creditor **votes against the plan and belongs to a class where there were more votes against the plan than in favour of it**, it will be entitled to enforce its collateral within a month of the publication of the plan's court confirmation unless the plan provides that such secured creditor receives a cash payment (up to the value of its security or **"Security Value"**) within 120 days. Failure to make payment results in the creditor being entitled to enforce the security.

"Security Value" means 90% of the "Reasonable Value" of the collateral less "Legally Preferred Claims".

"Reasonable value": is the value determined pursuant to specific rules set out in the Insolvency Law:

- Real-estate assets will be valued by means of an appraisal report issued by an approved appraiser duly registered with the Bank of Spain.
- Securities listed on a regulated market will be valued pursuant to the average weighted price at which they have been traded in the previous quarter.
- The value of other assets or rights will be determined pursuant to a report issued by an independent expert.

"Legally Preferred Claims": senior-ranking charges and encumbrances, excluding mere contractual preferences, such as those included in an inter-creditor agreement.

4.8.4. *Treatment of third-party guarantors*

Personal guarantees or security interests that third parties grant in favour of affected creditors are generally not affected by the plan. Specific provisions nevertheless apply:

- The creditor, not the security or guarantee provider, will be the party entitled to vote the plan regardless of any internal arrangements between them.
- The security interest or guarantee of a creditor who voted in favour of the plan may be discharged under the plan depending on what was agreed or applicable rules.
- The security interest or guarantee of a creditor who voted against the plan and is crammed down will remain enforceable against the security or guarantee provider.



Group restructurings

If provided in the plan, its effects can be extended to security interests or guarantees granted by any company that belongs to the debtor's group but is not part of the plan, provided that not doing so would cause the insolvency of both the guarantor and the debtor (this insolvency would be caused as a result of the recourse or reimbursement right that the guarantor would have against the debtor after paying the creditor).

4.9 Protection against claw-back actions

4.9.1. *Overview of claw-back actions*

The courts can rescind any action carried out, including any agreement or transaction entered into, by the debtor in the two years preceding the filing of the insolvency petition, or from that time until the insolvency declaration (the so-called **Suspect Period**), if "detrimental to the insolvency estate", even if there is no fraudulent intent, by means of a **claw-back action**.



The Spanish Supreme Court has held that an action is "detrimental" if it implies an "unjustified sacrifice" to the debtor's estate taken as a whole. If the sacrifice is justified, the transaction should not, in principle, be considered detrimental to the insolvency estate and should not be rescinded.

Whether an action is detrimental to the insolvency estate must be assessed on a case-by-case basis. The consequences of a successful claw-back action will depend on the nature of the rescinded action.

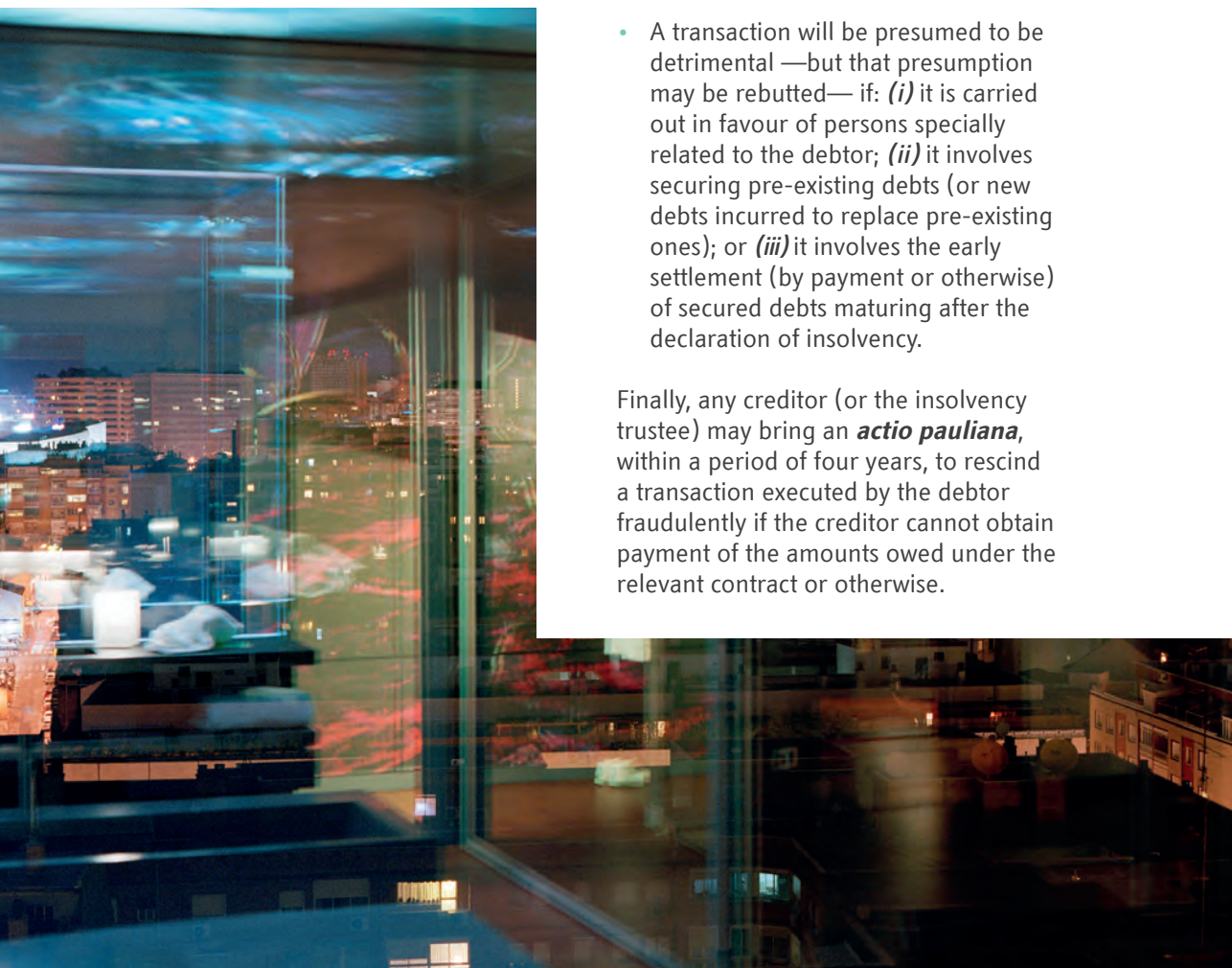
Claw-back also applies to any detrimental action carried out by the debtor in the two years preceding a pre-insolvency filing, as well as those carried out since that date up to the insolvency declaration, even if there has been no fraudulent intent, as long as *(i)* the plan has not been passed by the required majorities or has not been confirmed by the court; and *(ii)* the insolvency is declared within one year of the end of

the pre-insolvency period (or the end of any extension thereof).

The Insolvency Law establishes a series of presumptions:

- A transaction will be deemed to be detrimental in all cases if: *(i)* it is carried out for no consideration; or *(ii)* it involves the early settlement (by payment or otherwise) of non-secured debts maturing after the declaration of insolvency.
- A transaction will be presumed to be detrimental—but that presumption may be rebutted—if: *(i)* it is carried out in favour of persons specially related to the debtor; *(ii)* it involves securing pre-existing debts (or new debts incurred to replace pre-existing ones); or *(iii)* it involves the early settlement (by payment or otherwise) of secured debts maturing after the declaration of insolvency.

Finally, any creditor (or the insolvency trustee) may bring an ***actio pauliana***, within a period of four years, to rescind a transaction executed by the debtor fraudulently if the creditor cannot obtain payment of the amounts owed under the relevant contract or otherwise.



4.9.2. Claw-back actions in the context of a restructuring plan

Obtaining protection against claw-back actions is often crucial for parties participating in the plan. The court confirming the plan can protect all actions and transactions carried out under it against claw-back actions, provided it is expressly requested in the petition for confirmation filed with the court and the following conditions are met:

- A. When the claims affected by the plan represent at least 51% of the debtor's total liabilities, the following actions and transactions will be protected against claw-back unless it is proven that they were made with the intent to defraud creditors:

Actions and transactions that are **"reasonable"** and **"immediately necessary"** for the plan's successful negotiation and implementation, provided that they are identified as such in the plan.

Interim and new money, including financing provided by **specially related parties** (in which case creditors affected by the plan, excluding those held by such related parties, must represent at least 60% of the debtor's total liabilities).

Actions and transactions that are reasonable and immediately necessary to implement the plan.

The restructuring expert must certify that these majorities are met for the court to grant protection against claw-back actions.

Any creditor can challenge the court's decision to approve this protection, but only on very limited grounds (i.e. lack of required majorities, interim or new money not meeting legal requirements, interim or new money which are unfairly detrimental to the creditors' interests).



In the event of insolvency, provided that the above-mentioned thresholds of **51% or 60% (as applicable) of total liabilities** are met, as well as being protected against claw-back actions, new and interim financing will also benefit from the following **preferential treatment**:

- 50% of the financing will be treated as a claim against the estate (*crédito contra la masa*), that is, pre-deductible (i.e. payable before any bankruptcy claim except those that benefit from specific collateral).
- The remaining 50% will be treated as a generally privileged claim (*crédito con privilegio general*), that is, ranking just after those claims that benefit from specific collateral (specially privileged claims) but before ordinary claims.

- B.** If claims affected by the plan represent less than 51% of the debtor's total liabilities, the previously described actions and transactions may be subject to claw-back. However, evidence of detriment must be provided by the party asserting the claim, as none of the rebuttable presumptions of detriment discussed above will apply.



Rules applicable to specially related parties

A specially related party is a creditor whose claims are subordinated due to its close legal, economic, or structural connection to the debtor. The list of qualifying relationships under the Insolvency Law is exhaustive and according with the Spanish Supreme Court must be construed restrictively.

Where the debtor is a legal person, the following are deemed specially related parties:

- **Significant shareholders:** persons holding, directly or indirectly, 10% or more of the debtor's share capital (5% or more if the debtor is listed) at the time the claim was originated.
- **Directors and managers:** current and former directors (including shadow and legal directors), liquidators, and holders of general powers of attorney, within the two years preceding the declaration of insolvency.
- **Group companies:** entities forming part of the same corporate group as the debtor, as well as their common shareholders meeting the applicable ownership thresholds.
- **Assignees of related-party claims:** persons who acquire a claim from a specially related party are presumed to hold that status if insolvency is declared within two years of the assignment.

4.10 Challenging the plan

Non-participating or dissenting creditors and shareholders can challenge a court-confirmed plan within 15 business days of its publication in the Public Insolvency Registry. The petition must be submitted to, and heard by, the provincial court.

The filing does not suspend the plan's enforcement and implementation.

If multiple petitions challenging the plan are filed, they will be heard and decided jointly.

The final decision on any challenge petitions will not be subject to appeal.

The grounds for challenging a plan are limited and vary depending on whether or not it was approved by all creditor classes. The Insolvency Law also provides specific, more limited grounds on which shareholders can challenge the plan, which is consistent with the abovementioned principle that shareholders' consent is not required for a plan to be approved.

The grounds to challenge a plan can be summarised as follows:

If a plan is approved by all creditor classes, any dissenting creditor can challenge it based only on any of the following grounds:

1. If the plan's communication, content or formality requirements have been breached.
2. If the formation of creditor classes or the approval of the plan have not been carried out pursuant to the Insolvency Law.
3. If the debtor is not in a state of imminent, actual or likelihood of insolvency.
4. If the plan does not offer a reasonable prospect of avoiding insolvency and does not ensure the debtor's viability in the short- and medium-term.
5. If claims within the same class are not treated equally (i.e. breach of the principle of equal treatment).
6. If the reduction in the value of claims post restructuring is manifestly greater than is necessary to ensure the debtor's viability (the so-called "unjustified sacrifice"). When a claim was purchased by a creditor at a discount, the reduction must exceed the discount in order for the creditor to be able to invoke this ground.
7. If the debtor is not current in its tax and social-security obligations (only if public claims are affected).
8. If the "creditors' best-interest test" is not met.

The “BIC test”

The **creditors’ best interest test** seeks to ensure that dissenting creditors do not have to make under the plan a sacrifice that is greater than the one that they would suffer in an insolvency liquidation scenario (whether as a going concern or piecemeal liquidation).

When performing the test, the value that the creditors would receive as a result of the restructuring measures set out in the plan must be compared with the value that they would receive in a liquidation process (assuming liquidation occurs within two years of the plan’s approval).





If the plan is not approved by all creditor classes, the following rules apply:

Dissenting creditors (regardless of whether the class to which they belong approved or not the plan) can challenge the plan based on any of the grounds listed above for plans approved by all creditor' classes.

In addition, dissenting creditors belonging to a class that has not approved the plan can challenge it based only on any of the following additional grounds:

1. If the plan has not been approved by the required class' majorities.
 2. If one class receives rights or shares in excess of the amount of its claims (i.e. breach of the prohibition of expropriation).
 3. If the class to which the creditor belongs is treated less favourably than any other class of the same rank (i.e. breach of the rule of non-discrimination).
 4. If the class to which the challenging creditor belongs will retain or receive rights or shares of lower value than the amount of its claims while lower-ranking creditors or shareholders receive any payment or retain any rights or shares under the plan (i.e. breach of the absolute-priority rule).
 5. If the debtor has breached its tax or social-security obligations when public creditors are affected by the plan.
- 



Exception to the APR:

The court may still confirm the plan, effectively watering down the absolute-priority rule, if lower-ranked creditors or shareholders need to receive payments or retain rights or shares to ensure the debtor's viability, provided the affected creditors' rights are not unduly prejudiced. Spanish courts have applied this exception on a case-by-case basis, requiring that the debtor demonstrates that the retention of rights by lower-ranked creditors or shareholders is indeed necessary to ensure the debtor's viability.

As part of this analysis, courts assess whether dissenting creditors have proposed viable alternatives that would have made it unnecessary to apply the exception. Therefore, the passivity of dissenting creditors has been viewed favourably to admit the exception (Vilaseca, Transbiaga III).

If the plan is not approved by the shareholders of the debtor,

those that voted against may challenge it based only on the following grounds:

1. If the plan's communication, content or formality requirements have been breached.
2. If the plan was not approved by the required class' majorities or in compliance with applicable corporate rules.
3. If the debtor is not in a state of imminent, actual or likelihood of insolvency.
4. If the plan does not offer a reasonable prospect of avoiding insolvency and does not ensure the debtor's viability in the short- and medium-term.
5. If one class receives rights or shares under the plan in excess of the amount of its claims (i.e. breach of the prohibition of expropriation).

Finally, if the plan is not approved by any of the counterparties of those contracts that are terminated under the plan, it may be challenged by the affected counterparty based only on the following grounds:

1. If termination of the contract is not necessary for the plan's success and to avoid the declaration of insolvency.
2. If the compensation provided in the plan for the early termination of the contact is not adequate.

The consequences of a challenge being upheld depend on the specific grounds raised:

If the court rules that *(i)* creditor classes were not correctly formed or *(ii)* the plan was not supported by the required majorities, it will declare the plan **null and void with respect to all parties**. Despite the wording of the Insolvency Law.

If the court upholds any other grounds, the plan will be ineffective **exclusively with respect to the creditors who challenged the plan**, while remaining in force with respect to all remaining parties, including shareholders.

If the effects of the plan cannot be unwound, the creditor challenging it will be entitled to damages.

We are aware of at least one court that ruled when the effects of the plan cannot be unwound it must also be declared null and void (Wewi).

4.11 Default

Following court confirmation, a plan **cannot be terminated due to a breach** unless it expressly provides otherwise.



Exceptions:

1. Public creditors may terminate the plan's effects vis-à-vis such public creditors if the debtor defaults on public debt instalments or defaults under newly incurred tax or social-security obligations.
2. If the default results from the debtor's insolvency, any creditor may file for insolvency.



4.12 The independent restructuring expert

A restructuring expert, who can be a legal or natural person, is a professional who will be responsible for assisting the debtor and the creditors in negotiating and preparing the restructuring plan, as well as for preparing the reports provided for in the Insolvency Law or those that the judge considers necessary or appropriate.

The restructuring expert has become a key figure in the implementation of restructuring plans. Ongoing judicial practice has outlined and resolved some of the debates that had arisen in practice around its involvement in the restructuring process.



When is the expert appointed?

An expert **must** be appointed when:

- requested by the debtor;
- requested by creditors holding more than 50% of the claims affected by a plan (provided these creditors assume the expert's fees unless the plan is approved and provides otherwise);
- the court deems it necessary if the debtor requests a general stay of enforcement during the pre-insolvency period or an extension of such stay, in order to safeguard the interests of the creditors affected by the stay; or
- the plan submitted for the court's confirmation imposes a cram-down on dissenting creditor classes or shareholders.

In addition, an expert **may** also be appointed by the court if requested by creditors holding **over 35%** of the claims affected by the plan. In this case, creditors must justify the need for appointing the expert.



Procedure

- The judge appoints the expert requested by the debtor or the creditors, as the case may be.
- If the expert appointed does not meet the required qualification, the debtor or the creditors can challenge the appointment.
- Creditors holding more than 50% of affected claims can request the replacement of the expert appointed at the request of the debtor or minority creditors for one of their choosing.
- If the expert was appointed at the request of creditors holding more than 35% of the claims, the debtor may oppose the appointment if the expert is unnecessary or does not meet the required qualifications.

Duties and liabilities

The expert must:

- assist the debtor and the creditors with the plan's negotiation and preparation; and
- prepare all reports required by the Insolvency Law (e.g. class formation and valuation of the company as a going concern) or deemed necessary (e.g. report assessing the viability plan) by the court.

The expert must act with a high standard of care, independently and professionally, while remaining neutral towards all parties and will be liable for any damages caused for breach of duties. The expert must have civil-liability insurance in place.

Personal qualifications

The expert must:

- be a qualified legal or financial professional;
- be selected based on the size, complexity and cross-border elements of the matter; and
- have proven experience in restructuring processes or meet the criteria established for insolvency trustees.

The expert will be subject to auditor-style conflict-of-interest rules and cannot have advised the debtor or related parties in the preceding two years, unless previously appointed as an "independent expert".

The expert cannot be appointed as insolvency trustee if the debtor subsequently falls into insolvency.

4.13 Special rules for SMEs

Special rules apply to the pre-insolvency of small and medium-sized debtors ("**SMEs**"). These rules apply to corporate debtors that do not form part of a group subject to consolidation and whose balance sheet for the financial year preceding the pre-insolvency filing or the application for court confirmation of a plan shows (i) a yearly average headcount not exceeding 49 people; and (ii) yearly turnover not exceeding EUR 10 million.

The special rules applicable for SMEs are the following:

- A. With respect to the pre-insolvency framework:
 - Neither the creditors nor the restructuring expert will be entitled to request that the court suspend the debtor's insolvency petition during the pre-insolvency period.
 - Only the debtor will be entitled to request an extension of the pre-insolvency period.
- B. With respect to plans:
 - Court confirmation of a plan always requires **the consent of the debtor and the shareholders**. Therefore, the shareholders cannot be crammed down against their will.
 - **Only the debtor** can request confirmation of **class formation**.
 - **The relative-priority rule**, instead of the absolute priority rule, applies. Under the relative-priority rule, senior dissenting classes just need to be treated better than junior classes, even if the former are not paid in full.



Micro-enterprises

In addition to the general regime and the one applicable to SMEs, the Insolvency Law has created a third regime applicable to "micro-enterprises", which is not addressed in this Handbook. "Micro-enterprises" are natural or legal persons that carry out a business or professional activity and that, in the year before the special proceedings started: (i) employed an average of fewer than 10 employees and (ii) had an annual turnover of less than EUR 750,000 or liabilities of less than EUR 350,000.



4.14 Cross-border restructurings

4.14.1. Cross-border effects of Spanish plans and pre-insolvency filings



The Insolvency Law asserts “**universal scope**” with respect to the cross-border effects of Spanish pre-insolvency filings and confirmed plans, meaning that those effects are intended to extend abroad, even where foreign law would normally apply.

However, a plan or a pre-insolvency filing is not intended to prevail over foreign provisions concerning:

- **Rights *in rem***, retention of title, or registered assets abroad.
- Rights or transactions of the debtor **subject to public registration in another jurisdiction**.
- **Set-off rights** involving foreign-law governed claims.
- **Contracts** (real estate and employment) governed by foreign law.
- **Foreign claw-back actions**.
- **Foreign declaratory proceedings** over the debtor’s assets.



Exception

In the case of rights over book-entry securities or those traded in a clearing system, settlement system or financial market, the applicable laws are those of the jurisdiction in which the relevant registry, system or market is located.



For these extraterritorial effects to be valid outside of Spain, however, the plan or filing must be formally recognised abroad under each country's private international law:



Within the EU

Spanish pre-insolvency filings and confirmed plans should enjoy automatic recognition in all EU Member States, except in Denmark, under the European Insolvency Regulation. Therefore, creditors bound by a plan in Spain are also bound across the EU.

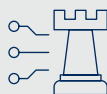


Outside the EU

Recognition depends entirely on the domestic law of each jurisdiction.

Local legal advice is essential when: *(i)* the debtor owns foreign assets that need to be protected from dissenting creditors, or *(ii)* the debtor operates branches outside the EU.

Precedents: Isolux and Abengoa's restructurings were recognised in the US under Chapter 15, signalling a favourable trend for future Spanish court-confirmed plans having effect in the US.



Post-Brexit UK

Automatic EU recognition no longer applies. Plans must now be recognised under English private international law, adding uncertainty and procedural complexity.



4.14.2. *Spanish courts' jurisdiction in group restructurings*

The Insolvency Law grants Spanish courts jurisdiction over subsidiaries whose COMI is located outside Spain, but only in the context of group restructurings. The requirements are as follows:

- Spanish courts must have jurisdiction over a pre-insolvency filing or a plan to be proposed by the group's parent company (i.e. the parent company's COMI must be located in Spain);
- the pre-insolvency filing or the application for court confirmation of the plan in relation to the subsidiaries must be confidential (and not published in the Public Insolvency Registry), and therefore fall outside the scope of the European Insolvency Regulation;
- the cross-border extension of jurisdiction over the group's subsidiaries must be necessary to ensure the successful outcome of the plan; and
- Spanish courts' jurisdiction will be limited to common creditors of both the parent company and the relevant subsidiaries, provided that their claims originate from a contractual agreement.



Keynote

This extended-jurisdiction rule differs from the “group coordination proceedings” regime set out in the European Insolvency Regulation, under which insolvency proceedings involving multiple members of an international group are coordinated by the court of a single EU Member State.

Extended jurisdiction under the Insolvency Law is at the court's discretion. By contrast, group coordination proceedings under the European Insolvency Regulation are initiated at the request of the insolvency practitioner from one group company. However, if two-thirds of the insolvency practitioners involved in the jurisdictions of the affected group companies consent on a specific jurisdiction to be applicable, that jurisdiction would have exclusive jurisdiction.



4.14.3. *Effects of foreign restructuring plans and other pre-insolvency mechanisms in Spain*

Cross-border issues and potential disputes regarding early restructuring processes initiated in multiple jurisdictions will be subject to international private law.

As in the European Insolvency Regulation regime, the Insolvency Law establishes that its own private international law rules, intended for insolvency procedures, will also apply – with the necessary changes – to pre-insolvency filings and restructuring plans.

However, some of these rules (e.g. rules on recognition of foreign pre-insolvency procedures and coordination between parallel insolvency procedures) will be limited to foreign early restructuring procedures that are “functionally equivalent” to the Spanish procedures (i.e. collective procedures based on insolvency legislation that are intended to restructure the debtor or its business to ensure viability and avoid insolvency), and rely on either a jurisdictional COMI test or “a reasonable connection with an equivalent nature”.

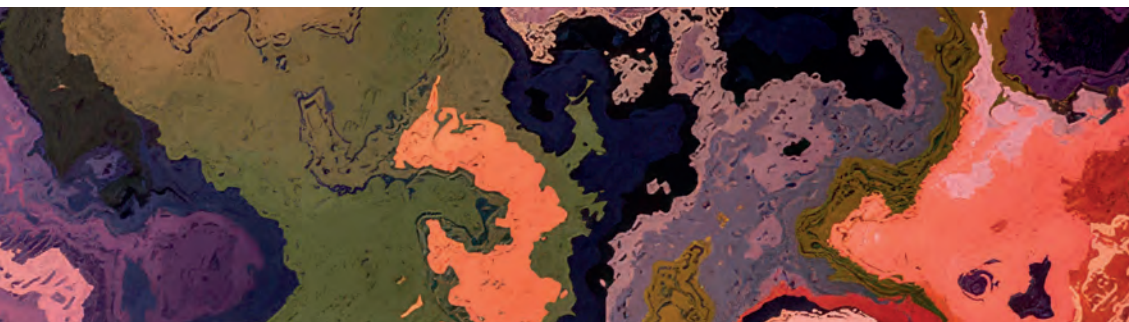


Keynote

The Spanish framework offers more tools and flexibility for restructuring than ever before. However, it also requires early action, alignment of stakeholder incentives and sound strategic execution.

Insolvencies, pre-insolvency filings, restructurings, and financial instruments involving both the EU and UK face increased uncertainty and require careful planning. Practitioners must analyse each situation individually to design the most effective structure for a potential insolvency scenario, enabling stakeholders to act quickly and preserve as much of the debtor’s value as possible.

Spanish courts may exercise jurisdiction over group subsidiaries outside the EU undergoing restructuring, if the parent company’s COMI is located in Spain and other requirements are met, facilitating coordinated group proceedings under a plan.



THE SPANISH RESTRUCTURING HANDBOOK

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Spain has one of the most sophisticated restructuring frameworks in Europe. The 2022 reform fundamentally transformed the country's insolvency regime, introducing a much stronger emphasis on early intervention, business rescue and value preservation.

This handbook provides a practical and comprehensive overview of the Spanish restructuring framework. It examines the pre-insolvency and restructuring tools available to debtors and creditors and addresses the principal legal, commercial and strategic considerations for companies, lenders and advisers dealing with financial distress in Spain.

CHAPTERS

- The Spanish Pre-Insolvency Landscape
- Types of Distress
- The Pre-Insolvency Communication
- Restructuring Plans