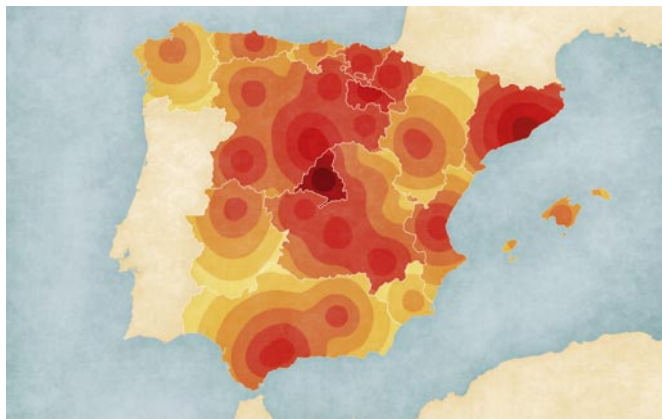


Spain: A new Insolvency Act Recast



Spain's Insolvency Act dated from 2003, prior to the global crisis of 2008. Since then, the Spanish insolvency regime has been amended in many occasions (among other issues, to adapt to pre-insolvency solutions, which were first introduced in 2009, or to include the debt release for natural persons, included in 2013). Therefore, a recast text had become necessary.

In 2016, a working group was appointed to prepare a proposal for an Insolvency Act Recast in Spain. However, four years passed until the Spanish Government, in the context of the new crisis caused by the COVID-19 pandemic, finally rushed to approve the recast text¹.

As opposed to other countries, like Italy, in which the entry into force of new insolvency codes was delayed in order to avoid more uncertainty in the COVID-19 times², Spain passed a new Insolvency Act Recast in the hardest times of the lockdown. It was published in the Spanish Official Gazette on 7 May and came in force on 1 September.

Given the nature of recast texts in Spain, Spanish restructurings will still need to be adapted to EU Directive on preventive restructuring frameworks³. Nonetheless, some of the changes that have caught our attention follow here.

An advance towards substantive consolidation

The Insolvency Court may now exceptionally rule on the consolidation of estates of insolvent companies when the procedures have been declared jointly (or later accumulated) and there is confusion among the insolvency estates. This could have a relevant impact in the insolvency proceedings of groups of companies such as, for example, Abengoa, who filed for its pre-insolvency proceedings (*preconcurso*) in August.

Less limits to the compensation of claims

The doctrine of the Spanish Supreme Court which determined that the compensation of claims is allowed if it derives from the same legal relationship (*compensación impropia*) is now expressly included.

The concept of productive unit (unidad productiva) is defined

Besides, in cases of **sale of the productive unit**, there is only succession of business regarding the labour force included as part of the productive unit (therefore, there is no regard for the labour force whose contracts are terminated).

Immunity of public claims to the discharge of debt

The debt release for natural

persons requires the debtor to pay public claims. This differs from the criteria of the Spanish Supreme Court and means a step backwards in the Spanish debt release regime.

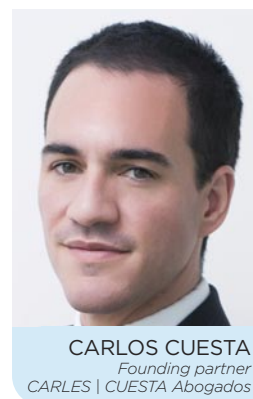
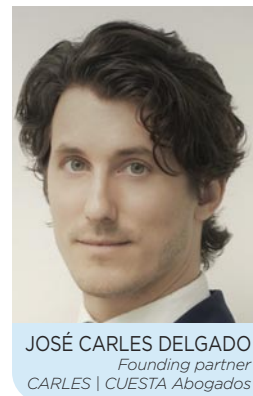
Refinancing agreements

Rules on the jurisdiction of the court in case of groups are clarified. Furthermore, the recast text defines the concept of disproportionate sacrifice (*sacrificio desproporcionado*) which allows creditors to challenge the Court-approval (*homologación*) of a refinancing agreement.

Finally, it should be noted that the recast text is not even recast since its entry into force, as temporary COVID-19 measures adopted on 28 April⁴ will coexist with the recast text until 2022. Among these measures outside of the recast text let us finally highlight (i) a moratorium of the obligation to file for insolvency until 31 December 2020 and (ii) incentives to fresh money from *especially related persons* (not subordinating their claims or even considering them as claims against the estate) until 2022. ■

Footnotes:

- 1 Real Decreto Legislativo 1/2020, de 5 de mayo, por el que se aprueba el texto refundido de la Ley Concursal.
- 2 Decreto-Legge 8 aprile 2020, n. 23. Misure urgenti in materia di accesso al credito e di adempimenti fiscali per le imprese, di poteri speciali nei settori strategici, nonché interventi in materia di salute e lavoro, di proroga di termini amministrativi e processuali, in its article 5, defers the entry into force of the Codice della crisi d'impresa e dell'insolvenza.
- 3 Directive (EU) 2019/1023 of the European Parliament and of the Council of 20 June 2019 on preventive restructuring frameworks, on discharge of debt and disqualifications, and on measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt, and amending Directive (EU) 2017/1132 (Directive on restructuring and insolvency).
- 4 Real Decreto-Ley 16/2020, de 28 de abril, de medidas procesales y organizativas para hacer frente al COVID-19 en el ámbito de la Administración de Justicia.



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