



Spain: Enforcing foreign EU judgments in insolvency procedures

In order to obtain the recognition of foreign judgments in Spain as part of insolvency proceedings, Spain's Insolvency Law (Ley 22/2003 de 9 de Julio, Concursal) must be analysed together with the European Insolvency Regulation (EIR) n° 1346/2000.

After analysing the stated legislation, one can affirm that with the aim of enforcing a foreign judgment as part of proceedings in Spain the following steps must be taken.

Recognition of the Judgment which opens the insolvency proceedings

According to Articles 16 and 25 of Regulation n° 1346/2000, recognition is automatic in relation to the judgment which opens the insolvency proceedings and any other ruling which is part of the insolvency proceedings in

any other Member State. Therefore, as long as a valid judgment is issued by a Court, the ruling will be automatically valid in all Member States.

In order to enforce these judgments, the Regulation refers us to the Brussels Convention of 1968 which contains the specific legal mechanisms to be followed when seeking the said enforcement. Therefore, enforcement in Spain of foreign EU judgments would have to be sought before the *Juzgado de Primera Instancia* in charge of the territory where the debtor has its place of residence. If the judgment ruled by the *Juzgado de Primera Instancia* is to be appealed, this process must continue before the Audiencia Provincial of the territory to which the *Juzgado de Primera Instancia* belongs to.

However, in accordance with Spain's Insolvency Legislation, this general rules do not apply if the judgment is related to a real property. Consequently, judgments regarding the following topics are not subject to be directly enforced:

1. Real rights and other Rights which are likely to be registered in a Public Registry.
2. Rights over financial securities.
3. The right to compensate a credit with a debt.
4. Any contract which allows the use over a real property.
5. Labour contracts and all legal relations with employees.
6. Claw-back actions.
7. Judicial processes which have already began.

Thus, secondary insolvency proceedings shall be initiated in Spain should these actions be pursued.

If this is the case, the trustee in charge of the foreign insolvency proceedings must seek to obtain the opening of Secondary Insolvency Proceedings in Spain, which will be conducted according to Spain's insolvency legislation. The new secondary proceedings will be conducted at the same time as

the main ones and will have legal access to those assets of the debtor which are located on the Spanish territory. Thanks to this mechanism, those assets which the Spanish Insolvency Law initially kept away from foreign proceedings will now be included. The administrators named in the main proceedings and those named in the secondary one will work together by sharing all information.

At this stage of the analysis, the possibility of applying for an Injunction shall be examined (Article 38 of Regulation n° 1346/2000).

Then, the Court where the main insolvency proceedings were opened can, in order to preserve the debtor's assets, appoint a temporary administrator empowered to request any measures to secure and reserve any of the debtor's assets situated in another Member State. In Spain, those measures would take the form of injunctions, known as *Medidas Cautelares*.

According to the Spanish Law, they would have to be initiated before the local court of the place where the debtor has the assets which shall be secured. The Spanish courts which are empowered to hear about these preservation measures are the *Juzgados de lo Mercantil*. If the assets whose preservation is sought are not located on a territory over which a *Juzgado de lo Mercantil* has jurisdiction, the process will have to be initiated before a *Juzgado de Primera Instancia*.

In any case, if the judgment granting or dismissing the preservation measures is to be appealed, this would have to be done before the *Audiencia Provincial* of the territory to which the *Juzgado de Primera Instancia*, or the *Juzgado de lo Mercantil*, belongs to.

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**THANKS TO THIS
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