Survey of Certain Regulation in relation to Insolvency Officeholders

Spanish Practice

INSOLVENCY OFFICEHOLDERS FORUM - INSOL

January 2016

1. Types Of Insolvency Office Holder

Current situation:

The Spanish Insolvency Act provides for a single insolvency practitioner, with the following requirements:

1. Lawyer with at least five years' professional experience and knowledge of insolvency law.
2. Qualified auditor or economist, being a member of a professional association,, with at least five years' professional experience.

The Court can also designate an entity including at least on practicing lawyer and one economist among its partners.

New regulation not yet in force. An amendment to the Act provides that in future:

A single insolvency practitioner shall be appointed by the Court following the turns established in the roster of practitioners.

Nevertheless, in major insolvency proceedings and in certain circumstances, the Court may make a reasoned appointment of an insolvency practitioner other than the one assigned by turn, where it is considered that such practitioner is better suited to the nature of the insolvency proceedings. The Court shall reason its appointment based on specialization or proven prior experience in the debtor's industry or area of business, experience with the financial/debt instruments used by the debtor, experience in proceedings giving rise to material changes working conditions, layoffs or redundancies.

In the case of insolvency proceedings affecting a credit institution, the Court shall appoint the insolvency practitioner from among those proposed by the Fund for Orderly Bank Restructuring (FROB in the Spanish acronym). It shall also appoint practitioners from among those proposed by the Stock Exchange Commission in the case of entities subject to its supervision, or by the Insurance Compensation Consortium, in the case of insurance undertakings.

Where justified in the public interest, the Court hearing the insolvency proceedings may appoint a creditor State Administation or a creditor public sector entity linked to or dependent on such Department, as a second insolvency practitioner, either on its own initiative or at the request of any public sector creditor, . In such case, the representative the practitioner must be a public official holding a relevant university degree.

Role

In the event of voluntary insolvency, the debtor shall conserve the rights of management and disposal of its assets, the exercise of which shall be subject to review, authorization and approval by the insolvency practitioners.

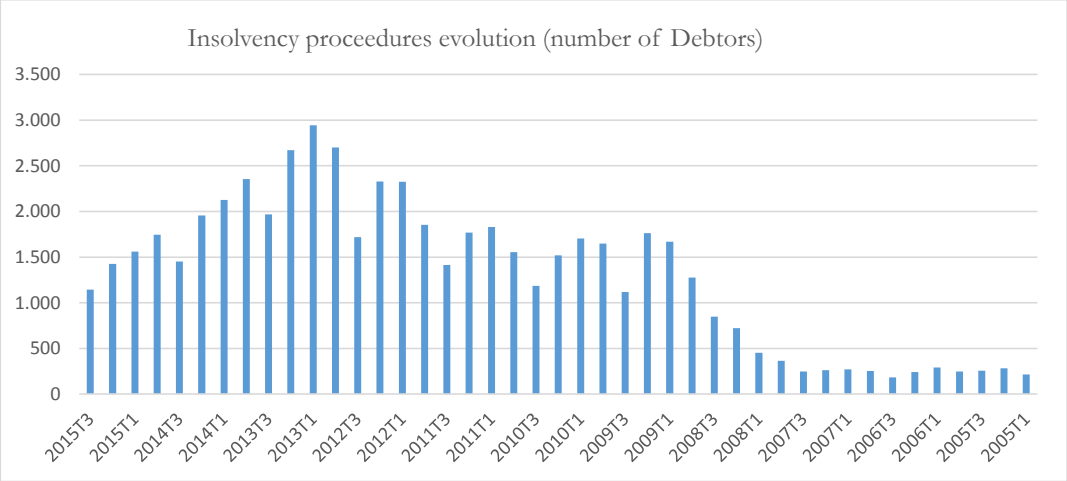
In the case of compulsory insolvency, exercise by the debtor of the rights of management and disposal of its assets shall be suspended, being substituted therein by the insolvency practitioners.
When the winding-up phase is opened the insolvency practitioners replace the directors or the liquidators of the company.

2. Size of the Profession

There is no central registry of IOH in Spain. We estimate that the country has around 5,000 IOHs.

There is no "numerus clausus" related to the IOH list.

After declarations of insolvency peaked in 2013, the number of procedures has gradually fallen as shown in the following chart:



3. Practising Norms

The majority of qualified practitioners are individual lawyers or economists, who are not exclusively on insolvency practice.

Professional services firms carry out the largest insolvency proceedings. These firms may also provide other services aside from insolvency services.

When a legal entity is appointed as the insolvency practitioner, the identity of the natural person who will represent it shall be disclosed to the Court.

The entity appointed shall be subject to the same regime of incompatibilities and prohibitions as natural persons. Likewise, when a natural person is appointed as IOH, he/she shall inform the Court whether he/she is a member of any professional firm in order to apply the same regime of incompatibilities to the remaining partners or collaborators. The regime of incompatibilities, prohibitions, disqualification, liability and separation as established for insolvency practitioners shall be applicable to the representative of the legal entity appointed.

Those persons who have provided any kind of professional services to the debtor, or persons especially related with the same in the last three years, including persons who have shared with the debtor any activity or business of the same or different nature in such period, may not be as appointed insolvency practitioners. The prohibitions mentioned in the Spanish Insolvency Act are described below.

4. Qualification, Training and Entry into the Profession

The necessary requirements for appointment as an insolvency practitioner are established in article 27 of the Insolvency Act, as follows:

a) Being a practicing lawyer with five years' professional experience in the practice of law, with accredited specialist training in insolvency law.

b) Being an economist, qualified commercial specialist or auditor with five years' professional experience, with proven expertise in the insolvency area.

c) The Court also may also appoint a legal entity which includes among its partners a practicing lawyer and economist, qualified commercial specialist or auditor, in order to ensure due independence and dedication to the performance of the functions of insolvency administrator.

Article 27.5 of the Insolvency Act provides that natural persons and legal entities meeting the conditions established by the implementing regulations may register in section 4 of the Public Insolvency Register. Requirements referring to qualifications, proven experience and to specific training courses and examinations will be implemented in the nearly future. Additional specific requirements for insolvency practitioners working in medium and large insolvency proceedings may be established in the near future.

At present, any natural persons or legal seeking inclusion in the Public Insolvency Register must be a member of a Professional Association of Economists/Chartered Accounts or in a Bar Association, or to be listed in the Official Registry of Accounting Auditors.

A draft Royal Decree is currently being prepared to implement the Insolvency Practitioners Statute. This draft provides for an aptitude test for enrolment in the Public Insolvency Registry. The requirements for certification and professional experience must be met before candidates can sit this test.

The test will consist of a maximum of 100 questions in relation to an insolvency case study and will be divided into two parts:

a) A general part common to all applicants.

b) A specific part, to check knowledge of the legal or economic specialty chosen.

5) Professional Bodies

The activity of insolvency practitioners cannot be considered as a specific profession. In Spain there is no specific university major degree on insolvency.

Practitioners are members of the bar association or association of economists, and they act in the capacity of economist or lawyer and not trustees.

In Spain there are several professional association of lawyers and economists, generally one for each geographic region (Autonomous Community). Each of these associations set their own criteria for the annual training required of their members. These requirements consist of the accreditation of a number of training hours per year.

None the professional associations has any specific regulations for the activity of insolvency practitioners, no mandatory minimum standards apply, and no period practice or conduct reviews are performed.

6) Continuing Professional Education

Neither continuous professional education of the insolvency practitioners or any other standards are regulated in the Spanish Insolvency Act.

Insolvency practitioners update their training individually or by participating in the different events and forums organized from time to time to discuss legal developments in insolvency matters.

As already mentioned, the only mandatory training requirements which insolvency practitioners must meet are those required by the professional associations to which they belong (association of economists, law associations, etc.). However, these professional associations do not currently provide any specific training on insolvency matters.

The current draft of the new Insolvency Practitioners' Statute does not contains any regulation of the training of insolvency practitioners, requiring only that insolvency practitioners must be members of relevant professional associations.

7) Body Corporate or Individual

Being a body corporate would facilitate the implementation of certain measures that may be required and mandatory for the members, which would improve practice.

8) Sanction for Acting as an IOH without proper authorization

Inclusion in the rosters of IOHs submitted to the Courts by the professional associations to which practitioners belong (economists, certified chartered accountants or lawyers) is currently compulsory in Spain for appointment as IOH in insolvency proceedings.

Based on the above, and taking into consideration that professional associations are responsible for providing the list of potential IOHs to the Court and for validating that the professionals listed meet the requirements established in the Spanish Insolvency Act, the likelihood of any practitioner's acting without proper authorization is low in Spain.

We are not aware of any cases of unauthorized insolvency practice in Spain. Nevertheless, any such breach of the law which might occur would constitute the criminal offence of "professional intrusion" defined in article 403 of the Spanish Criminal Code.

In the event of conviction, the offender could be sentenced to imprisonment for a term of between 6 months and 2 years.

9) Bonding and insurance

Law 38/2011, of 10th October, amending the Spanish Insolvency Act, established the requirement to arrange mandatory professional indemnity insurance or an equivalent guarantee. This provision applies to all practitioners seeking to act as IOH in any insolvency or bankruptcy proceedings[1].

The only exception to the requirement for professional indemnity insurance or equivalent guarantee is when the IOH appointed is a State Administration or a Public Law Entity (see section 10 of this document), or when public employee is appointed to discharge the duties of the IOH.

Royal Decree 1333/2012, of 21st September regulates IOH civil liability insurance and the equivalent guarantees. This legislation determines the minimum amount of guarantees as explained in detail below.

[1] In accordance with article 29 of the Spanish Insolvency Act ("Acceptance") requires that *"... within the five days following the receipt of the communication, the appointed shall appear before the court to prove that have taken out a civil liability insurance or equivalent guarantee proportional to the nature and scope of the hedged risk in the terms developed in the regulations, to respond for any possible damage in the exercise of its position and to state whether or not accepts the request. When the IOH is a legal entity the requirement to take out a civil liability insurance or equivalent guarantee shall lie on it".*

As an alternative to insurance, article 12 of the Royal Decree provides for a joint guarantee, which must be equivalent to insurance in terms of sum insured and time limits.

Requirements of IOHs to maintain professional indemnity insurance:

1. According to Article 8.1 of Royal Decree 1333/2012, the minimum insured sum for events which result in IOH liability shall be € 300.000.
2. Notwithstanding the above (article 8.2 of Royal Decree 1333/2012):
   a) The minimum insured sum shall be €800,000 when the IOH has been already involved in at least three ordinary[2] insolvency proceedings.
   b) The sum insured shall be € 1.5 M. in the case of High Profile[3] insolvency proceedings, in accordance with the provisions of Article 27 (ii) of the Insolvency Act (Law 22/2003 of July 9).
   c) The sum insured shall be three million Euros when any of the following circumstances applies:
      - In the case of insolvency of a listed company, or an entity in charge of governing securities trading, clearing or settlement, or an investment services firm.
      - In the case of insolvency of a credit institution/bank or an insurance company.
3. The insured sum shall cover both damages and costs incurred by the creditor exercising the action in the interest of the debtor's estate.
4. When the IOH is a body corporate/firm, the insured sum shall be €2 M. (Article 8.3 of Royal Decree 1333/2012). However, the insured sum shall be €4 M. where the body corporate / firm acts as IOH in any of the cases listed in point 2.c above.

[2] Ordinary procedures are all except those classified as High Important procedures (see below) and those classified as small procedures – "procedimiento abreviado". The small insolvency procedures are those which meet any one of the following conditions: i) total assets < € 5 M, ii) total liability < € 5 M, iii) number of creditors > 1000 and iv) work force < 50 employees

[3] High Profile procedures are those meeting any of the following conditions: i) annual revenue > € 100 M, ii) total liability > € 100 M, iii) number of creditors > 1000 and iv) work force > 100 employees

5. Under article 10 of the aforementioned Royal Decree, the civil liability insurance arranged by the IOH may include other coverage freely agreed between the parties, and it may extend the scope of coverage and limitations.

The IOH's professional indemnity insurance may by contracted either directly by the IOH with an Insurance Company or through any of the IOH professional associations, which may offer group liability policies under more attractive conditions.

10) Appointment of IOHs

The appointment of IOHs is regulated in the Spanish Insolvency Act, article 27. The main terms disclosed in the above article are as follows:

1. IOHs will be formed by a single member, who must comply with one of the following conditions:
   - Being a practicing lawyer with at least five years' actual experience in the practice of law and specialist training in insolvency law.
   - Being either a qualified Economist or a Certified Chartered Accountant (hereinafter CCA) with five years' general professional experience including experience in the insolvency field.

   A body corporate may also be appointed provided its partners or employees include at least one practicing lawyer and one economist/CCA, and that it is able to ensure due independence and dedication to the discharge of the tasks incumbent on IOHs.

2. Notwithstanding the provisions of section 1 above, please take into account the following:
   - In the event of insolvency of a listed company or an entity governing securities trading, clearing/settlement, or an investment trustee/investment firm, a technical officer of the National Securities Market Commission (hereinafter CNMV) or another person/firm[4] nominated by the CNMV will be appointed as IOH.
   - In the event of insolvency of a bank or an insurance company, the judge shall appoint an IOH from those nominated by the Deposit Guarantee Fund ("*Fondo de Garantía de Depósitos*", a government entity responsible for guaranteeing deposits and securities held by credit institutions) or by the Insurance Compensation Consortium ("*Consorcio de Compensación de Seguros*"), as applicable.
   - In high profile insolvency procedures ("*procedimientos de especial trascendencia*"), the Court and the IOH referred to in paragraph 1 above shall appoint a second IOH from among the creditors holding ordinary or unsecured claims among the largest liabilities (top third of the total unsecured liabilities).
   - When the debt owed to employees is included in the top third of liabilities, the Court may appoint a legal representative of the employees as IOH[5]. However, the first IOH appointed by the Court will represent the insolvency administrators in dealings with third parties under the terms provided in the Spanish Insolvency Act. If the second IOH appointed is a State Administration or public agency, the professional representing such institution in the capacity of IOH must hold a university degree law, economics or accountancy.
3. The Commercial Courts ("Juzgados de lo Mercantil") keep lists of all professionals and firms who have indicated their willingness to take on the role of IOH,

[4] The professional/ body corporate nominated by the CNMV as IOH must meet the requirements established for Economists or CCAs.
[5] The professional/ body corporate nominated by the employees' representatives as IOH should meet the requirements established for Economists, CCAs or Lawyers.

accredited their training in insolvency matters, and made a commitment to ongoing training in insolvency matters.

To this end, the CCA Institution and the other relevant professional associations will issue the respective lists of IOH professionals/firms available on a yearly basis (December).

4. The IOH will be appointed by the Court seeking an equitable distribution of appointments among those included in the lists. However, the law allows the Court to proceed as follows:
    - The Court may chose a specific IOH when the foreseeable course of proceedings will require special knowledge or training, such as know-how in the field of business turnaround or expertise appropriate to highly complex procedures.
    - In ordinary proceedings (neither small nor high profile insolvencies), the Court shall appoint an IOH from among the candidates who can prove prior appointment as IOH in at least three small proceedings or another ordinary proceeding, unless the judge considers on good grounds that the IOH appointed has manner, suitable training and experience in view of the specific characteristics of the insolvency proceeding.
5. In cases of an insolvency procedure affecting a group of companies, the Court shall appoint only one IOH if possible.

The above is the current state of the regulations. Nevertheless, certain amendments were made in the recent reform of the Spanish Insolvency Act (Law 25/2015 of 28th July), which will take effect in the near future (when the secondary legislation implementing the Spanish Insolvency Act can be drawn up and approved). These eventual changes include the following.: i) IOHs may be classified in three groups based on the size of insolvency procedures (small, medium and large). The conditions under which any given insolvency procedure would be classified into each of these groups have yet to be defined. The requirements applicable to IOHs appointed in medium-sized or large procedures likewise remain to be defined. ii) It is possible that IOHs may be required to demonstrate professional experience and knowledge in exams or through training certificates)in the future. iii) The IOHs appointed to insolvency procedures will be chosen by lot.

11) Remuneration

The Spanish Insolvency Act regulates IOHs' fees depending whether the practitioner is a natural person or a legal entity (article 2.1, Rule of identity, Royal Decree 1860/2004). IOHs' fees are regulated in Royal Decree 1960/2004, of 6th September. The sole fee is calculated as follows[6]:

[6] The calculation mechanism described is used to set the fee for the common stage of the proceeding, while fees for the liquidation or agreement stage are determined as a percentage of the common stage fee, as explained below.

Calculation of the fees of Insolvency Practitioner

The principal amounts taken into consideration to determine fees for the common stage of insolvency proceedings are: *"The value of the assets will be the result of the final inventory, and the value of the liabilities will be the result of final creditors list"*. (article 4.4 Royal Decree 18/60/2004). The following percentages are applied to these amounts:

a) Applicable percentages for assets

Assets (up to euros)	**Amount of fees**	**Rest of Assets (up to euros)**	**Percentage applicable to the rest of assets**
0	0	500,000	0.600
500,000	3,000	500,000	0.500
1,000,000	5,500	9,000,000	0.400
10,000,000	41,500	40,000,000	0.300
50,000,000	161,500	50,000,000	0.200
100,000,000	261,500	400,000,000	0.100
500,000,000	661,500	500,000,000	0.050
1.000.000.000	911.500	Above 500,000,000	0.025

b) Applicable percentage for liabilities

Liabilities (up to euros)	**Amount of fees**	**Rest of Liabilities (up to euros)**	**Percentage applicable to the rest of liabilities**
0	0	500,000	0.3
500,000	1,500	500,000	0.2
1,000,000	2,500	9,000,000	0.1
10,000,000	11,500	40,000,000	0.05
50,000,000	31,500	50,000,000	0.025
100,000,000	44,000	400,000,000	0.012
500,000,000	92,000	500,000,000	0.006
1,000,000,000	122,000	no limit	0.003

If Directors' powers of attorney to manage the insolvent company are suspended, the Court may increase the amount resulting from the application of the previous percentages by up to 50 per cent (article 4.1 RD 1860/2004).

If the Court orders the insolvency to be processed under the simplified procedure (i.e. not in the case of ordinary or high profile insolvencies), the above fees will be increased between 5 and 25 per cent where there is only one IOH (article 4.5 RD 1860/2004).

The resulting fees will be reduced by 25% when the debtor ceases trading[7]. (Article 5.1 RD 1860/2004)

Article 6 of RD 1860/2004 also mentions certain situations in which it is foreseeable that insolvency proceedings will be complex, providing for an increase of 5% in the IOH calculated on the above basis. The applicable situations are as follows:

- When the final assets or liabilities of the Debtor are at least 25% higher or lower than the value declared by the Debtor upon filing for insolvency.
- When at least one quarter of the value of the Debtor's assets are located outside Spain and the total value of the assets is over 10 million euros.
- When there are more than 1,000 creditors.
- When the Debtor has more than 250 employees.
- When any redundancy plans are filed with the Court and the Debtor has more than 50 employees.
- When the Debtor has more than 10 work facilities or at least 3 facilities situated in different provinces.
- When the Debtor is quoted listed company.
- When the Debtor is a credit institution or insurance entity.

[7] If the cessation or suspension of trading is partial, the Court will set the percentage reduction in fees applicable on a discretionary basis.

The subsequent stages of insolvency proceedings are remunerated as follows (Article 9 RD 1860/2004).

- The IOH's fees for the creditors' agreement negotiation ("*fase de convenio*") will be equal to 10 per cent of the above ordinary fees ("*honorarios de la fase común*") for each of the six first months of negotiations.
- The IOH's fees for the liquidation stage ("*fase de liquidación*")will be 10 percent of the ordinary fees ("*honorarios de la fase común*") for each of the first six months of the liquidation process.

  As of the seventh month of both the creditors' agreement negotiation and the liquidation processes, the IOH's fees for each consecutive month will equal to 5 per cent of the fees approved for the common stage.

The recent reform of the Spanish Insolvency Act, which come into force on 29th July 2015 (Law 25/2015), establishes the following limits in relation to IOH fees:

- Article 34.2.b) establishes limits IOH's fees in respect of the common stage[8] ("*fase común*") of the insolvency procedure to the lower of the sum obtained by multiplying the value of the Debtor's assets by 4 or €1.5 M. In highly complex procedures, however, the Court an approve IOH remuneration above the aforementioned ceiling mentioned , subject to a hearing of the parties, but such additional remuneration may not exceed 50% of said ceiling.
- As of the thirteenth month after the opening of the liquidation phase, IOHs will receive no remuneration unless the judge decides in the circumstances to extend the period, after hearing the parties decide. Such extensions will be quarterly and may not exceed a total of six months.

[8] The common stage ("fase común") of the insolvency procedure is the name applied to the initial part of the process before the outcome for the Debtor's business (winding up vs. creditors agreement) is known.

- In relation to the 5% increases in IOH fees referred to above (more then 1,000 creditors, more than 250 employees, etc.) the total increase may not exceed 15 per cent if the insolvency is classified as medium , and 25 per cent if it is classified as large.

In the event of judicial approval of an anticipated creditors' agreement ("*propuesta de convenio anticipado*"), the aforementioned IOH fees for the common stage will be increased up to a 25 per cent (Article 7 RD 1860/2004).

In accordance with article 11 of RD 1860/2004, meanwhile, each IOH will have the right to receive 1% of the net increase in the value of the Debtor's assets net value if they successfully take any actions for reinstatement.

These are the terms applicable at present. Nevertheless, the recent reform of the Spanish Insolvency Act, Law 25/2015 provides for a new regulation of IOH fees in the near future, which that will modify the terms and amounts currently.

Article 34 (ii) of the Spanish Insolvency Act, which came into force on 29th July 2015, provides for a mandatory escrow account in order to guarantee IOH fees in all insolvency procedures[9]. The escrow account will be held and administered by the Ministry of Justice, and all IOHs will be required to make compulsory contributions, as follows: i) 2.5% of an IOH's fees where set between 2,565 euros and 50,000 euros, ii) 5% of an IOH's fees where set between 50,001 euros and 500000 euros, and iii) 10% of an IOH's fees where set at over 500,000 euros.

Contributions to the escrow account will not apply in insolvency procedures where the IOH's remuneration for the entire insolvency proceeding is less than 2,565 euros, or in cases where the IOH fees are paid out of the escrow account(Article 34 (iv.2).

[9] Before the recent amendment of the Spanish Insolvency Act came into force, IOHs found themselves unable to collect their fees in more than a few cases due to the low value of the Debtor's assets or because most of the assets were linked to secured claims.

The reform also establishes the obligation of the Debtor or any other third party to inform the Court about any kind of remuneration it may have paid to the IOH, indicating the amount paid and the date.

Party or parties with a right to review and challenge remuneration.

The IOH must file fee application letter with the Court, quantifying and justifying the remuneration payable. The Court will then notify all parties of the fee application letter and will finally issue a decision approving the amount.

In any phase of the insolvency procedure, where reasonable grounds exist, the Court may modify the IOH's remuneration at any stage in the insolvency procedure, either directly or in response to a demand by creditors, in accordance with the terms defined in the legislation which establishes IOH remuneration (RD 1860/2004).

The decision issued by the Court in relation to IOH remuneration is subject to appeal in the provincial High Court.

12) Personal Liability of IOHs

We could classify the liability of IOH in three groups according to their nature: i) Personal liability, ii) Liability for Tax, Social Security and Labor obligations, and iii) Disciplinary liability.

Personal liability

Article 36 of the Insolvency Act covers the following matters relating to the personal liability of IOHs in carrying out their functions:

1) IOHs shall be held liable to the Debtor and to the creditors for damages and losses caused to the Debtor's assets by acts or omissions which are unlawful or performed without diligence.
2) IOHs shall be liable for any the detrimental acts or omissions of the Debtor, unless they can show that they acted with due diligence to prevent or avoid any damages or loss.

3) Any liability actions brought shall be substantiated in the relevant declaratory proceedings held in the Court responsible for the insolvency proceedings.
4) Liability shall lapse after four years of the date at which the claimant became aware of the impairment or loss concerned in the claim, and in all cases as of the moment at which the IOH and/or any delegate assistants ceased to hold office.
5) If the Court orders the IOH to compensate losses or pay damages, the creditor who has took the action in the interest of the aggregate assets shall be entitled to reimbursement of the necessary expenses incurred out of the total compensation received.
6) The above actions are without prejudice to the relevant liability actions to which the debtor, creditors or third parties may be entitled for any acts or omissions of the IOH and/or delegate assistants which are directly detrimental to their interests.

Liability for Tax, Social Security and Labor Obligations

With regard to tax matters, article 43.1 c) of the General Tax Act, of December 17, 2003, effective from July 1, 2004 makes specific mention of the members of the receivers. *"The members of the receivers and liquidators of companies and entities in general they had not taken the necessary steps for full compliance with tax obligations accrued prior to such situations and attributable to the respective tax obligation. Tax obligations and sanctions subsequent to such situations as managers when they respond with functions of administration."*

In labor and social security matters, the revised text of the Social Infractions and Sanctions Act approved by Royal Legislative Decree 5/2000 of August 4 , article 22.3 states: *"Do not enter , in the manner and deadlines, the corresponding fees for all items collected by the General Treasury of the Social Security or not make the deposit in the amount due, having fulfilled in time its obligations under paragraphs 1 and 2 of Article 26 of the revised text of the General Law on Social Security , if not the lack of income resulting from a bankruptcy declaration of the company, or to a case of force majeure , no postponement was requested to pay the fees in advance at the start of the inspection , unless action that has resulted in refusal."*

Disciplinary liability

As regards disciplinary liability, the Insolvency Act provides for the following cases:

- Severance: *"When a just cause concurs, the Court, on its own motion or at the request of any of the persons legitimated to petition for a declaration opening the insolvency proceedings, or any of the other insolvency practitioners, may sever the insolvency practitioners from office or revoke the appointment of the delegate assistants." (Article 37 LC).*
- Duty to attend: *"The insolvency practitioners shall be bound to attend the meeting. Their failure to do so shall give rise to loss of the remuneration set, returning the sums received to the estate. A remedy of appeal to the higher Court may be lodged against the judicial resolution imposing that penalty." (Article 117.1 LC).*
- Disqualification from the Court, with reinstatement of the good or right acquired and credit loss trustee:
  - *"The IOH may not acquire, either acting in their own name or through a third party, not even at auction, the properties, goods and rights forming the aggregate assets of the insolvency proceedings. (Article 151.1 LC).*
  - *Those who breach the prohibition to acquire shall be barred from holding office, shall return the properties, goods or rights they have acquired to the Debtor without any consideration whatsoever and the creditor who is also an IOH who holds claims in the insolvency proceedings shall lose them. (Article 151.2 LC)."*
- Loss of the right to remuneration, with the obligation to repay any amounts received: *"IOH severed due to undue prolongation of the winding-up shall lose their entitlement to receive the remunerations accrued, and they shall return the sums they may have received for that purpose since the opening the winding-up phase to the aggregate assets" (Article 153.3 LC)*
- Temporary incapacitation to be named in other insolvency procedures for a period of not less than six months or more than two years: *"Approval or disapproval of the IOH actions does not prejudge whether or not a liability action against the IOH is appropriate, but disapproval shall give rise to their temporary barring to be appointed in other insolvency proceedings for a period that shall be determined by the Court in the ruling of disapproval and that may not be less than six months, or exceed two years." (Article 181.4 LC)*

- Fines for failure to respect procedural good faith, article 247 of the Code of Civil Procedure, as referring to *"those involved in any kind of action", given that this would include* the receivers.

13) Release of IOHs from Liability

The mechanism for releasing the IOH from liability provisions is established in Article 36.4 of the Spanish Insolvency Act, which states: *"The liability action shall expire after four years, from the claimant having knowledge of the damage or loss the claim concerns and, in all cases, from when the insolvency practitioners or delegate assistants have ceased to hold office."*

Liability actions which may apply to the debtor, creditors or third parties for acts or omissions of the receivers directly affecting the interests of the same have a limitation period of one year.

14) Independence

The Spanish Insolvency Act mentions "independence" in article 27.2, in accordance with which "…it will be possible to designate a legal person in which at least a lawyer and an economist, or CCA is employed and who guarantees the necessary independence and dedication in the implementation of the IOH functions."

Likewise, article 28.1 of the Spanish Insolvency Law article 28.1 regulating disqualifications, incompatibilities and prohibitions excludes the following from appointment as IOHs:

b) Persons or entities who have provided any kind of professional services to the debtor in the last three years, as well as persons especially related to the debtor.

c) Persons or entities affected by the circumstances mentioned in article 13[10] of Royal Legislative Decree 1/2011, of 1st July, Auditors Act, in relation to the Debtor

[10] It will be assumed that the auditor or audit firm lacks sufficient independence in the discharge of their functions for a Company or Entity, in addition to the cases of incompatibility mentioned in other laws, when one of the following circumstances affects the auditor signing the auditing report: a) having a management or directors role, an employment contract or contract of internal supervision of the audited entity, or having broad powers of attorney under a general mandate granted by the audited entity; b) having a

and its Directors, or in relation to any creditor accounting for more than 10 per cent of the aggregate liabilities concerned in the insolvency proceedings.

d) Persons or entities who are especially related to any person who has provided any kind of professional services to the Debtor.

- The following are considered especially related parties of the debtor: a) The debtor's spouse (or the debtor's directors) or his/her spouse (or a director) within the two years prior to filing for insolvency, his/her legally registered partner or cohabitee; b) ancestors and descendants of the debtor (or directors of the debtor) and/or the persons mentioned in the prior point; c) The debtor's spouse's (or debtor's directors') ancestors and descendants; d) legal entities controlled by the debtor's spouse (or the debtor's directors) or by the persons mentioned in the preceding points (it will be assumed that control exists when one of the situations mentioned in the article 42.1 of Spanish Commercial Act is present); e) legal entities owned by the debtor's group of companies,

---

direct or indirect financial interest in the audited entity, if in one of the two cases it has material significance for any of the parties; c) existence of any relationship of marriage, co-sanguinity or affinity until the first degree, or collateral consanguinity o the second degree, including the spouses of those who have such relationships with the owners, directors or persons responsible for management of the financial affairs of the audited entity; d) preparation of the financial statements or other accounting documents of the audited entity; e) provision of valuation services to the audited entity resulting in the valuation of substantial amounts, in terms of relative importance, in the financial statements or other accounting documents of that entity pertaining to the audited period or fiscal year; f) provision of internal auditing services to the audited entity, except if the Management body of the audited entity is responsible for the internal control system as a whole; g) provision of legal (advisory) services to the audited entity, except where such services are provided by different legal entities and boards of directors, and where they do not refer to the resolution of conflicts about matters which could have a significant impact, in terms of relative materiality, on the financial statements for the audited period or year. h) provision of audit or other services, where such constitute a significant percentage of the total annual revenues of the auditor or the audit within a period of three years; i) provision of services in relation to the design and/or implementation of IT services in connection with the generation of data for the financial statements of the audited entity, except where the audited entity assumes responsibility for the general internal control system, or where the service is provided following the requirements established by the audited entity, which must also take responsibility for the design, implementation, evaluation and functioning of the system.

- The following are especially related parties of the Debtor: a) partners who in accordance with the law are personally liable for corporate debts and are directly or indirectly owners of at least 5% of the company's equity, if the insolvent company had issued shares admitted to trading on the stock market, or 10% if not; and b) the debtor´s directors and liquidators and any other persons or entities holding general powers of attorney granted by the debtor within the two years prior to the declaration of insolvency. Creditors who directly or indirectly capitalized all or part of their claims under the terms of any refinancing agreement adopted in accordance with the article 71 (ii) or the fourth additional disposition of the Spanish Insolvency Act, will not be considered persons linked to the Debtor, even if they accepted managerial roles in the administration of the debtor upon such capitalization, , c) The companies forming part of the debtor's group, where the same meet the conditions mentioned in point 1 of this section.