



INSIDE STORY – SEPTEMBER 2016

Abengoa insolvency proceeding, Spain

In the beginning the Spanish multinational Abengoa was a problem for its financial creditors... then it was a legal issue... and now actually it is a both things.

Abengoa has two main problems. Firstly, it has a debt of €10,000 million and secondly, it needs at least €1,200 million to keep the business in operation.

In March 2016, Abengoa and 44 of its subsidiaries filed a petition before the Spanish Commercial Court announcing its intention to reach an agreement with its creditors in order to avoid the liquidation of all companies. At the same time, and according to the Spanish law, the petitioners avoided any opportunist behaviour that would prevent any creditors from suing any company claiming any amount.

Within the four months of reaching an agreement between Abengoa's group and its creditors, they have agreed a standstill until next October while they find a final solution to the main issues: financing the debt and having enough funds to keep the business running.

In April 2016, the Spanish Commercial Court backed the standstill agreement between Abengoa's group and its creditors with an average of 75% of all liabilities. This was the first challenge to overcome because before granting any decision the judge had to decide if he should consider separately the liabilities of each company or group's liabilities. This decision marked the way forward, referring the percentage to approve the refinancing agreement because each company has its own personality and its own liabilities.

The agreement reached between Abengoa and its creditors consists in an acquittance and conversion the debt in equity so that the company will be under control of its creditors (banks and hedge fund).

We can classify the creditors in two groups: banks (Bankia, Banco Popular, Santander, Caixabank and Credit Agricole) and those which will bring fresh money as a contribution to keep the business running (Abrams Capital, The Baupost Group, Canyon Partners, The D.E. Shaw Group, Elliott Management, Oaktree and Värde). This last group must inject at least €1,200 million if they want keep Abengoa afloat as the best way to take the control of the company and preserve its assets, among which are Atlantic Yield in the US and other renewable companies.

The shareholder meeting has agreed that the new shareholders will be as follow;

- (i) 55% of the share capital for those creditors which have provided fresh money
- (ii) 35% of the share capital for those which have accepted an acquittance of at least 70% of their credit
- (iii) 5% of the share capital for those creditors which have renewed the guarantee granted for Abengoa to the contractor according to his tenders and
- (iv) 5% of the share capital for the actual shareholders.

The legal challenges to face for those who are involved in this case were the international effect of the Spanish Commercial Court decision in case of opening an insolvency proceeding with subsidiaries in very different jurisdictions. Even before opening any insolvency proceedings we have doubts that Abengoa could challenge the creditor's execution of any claim or guarantee out of any EU State Member according to European Regulation 2015/848.

Mariano Hernandez
ABOGADO, M&M ABOGADOS PARTNERSHIP SLP
Email: mhernandez@mmabogados.org