

Spain: Ground-breaking provisions introduced

Bernardino Muñiz / José Luis Vazquez and Hogan Lovells International LLP

On Friday 7 March 2012 a piece of legislation (Royal Decree-Law 4/2014) which amends the Spanish Insolvency Law (Law 22/2003 of 9 July) was passed.

The RD-Law 4/2014 has introduced new ground-breaking provisions in relation with the out-of-court refinancing agreements with the aim or incentivising the early negotiation of such agreements and, by doing so, avoiding the filing for insolvency of the distressed debtors.

Prior to the coming into force of RD-Law 2014 the pre-insolvency provisions included in the Insolvency Law provided very little protection against individual enforcement actions by creditors which could threaten or abort the negotiations of restructuring schemes. From now on by filing a communication with the

relevant Court indicating that negotiations with creditors to agree on a refinancing agreement have been commenced, a Company will be shielded from enforcement actions. This Chapter 11-like freeze period regime affects both foreclosure actions against assets which are necessary to the debtor and enforcement actions from the holders of financial claims.

The second set of ground-breaking provisions included in RD-Law 4/2014 refer to the effects of the approval of refinancing agreements. Under the new regulation of the judicial endorsement of the said agreements it will be possible to cram-down dissenting creditors not only in relation with waiting periods but also with haircuts or debt for equity swaps and other similar operations.



Finally, in order to ensure that the shareholders of the company do not attempt to veto refinancing agreements approved by creditors which involve the dilution of their stake in the distressed company, RD-Law 4/2014 includes provisions that might lead to the shareholders that have acted unreasonably responding of the financial deficit of the company in case it ends up filing for insolvency and being liquidated.

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For further information, please contact:

Simeon Gilchrist
Partner
simeon.gilchrist@edwincoe.com

Ali Zaidi
Head of Insolvency & Restructuring
ali.zaidi@edwincoe.com

Edwin Coe LLP
2 Stone Buildings
Lincoln's Inn
London WC2A 3TH
t: +44 (0)20 7691 4000
edwincoe.com

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