

Spanish Insolvency Law Amended with a Welcome Reform to Article 90.1.6°

The change provides clarity regarding the pledges over credit rights, restoring pledges as effective and efficient security interests.

The Spanish legislator has finally enacted the long-awaited reform to Article 90.1.6° of the Insolvency Law, as recommended and anticipated in our previous reviews to the recent Insolvency Law amendments ([see Client Alert dated 18 March 2014 Material Reform of the Spanish Insolvency Law](#)). The reform clarifies the controversy of the requirements for pledges of credit rights to benefit from a special privileged credit status in an insolvency scenario.

The 2011 Reform

Before the reform of November 2011 to Article 90.1.6° of the Insolvency Law (the 2011 Reform), credit rights — such as those arising from commercial transactions, lease agreements or intercompany loan agreements, among others — were pledged according to the Spanish Civil Code. The Spanish Civil Code entails relatively limited formal requirements, most notably, the delivery of possession of the asset pledged.

The 2011 Reform resulted in an unclear and controversial situation as to how security created over future credit rights, arising after an entity is declared insolvent, would be ranked. Since the 2011 Reform was published, the opinion among scholars and major market practice in Spain has been to structure such pledges without the delivery of possession and request the registration of the pledges over credit rights in a public registry before the declaration of insolvency (the Pledges WODP), in order to benefit from the status of a specially privileged credit (*créditos con privilegio especial*).

The Pledges WODP have resulted in burdensome, unpredictable and expensive security interests. During the period since the 2011 Reform came into force, registers have been extremely formal and have not been aligned in their approach to registering Pledges WODP. This misalignment has caused great uncertainty over the requirements for the Pledges WODP to accede to the relevant registry. This in turn has resulted in high costs because of the continuous clarifications registers required, the constant updates of the credit rights pledged during the life of the Pledges WODP and vague registry fee tables.

The 2015 Reform

The reform to Article 90.1.6° of the Insolvency Law, included in the 5th Final Provision on the Legal Regime of the Public Sector Act (*disposición final quinta de la Ley 40/2015, de 1 de octubre, de Régimen*

Jurídico del Sector Público) (the 2015 Reform), removes any doubt as to the ranking of pledges over credit rights, whether present or future (arising from agreements entered into before the declaration of insolvency), if those pledges are structured by means of an ordinary pledge with a transfer of possession following the Spanish Civil Code.

Conclusion

The Spanish banking and finance legal market has been waiting for (and demanding) this reform since the 2011 Reform, and the Spanish legislator has had several opportunities before the 2015 Reform to clarify this tedious provision. Nevertheless, the 2015 Reform is a very welcome change which will once again make any pledge over credit rights an effective and efficient security interest. Moreover, reverting to the ordinary Spanish Civil Code pledge with a transfer of possession completely clarifies that the security interest will automatically pass with any transfers or assignments to the relevant transferee or assignee.

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