

Spanish Toll roads benefit from Insolvency Law reform

Spain has introduced new insolvency legislation with effect from 6 September to deal with motorway toll roads in urgent need of restructuring. It allows for the public authorities to initiate a standard proposal to facilitate the restructuring of all concessionaires. The new law provides for cram down mechanisms allowing proposals for restructuring to be approved with 65% votes of unsecured creditors and 75% votes of each class of secured creditors. It also allows these concessionaires to be dealt with by the same judge, in the same court using the same standard proposal.

Key issues

- New law for restructuring toll road concessionaires
- Restructuring proposal may be instigated by the public authorities
- Cram down possible (including write-offs and rescheduling) with 65% unsecured votes and 75% secured creditors votes

Purpose of the regulation

Spain is not alone in the fact that many infrastructure projects carried out at the height of the boom, have failed to generate the necessary income to allow them to operate efficiently. The Spanish government has for some time been considering what the appropriate solution would be to these failing projects, not least because the state has underwritten these projects. The new law reforms therefore present a solution to the problem by introducing a "one-size fits all" restructuring process. Inigo Villoria, head of our restructuring and insolvency group in Spain states "The new legislation recognises that it is in the public interest to allow these concessions to be restructured. The solution offered by the reforms allows the concessions to be restructured instead of liquidated, which is good news in terms of the Spanish economy generally".

The formula chosen under the new law applies to all of the insolvent motorway toll road concessions. It is designed to facilitate a proposal for a harmonised arrangement with creditors in each of the insolvency proceedings. The law states that:

"These solutions arise as the result of mediating a joint formula for all insolvency proceedings that entails the presentation of proposals for arrangements with creditors that may affect all of these entities. In this regard, for reasons of procedural economy and swiftness, and in order to obtain a guarantee of success for the devised solution, it is advisable to jointly process all of the insolvency proceedings declared in relation to such entities".

Current status of concessionaires' insolvency proceedings

Formal insolvency proceedings for these concessionaires have already been commenced and some are already in the arrangement stage. In other proceedings, the Courts have simply opted to slow down the processing of the insolvency proceedings, delaying the conclusion of the initial stage. There have not yet been any proceedings in which the liquidation stage has been opened.

In all of these scenarios, the parties (and the Courts hearing the insolvency proceedings) were waiting for the Spanish Administration to make a decision in this regard.

As explained below, the effect of the new law is to extend the arrangement stage, in order to allow the creditors to accept an arrangement, which will be pushed forward by the Spanish Government.

The Administration's solution

In lieu of an agreement between the interested parties (concessionaires, shareholders, creditors and Receivers), the Government has decided to enable the public authorities who originally granted the concessions to instigate proposals for arrangements and to have them jointly processed in one Court. The new law applies even in cases where proceedings have already been commenced, as long as they are not in the liquidation stage.

Practical consequences of the new law

The effects of the new law will vary depending on the status of the insolvency proceedings.

When the term for filing a proposal for an arrangement with creditors has already expired (but the liquidation stage has not yet begun), the insolvency judge will issue a decision granting a new period of time to allow a proposal for an arrangement to be filed. Subsequently, the public authority who granted the concession will be authorised to present a proposal for a creditors' arrangement, which may be an identical proposal for all of the concessionaires undergoing an insolvency proceeding and, in this regard, it may be subject to its approval in the other proceedings. It is our understanding that the Administration is working on the arrangement.

In relation to proceedings where the time period for filing a proposal has not yet expired, the public authority will present a proposal for an arrangement within the term stipulated in the Insolvency Act, although the insolvent party and the rest of the creditors may do so as well.

From this moment on, the proposal for the creditors' arrangement will be subject to the provision of the new law in respect of the regime on majorities for accepting the arrangement. In the event that it involves imposing a write-off or a maturity extension of more than five years (which is likely), the arrangement must be accepted by 65% of the ordinary liabilities. Additionally, creditors in the same category (i.e., financial creditors holding security) may cram down dissenting creditors if a 75% majority is reached within that category of creditors.

Once the proposal for the creditors' arrangement has been filed, the joinder will be ordered in favour of the Judge hearing the insolvency proceedings with the greatest amount of aggregate liabilities (Mercantile Court no. 6 in Madrid). It should be noted that each of these insolvency proceedings, and therefore the creditors' arrangements, will still be processed separately, even though the same Judge will hear all cases.

Commentary

The new law offers a practical solution to the difficulty Spain has encountered with the financing of its toll roads. It certainly represents a positive step forward for the concessionaires and for the state. For creditors, who are not amenable to the proposals put forward by the public authority it does mean that they could have an arrangement imposed upon them provided the requisite creditor majorities are achieved, something which they could not have anticipated when they entered into their original arrangements with the concessionaires. The new law also represents perhaps a growing trend in the restructuring arena where entity specific solutions to financial distress are being sought, especially where failure is perceived to carry risks that extend to the wider economy and where state intervention is effectively justified on public interest grounds. It will be interesting to see whether Spain stops at the motorway concessionaires or considers other infrastructure projects that may also be facing difficulty. It may also serve as a useful blueprint for other jurisdictions. One thing is for sure, the speed at which the Spanish legislature has been able to intervene, is impressive, and one hopes will provide a timely conclusion to the difficulties faced in this sector.

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