

Spain

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English trends in Spanish restructurings

English law can have an important role in the restructuring process of a Spanish company or group.

Traditionally, most restructuring cases in Spain have been governed by Spanish law and they have ended successfully (or not) by means of amendment agreements (ring-fenced or not) to existing Spanish loan documentation.

However, there is now a new trend to use, for example, schemes of arrangements subject to English law in order to provide a more friendly and flexible jurisdiction for creditors.

English law can be applicable in Spanish

restructurings where you are able to find a significant

connection with the UK. Normally, this requirement is complied with when the original loan documentation is already subject to English law.

However, this route may also be applicable to Spanish loan documentation if there is any other

true connection with the UK.

Other more complex alternatives may involve a transfer of the debtor's center of main interests (Comi) to the UK. This may be easier to achieve when there is a holding company as the parent of the Spanish group or affiliates. This can be achieved quite easily by moving directors and business to the UK, since normally there are no further assets or activity located in the jurisdiction of origin.

At this point, the critical issues from the Spanish legal perspective are what the effects of the UK scheme of arrangement are in Spain, and what its qualification would be in case of bankruptcy (*concurso*) of the Spanish debtor.

First, the UK scheme of arrangement will be valid and effective among the parties and this will not be contested. However, if the Spanish debtor is declared in *concurso*, the Spanish judge dealing with the

insolvency proceedings shall apply the Spanish Insolvency law when dealing, for instance, with the ranking of creditors and shall not follow the terms of the UK scheme.

Therefore, keep in mind that these structures may be a good alternative as long as the Spanish debtor is not declared in *concurso* in Spain. Otherwise, Spanish law provides more protected and efficient schemes such as the ring-fenced restructurings (Royal Law Decree 3/2009).

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