

# AMENDMENTS TO SPAIN'S INSOLVENCY LAW - DEBT RESTRUCTURING - ALLEN & OVERY

*Posted on 28/06/2009*



**Jorge Santiago Neves**

Category: [Restructurings](#)



**On 31 March 2009 a new Royal Decree Law was published (RDL 3/2009 of 27 March 2009) covering urgent tax, finance and insolvency measures intended to adapt Spain's existing insolvency law (Ley 22/2003 de 9 de julio, Concursal - LC) to the current financial situation.**

The economic crisis has multiplied the number of insolvency proceedings and has caused the collapse of Spain's Mercantile Courts. The aim of RDL 3/2009 is to adapt certain provisions of the LC to the real needs of commercial transactions, to clarify some doubts regarding the LC and to create a favourable environment for the debt restructuring of companies under stress. At the same time, it intends to give insolvency proceedings greater speed.

## Towards "solvent restructuring"

Among the issues that have created significant uncertainty in the application of the LC has been the potential rescission (acción rescisoria) that may affect any refinancing or restructuring agreement entered into during the so called 'suspect period' of two years prior to the declaration of insolvency.



Antonio Vázquez-Guillén

This had made financial entities reluctant to restructure the debt of companies under stress.

Under RDL 3/2009, 'restructuring' is now defined as reorganisation of debt that responds to a continuity and viability plan of the debtor, and entails either an increase in the loans available to the debtor, the deferral of the repayment calendar or other similar amendments.

Ignacio Ruiz-Cámara y Antonio Vázquez-Guillén, de Allen & Overy en Madrid tratan las medidas introducidas por el nuevo Decreto-Ley 3/2009, del 27 de marzo, que tuvo como fin modificar la Ley Concursal (LC) para hacer frente a la crisis económica. Los autores aclaran, en concreto, la modificación a la LC en caso de acción rescisoria así como una nueva definición de las partes que se califiquen como personas especialmente relacionadas con el concursado y una actualización de las reglas para la presentación por un deudor insolvente de su propuesta anticipada de convenio de acreedores.

From now on, rescission actions foreseen under article 71 LC will no longer be applicable to restructuring agreements which comply with the following requirements:

- (i) the agreement is entered into between the debtor and creditors representing at least 60% of the creditors' liabilities;
- (ii) an independent expert issues a report declaring the reasonable and feasible character of the viability plan and the proportionality and adequacy of the security granted to the market conditions; and
- (iii) the agreement is documented in a Spanish notarial deed.

### Specially related parties

A significant amendment introduced relates to the definition of who shall qualify as specially related to an insolvent company. Creditors who, at the same time, qualify as specially related to the insolvent debtor are ranked as subordinated creditors. The new drafting (article 93.2.1) provides that only those creditors who, at the time the relevant credit right is created, hold 5% of the share capital of the insolvent company (for listed companies) or 10% (for non-listed companies) will be considered as specially related to the insolvent company.

Therefore, only credits from those who hold a relevant percentage of the share capital of a company at the time the credit is granted (and not when the insolvency is declared) shall be considered as subordinated credits. This amendment solves a serious practical problem. In several recent transactions, financial entities have refused to exchange their credits for a stake in the share capital of the debtor (the so called debt for equity solution) or to enforce security over shares due to the risk of becoming subordinated in a potential insolvency of the debtor.

## **Anticipated proposal of creditors' agreement (Propuesta anticipada de convenio)**

The new wording of the LC also removes most of the events contained in the original drafting which impeded presentation by the insolvent debtor of an anticipated proposal of creditors' agreement. The anticipated proposals are critical to accelerate insolvency proceedings.

For the acceptance of the anticipated proposal of creditors' agreement, such anticipated proposal needs to be agreed by creditors of any nature (including subordinated ones) who represent at least 20% of the total liabilities of the insolvent company, unless the anticipated proposal is presented together with the voluntary insolvency request, in which case only 10% is required.

In addition, measures have been introduced to allow debtors to delay the filing of insolvency while they negotiate an anticipated proposal with creditors.

Ignacio Ruiz-Cámara is a finance and capital markets partner in the Madrid office of Allen & Overy. He can be reached via [ignacio.ruiz-camara@allenoverly.com](mailto:ignacio.ruiz-camara@allenoverly.com). Antonio Vázquez-Guillén is a public law and litigation partner and can be reached at [antonio.vazquez-guillen@allenoverly.com](mailto:antonio.vazquez-guillen@allenoverly.com)