

AN OUTBOUND FLOW OF INSOLVENCIES - CLIFFORD CHANCE

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The inflexibility of Spanish insolvency law is leading companies to look internationally for new jurisdictions from which to restructure their operations

The main difference between the Spanish Insolvency system and other European jurisdictions is the absence in Spain of a pre-package deal, which could be used to avoid the initiation of a Court insolvency procedure, says Iñigo Villoria, restructuring and insolvency partner at Clifford Chance in Madrid.

La principal diferencia entre el sistema concursal español y cualquier otra jurisdicción europea es la ausencia en derecho español de un paquete provisional de medidas, lo que está llevando a las empresas a buscar otras jurisdicciones desde las que reestructurar sus operaciones, comenta Iñigo Villoria de Clifford Chance en Madrid

"In Spain there is no way to suppress dissenting creditors, other than a formal insolvency process,

and insolvency is very detrimental for the value of the company. This situation is giving dissenting creditors a very powerful tool in order to put pressure in the context of the refinancing negotiations." Generally speaking, the insolvency process is rarely used in Spain as a restructuring tool, due to timing issues and a lack of flexibility, he says.

Although recent reforms of the regime have tried to solve these problems, there remains a need for further revision of restructuring tools.

"As of today, there have been few precedents of successful insolvencies.

An amendment has been made in order to allow a quick termination of the insolvency process by means of a creditors' arrangement. However, even when the majority of creditors had given their consent at the beginning of the process, there continues to be a need to wait for several months in order to exit the insolvency process, as the arrangement cannot be approved until the Court has definitively assessed the assets and liabilities of the company," he says.

As a result, he observes that certain other European jurisdictions where there is an assumption of better restructuring tools than exist in Spain are showing an increasing willingness to accept jurisdiction to deal with the insolvency of Spanish incorporated companies (notably France and UK), in cases when it may be arguably alleged that the company has interests in that jurisdiction.

"The purpose is to coordinate the restructuring process of the whole group of companies in which the Spanish entity is integrated and so avoid problems arising out of the need to coordinate separate insolvency procedures in the different jurisdictions where the companies of the group have been incorporated," says Villoria.