

FACING THE INSOLVENCY VOID - ARAOZ & RUEDA

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Company directors and small and medium-sized enterprises (SMEs) have been among the hardest hit by Spain's economic downturn

As the recession enters its third year, lawyers are beginning to see SMEs account for an even larger share of insolvencies.

Iñigo Rodríguez-Sastre, Head of Insolvency at Araoz & Rueda, has seen an increase in company directors filing for insolvency as a result of the financial and business pressures being faced rather than creditors foreclosing on their business.

This has been down to the fact that the Spanish banks are not faring much better than the rest of the economy, with credit restrictions imposed on companies that are already experiencing a lack of capital, which has resulted in more SMEs going insolvent.

"SMEs who work with the public administration, are paid more than nine months later than the date the goods were shipped, i.e. services were rendered and the invoice was issued." Rodríguez-Sastre explains: "A clear example in point is pharmaceutical companies and drugstores who sell to the

social security boards of Spain's various regions; because of restrictions in public spending, regional governments are taking much longer to pay, which is forcing many SMEs out of business."

Delays in payments are becoming more and more common. Organisations active in sectors such as waste management and park conservation are also facing lengthy waits for payment, despite the fact they too have suppliers and staff that need paying.

Rodríguez-Sastre stresses that Company Directors need to be aware that under Spanish law the insolvency test is "cash based". When it comes to company debts, as a general principle, directors are not liable for such debts because they are protected by the business judgment rule.

Under this rule, if the company stops trading and the Directors have not applied for voluntary insolvency, or if the company goes bust for purely business reasons but creditors can show that the insolvency was generated or aggravated by actions or omissions from Directors, then they may be liable.