

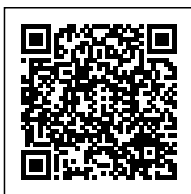
FINANCE AGREEMENTS STANDING UP TO SCRUTINY - PÉREZ-LLORCA

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As the number of company insolvencies in Spain continues to climb, emphasis is therefore being placed by creditors on ensuring that any agreements they enter into are capable of standing up to scrutiny in a bankruptcy situation, says Félix Montero, dispute resolution partner at Pérez-Llorca in Madrid.

Como el número de empresas en procesos de insolvencia continúa creciendo, los acreedores están poniendo énfasis en cerciorarse de que cualquier acuerdo financiero que se suscriba pueda hacer frente a una situación de bancarrota, comenta Félix Montero, socio de Litigación y Arbitraje de Pérez-Llorca en Madrid. Los bancos exigen garantías cada vez más altas ya que en un proceso de

insolencia quieren asegurarse de que recuperarán lo máximo posible.

"Both creditors and debtors want of course to avoid insolvency but if it does occur the banks want to make sure that any financial arrangements and any guarantees given will stand in line or ahead of any competing claims."

It is important to note, says Montero, that in the event of an insolvency any contractual arbitration clauses will become invalid and so the investigation of claims will be undertaken by the courts.

"Often the main judicial issue is on how financing and particularly re-financing packages have been created and agreed – what is the security and what are the guarantees given. The aim of the banks is to create a scenario in which assets are 'ring-fenced' but that means having to ensure that they do not impinge any preexisting or privileged claims. The idea is not to prejudice the potential creditors in the insolvency."

Such agreements can be difficult to draft, says Montero, as they have to acknowledge any prior or senior debt that may exist in a different context and creditors will inevitably be worried about being challenged by those holding mortgage or other debt guarantees or even by ordinary creditors.

"Creditors want to avoid any potential conflicts arising over any insurances offered on assets before the latest agreements came into being, and to avoid anything that might be perceived as a 'part-payment' as this may too be perceived as invalid."

Banks, he says, are inevitably also becoming much less tolerant of financial covenant breaches by debtor companies, they have begun to make the first move and as a result there can be a rapid transition towards an insolvency procedure if appropriate refinancing does not take place.

"Debtors need therefore to be prepared to fully negotiate with creditors – to pre-empt any issues before the banks decide that a situation is already lost. The finance arena has changed completely. The banks are demanding ever-higher guarantees and in the event of an insolvency want to ensure that they are able to recover as much as possible."