

LOOKING FOR A MORE FLEXIBLE PRE-INSOLVENCY REGIME - JAUSAS

Posted on 31/12/2009



"Companies are going global in search of scalability and there is huge potential in these markets."

Allen Miller, Head of Corporate, Co-head Latin America practice

Category: [Corporate](#)



Despite the introduction of reforms in March 2009 aimed at encouraging out of court agreements between debtors and creditors in Spain, pre-insolvency processes remain far too rigid for practical application, says Agustín Bou, Head of Restructuring and Insolvency at Jausas.

"The current process outlines the need for a viability plan, the appointment of an insolvency auditor, and the agreement of three-fifths of creditors which must then be investigated by the Court, with the debtor company still having to file insolvency proceedings," he explains.

Notable also is the variable application of pre-insolvency processes across different business sectors. The last reforms having been heavily influenced by the collapse of the country's construction and real estate sector, he says.

A pesar de las reformas introducidas en marzo de 2009 destinadas a fomentar los acuerdos extrajudiciales entre acreedores y deudores en España, los procesos de pre-insolvencia siguen siendo demasiado rígidos para su aplicación práctica, afirma Agustín Bou de Jausas.

"A construction company may have relatively few suppliers with a single major creditor, often a bank holding a mortgage, and in such scenarios it is usually in everyone's interests to continue financing the project, finish the scheme, and get the assets onto the market."

In such circumstances, the mere threat of a company filing for bankruptcy may be enough to get creditors around the discussion table, with the hope of reaching an agreement, says Bou. But matters are often not so straight forward in other sectors.

"Industrial companies often have hundreds of suppliers and it may be impossible to reach a viable agreement with the majority of them, while any preinsolvency agreement is in any event only binding on signatory creditors."

He therefore welcomes a Government Commission now looking at a new more flexible fast-track pre-insolvency process, modelled on Spanish, Italian and French experiences. The proposals foresee a much simpler and cheaper process, without the need to file formal insolvency proceedings or for court-appointed receivers, he explains.

Under the proposals a debtor need merely inform the Court it has entered into negotiations with its creditors, he says.

"If a simple majority agreement can be reached it may be endorsed by the Court and apply to all creditors. The timetable for the reforms may be slightly optimistic – with a consultation paper planned by the end of the year – but the sentiment behind it offers a much more realistic assessment of the issues in hand."