

Insolvency & Restructuring Q&A - Spain

Spain along with Greece and Portugal has been under a lot of scrutiny over the state of their finances. There has been an on-going debate to the 'European bail-out' and whether certain countries could withstand another year like 2010.

Lawyer Monthly speaks to top legal expert, José Pajares, to find out how he thinks the Spanish economy will fare, and if 2011 will hold any surprises to boost the Spanish economy and image...

Q **Has insolvency and restructuring increased since the global recession? What sort of effect has it had on locally based businesses?**

Insolvency, and in a lower percentage the restructuring (as Spanish Insolvency law doesn't make this operative easier, despite the modification approved by the RDL 3/2009 of May 27th 2009, and waiting for the law which reformed the Insolvency Law and whose draft has been approved by the Spanish Government on December 17th, 2010) has greatly increased in the last two-three years; only in 2010 we can see a decrease around 3% in connection to 2009.

Obviously this situation has led to the closing down of many companies and the loss of many jobs, but above all the chain effect between suppliers and clients.

Q **What would you advise companies who are unable to reconcile their debts, are there any preventive steps they can put into place?**

From my personal point of view the only viability is to negotiate out of Court upon close rules with all the Creditors so that the company can continue with its activity acquiring goods and with its commercialisation making these suppliers stronger, and in time and, of course with a deduction, to pay the previous ones.

Q **What sort of approach has the government taken vis-à-vis companies that are unable to pay their debts?**

An attempt has been done in Spain with the RDL 3/2009, on 27th of March, but it was insufficient and

for this reason the Spanish Government on December 17th, 2010 has approved the draft of the law which modifies the Insolvency Law.

Q **What are the typical errors committed by companies involved in restructuring?**

There is no doubt that the overhang and the investment in unnecessary assets always.



Q **What if any legislative progressions do you see for insolvency and restructuring?**

A compulsory mechanism for all the creditors it must be created in order to permit the company to go on if it could keep itself with positive cash-flow, independently on the payment of the previous debt. This with its future development it will create wealth to deal with them. Moreover, it was necessary (see GM case) to allow that it would be approved by 1/3 of the creditors. **LM**

José Pajares top legal expert from Pajares & Asociados



ACADEMIC QUALIFICATIONS:

- Law Degree from University of Saragossa, graduated 1.982
- Registered with the following Law Societies: Real e Ilustre Colegio de Abogados de Zaragoza from 1982 and later to Ilustre Colegio de Abogados de Madrid.
- Managing Shareholder of PAJARES & ASOCIADOS, ABOGADOS DESDE 1958 S.L. (www.pajaresyasociados.com)
- Partner & Member of ORIA, PEÑA, PAJARES & ASOCIADOS, S.L., integrated with the offices PEÑA & ORIA S.L., Chris & Seeger, Dennis C. Reich and Henry Dahl (North Americans) specialised in civil liability (www.lawyerseekeurope.com)
- Partner & Member of ABOGADOS EN DEFENSA DE LA SALUD S.L. integrated with the Office of PEÑA & ORIA S.L., specialised in Health Law. (www.abogadossalud.com)
- Partner & Member of HOMOLOGA TUS ESTUDIOS S.L., integrated with the prestigious lawyer D. Alejandro Arregui de las Heras specialised in the homologation of foreign university degrees. (www.homologatusestudios.com)
- President of the Bankruptcy Law Commission of Insolvencies of the International Association of Lawyers (U.I.A) and member of his Committee of Presidency from April 11, 2008. As such he has intervened in different and important restructuring and refinancing
- Director of Juridical Services at Saragossa office of ERNST AND YOUNG, S.L. between 1999 and 2003
- PAJARES & ASOCIADOS, ABOGADOS DESDE 1958 S.L. chosen by Corporate International Magazine Global Award as winner in the category of "BANKRUPTCY ADVISORY FIRM OF THE YEAR IN SPAIN" (Firm of the year in Spain in Insolvency advice).
- Independent Counsellor, being a part or not of the board of Directors, Advice Adviser and / or Executive Committee, for different mercantile entities related to the nurturing, plastic, hotel and catering business, leisure, third age, promotion and construction, SIMCAV, etc. Beside advising on the administration of different movable properties of the big capital, many of them proceeding from transmissions to third parties of participations in mercantile national companies.
- Arbitrator of the Aragonese Court of Arbitration and Mediation.
- Professor in the School of Formation of the REAL E ILUSTRE COLEGIO DE ABOGADOS DE ZARAGOZA.
- Collaborator in the ESCUELA DE PRACTICA JURIDICA DE LA UNIVERSIDAD DE ZARAGOZA, Faculty of Law.
- Secretary of the Non-governmental Organization ASOCIACION INFANCIA Y DESARROLLO POR EL TERCER MUNDO (THIRD WORLD CHILDHOOD AND DEVELOPMENT ASSOCIATION), supervisor and coordinator of projects in the State of Gujarat, India



PUBLICATIONS

- Author of numerous articles specialised in national press (ABC, EL MUNDO, LA GACETA DE LOS NEGOCIOS, EXPANSION, PUBLICO, HERALDO DE ARAGON, etc) and international (INTER-AMERICAN BAR FOUNDATION, INTERNATIONAL JURISTE, CORPORATE INTL) and participant in diverse forums in Spain, Morocco, Austria, Switzerland, France, The United States, Italy, Brazil and Turkey.
- Official participant in the Congresses of Geneva, Fez, Salvador of Bay, Paris, Bucharest, Seville and Istanbul of the UIA held between 2004 and 2010.
- Speaker in courses, seminars and conferences.
- Professor at REAL E ILUSTRE COLEGIO DE ABOGADOS DE ZARAGOZA, for the courses of the reform of the Insolvency Law held on the 15th and 16th October, with the conference: "LOS ACUERDOS DE REFINACIACION SEGÚN EL RDL 3/2009"
- As President of the Bankruptcy Law Commission of International Association of Lawyers (U.I.A) has taken an active in 35^o session of the COMMISSION OF NATIONS JOINED FOR THE INTERNATIONAL COMMERCIAL LAW (UNCITRAL), WORKGROUP V, REGIME OF INSOLVENCY held in Vienna, between November 17 and 21 of 2008, 36^o, in New York, between May 18 and 22 of 2009 and 38^o in New York, between April 19 and 23 of 2010



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