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Client Alert
Commentary

Latham & Watkins Insolvency Practice Group

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Mercantile Courts of Catalonia to Follow "Celsa" Rationale

Proceedings from the Courts' seminar on the homologation of refinancing agreements clarify some material uncertainties.*

Background

As a result of a recent seminar, the Catalonian Mercantile Courts have reached a common understanding (the Conclusions) regarding, among other issues, current controversial insolvency issues related to the Homologation of Refinancing Agreements. Notably, although the seminar proceedings expressly states that the Conclusions do not pretend to impose on the Catalonian Mercantile Courts any specific doctrine, the courts articulate their intent to respect the Conclusions — provided that they apply in the relevant case. Furthermore, the proceedings aim to present insolvency receivers with a reasonable legal solution to issues related to the Fourth Additional Provision of the Spanish Insolvency Law (the AP4) as recently amended by means of Law 14/2013, 27 September on support for entrepreneurs.

Maturity extensions and moratorium on enforcement under the AP4

The Conclusions regarding the maturity extensions and moratorium on enforcement are (i) the three-year maximum period limit set out in the AP4 refers solely to enforcement actions sought by financial creditors and not to maturity extensions stated in the refinancing agreement and (ii) the moratorium enforcement of any type sought by financial creditors may be imposed on any financial creditor even if they are secured.

In light of the above, on one side, homologated refinancing agreements could include maturity extensions beyond the three-year stated time period. However, such a maturity extension would only be imposed on "unsecured" financial creditors (please refer to the section below). On the other hand, the moratorium on the enforcement of security interests could not extra-limit the three-year time period and would be imposed on secured financial creditors.

The below simplified matrix describes the Conclusions in this regard:

	Maximum Period (if any)	**Financial creditors which may be crammed down**
Maturity extensions	No maximum period	"Unsecured" (as defined below)
Enforcement moratorium	Three years	Unsecured or secured

Concept of secured creditor under the AP4

Pursuant to the Conclusions, and for the purposes of the AP4, a secured financial creditor — which is entitled neither unilaterally nor in any circumstance to enforce the collateral — shall not be regarded as a secured financial creditor. Consequently, maturity extensions beyond the three-year time period could be imposed on financial secured creditors which are entitled neither unilaterally nor in any circumstance to enforce the collateral (*e.g.* a member of a group of creditors where a certain majority decision for enforcement is required and where said enforcement shall be carried out by the security agent). In other words, as we anticipated on our previous *Client Alert*, the Catalonian Mercantile Courts will apply the "Celsa" rationale.

Conclusion

The legal preciseness of the Conclusions raises some questions about their compatibility with the AP4 and, thus, poses some risk of a potential review by the Superior Courts. However, the Conclusions offer players involved in restructurings whose debtor has its centre of main interests in is Catalonia (as a general rule, and except otherwise proven, the centre of main interests shall be the place of the debtor's corporate headquarters) some clarification about the above material pre-existing uncertainties which require careful consideration.

* Please refer to our previous *Client Alert*, *Spanish Insolvency Law Amendment: Refinancing Agreements Homologation Majority Rate Lowered to 55 Percent*, October 28, 2013 regarding (i) the amendment to the homologation of refinancing agreements contained in the AP4 carried out by Law 14/2013, 27 September on support for entrepreneurs and (ii) the noteworthy ruling known as the "Celsa" case.

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