

Ley Concursal

The new Spanish insolvency law, the *Ley Concursal*, came into effect on 1 September 2004. The new law was ratified on 9 July 2003 and had originated from a reform proposal issued by the Spanish Parliament on 23 July 2002. The *Ley Concursal* is now the comprehensive code for insolvency law in Spain, replacing various antiquated statutes.

All types of insolvency proceedings in Spain have now been consolidated into one (a *concurso*), which will have different outcomes for the insolvent company, depending on the financial status of the debtor.

A *concurso* will result either in a creditors' agreement or the liquidation of the company. Creditors may agree with the company that the company's operations should continue or that its management be vested in a third party. A valid agreement between the debtor and its creditors requires the consent of all parties to it and must not require more than 50 per cent of debts to be written off or allow more than five years for repayment of all debts. Liquidation will occur only if a valid creditors' agreement cannot be concluded.

A company may open a *concurso* voluntarily or at the instigation of creditors. In the case of a voluntary *concurso*, all business decisions in relation to the company will be overseen by court-appointed administrators. In a mandatory *concurso*, management of the company will be transferred to another person. In each case, a commercial judge presides over the *concurso* and is assisted by the administrators. The *Ley Concursal* also introduced major reforms to the substantive body of Spanish insolvency laws. For example, Spain has a new priority regime for debts, as follows:

- Debts relating to the insolvency proceedings;
- Debts secured by real property or moveable personal property;
- Certain governmental charges, including taxes up to 50 per cent of their value;
- Ordinary debts; and
- Subordinated debts, including certain debts owing to persons associated with the company, such as directors.

The timeframe for voidable preferences has also been extended, and a moratorium on enforcement of security introduced, under the *Ley Concursal*. The legislation also addresses cross-border insolvency issues for the first time in Spanish legislative history, adopting an approach that is based on the EC Regulation on Insolvency Proceedings and generally consistent with the UNCITRAL Model Law.