



Financing and restructuring



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CASES AND TRANSACTIONS

ELECNOR – Asset-backed securities fund to develop sustainable energy projects

Cuatrecasas advised Elecnor on establishing an asset-backed securities fund—Elecnor Eficiencia Energética 2020, Securitization Fund—worth €50 million with a seven-year maturity period, which will be traded on the Spanish Alternative Fixed-Income Market (MARF).

G-advisory rated the issue as Green Bonds, as it meets the requirements of the Green Bond Principles.

The fund has been assigned the credit rights resulting from the contracts for energy services management and the maintenance of public lighting installations, which Elecnor carries out for 43 Spanish municipalities and public entities. This is the first securitization transaction for the sale of future credit rights derived from contracts with public administrations to be concluded in Spain.

Banco Sabadell is the structurer, placement entity, registered advisor and payment agent of the transaction, with TDA in charge of managing the securitization fund, and SGFT of asset-backed securitization.

ELAWAN ENERGY – Financing for five photovoltaic plants

Cuatrecasas has advised a bank syndicate on financing granted to five companies in the Elawan Energy Group for a project to build, start up and operate five photovoltaic plants in Bonete and Higuera (Albacete region of Spain).

The plants, with a total capacity of 250 MW, have independently structured loans totaling approximately €92 million, granted by Banco Sabadell, Bankia, Abanca Corporación Bancaria and Banco Pichincha Spain to the special purpose

vehicles that own each plant, all of which are wholly owned by Elawan Energy.

The five plants each have installed power of 50 MW and are currently at the construction stage, with start-up expected for next summer.

Elawan Energy, through these five plants, pointed out that it will supply energy to approximately 122,000 homes, with estimated annual production of 500 gigawatt hours (GWh) of clean energy.

COLONIAL – Credit facility for €1 billion

We advised Colonial on a new type of revolving financing not secured by a mortgage, the interest rate of which is linked to the evolution of certain corporate sustainability parameters audited by an independent agency.

The banking pool is made up of different national and international financial institutions, including CaixaBank acting as the agent bank, and BBVA, BNP, Natixis, and again CaixaBank, acting as sustainability agents.

The new credit line, with two €500-million tranches and an extension option of up to two years, will inject liquidity into the company for its business over the next five years.

CODERE – Issue of super senior bonds

Cuatrecasas advised Codere México, S.A. de C.V., a subsidiary of Codere, S.A., on its participation in the issue and placement of two tranches of super senior bonds, for a total of €250 million.

The bonds, which mature in three years, were issued by Codere Finance 2 (Luxembourg), S.A. and guaranteed by, inter alia, a pledge on the shares of Codere México, S.A. de C.V., subject to Mexican legislation, and by a personal guarantee granted by that company.

The bonds were issued in two tranches; the first on August 29, 2020, for a total amount of €85 million;



and the second, on October 30, 2020, for a total amount of €165 million.

Codere is a Spanish multinational company, a standard bearer in the private gambling industry, operating in eight countries in Europe and Latin America.

This transaction marks a milestone in the restructuring of the group's debt, since it forms part of the Scheme of Arrangement entered into by Codere Finance 2 (UK) Limited with its creditors under Part 26 of the UK Companies Act 2006.

In particular, the transaction allowed Codere to refinance its debt and obtain funds which will be used for the general corporate purposes of the group's companies in the various jurisdictions in which it operates.

ING BANK – Largest RMBS fund registered in Spain

We advised ING Bank on establishing an asset-backed securities fund, assigning credit rights arising from mortgages (residential mortgage-backed securities, or "RMBS") and on issuing securitized bonds worth €14.056 billion.

ING Bank Sucursal en España and ING Bank, N.V. registered a prospectus with the Spanish Securities and Exchange Commission regarding the SOL LIION II RMBS fund, a fund made up of residential mortgages, considered STS (simple, transparent and standardized) under the EU regulations on securitization, for €14.056 billion. This is the largest transactions of its kind to be registered in Spain to date.

The fund's securitized bonds may be used as collateral with the European Central Bank. It is the first open-end revolving assets and open-end liabilities RMBS fund, meaning that the number of bonds issued can be increased up to a maximum of €15.75 billion.

TRESMARES CAPITAL – Direct lending for corporate acquisition

Cuatrecasas advised TRESMARES CAPITAL on granting direct lending as part of the partial acquisition of shares of Prodesa, a company engaged in supplying turnkey projects of entire biomass pellet production plants.

The transaction was structured around two bilateral funds granted by the investment fund Tresmares Santander Direct Lending, S.I.C.C., S.A.; one to Prodesa Medioambiente, S.L. and the other to the purchasing special purpose vehicle.

Tresmares Santander Direct Lending, S.I.C.C., S.A. is a private debt fund of up to €900 million, belonging to the independent alternative finance platform TRESMARES CAPITAL, founded by Banco Santander.

LEGISLATION

COVID-19: latest legislative measures

On October 25, 2020, under Royal Decree 926/2020, the Spanish government once again declared a state of emergency for the whole of Spain, lasting until May 9, 2021. Exceptional measures have continued to be adopted in recent months, including:

- **ICO loans.** Measures have been reinforced to support the liquidity and solvency of companies by extending the period for granting the two guarantee facilities managed by the Spanish State Finance Agency (*Instituto de Crédito Oficial* or "ICO"), and the maturity date and grace period of previously guaranteed transactions.
- **Insolvency.** Recent laws have extended the suspension of the obligation to file for insolvency proceedings until March 14, 2021, and increased the temporary scope of measures on the non-admission of applications for non-performance of composition agreements and refinancing agreements.



- **Leases.** New measures have been introduced on the temporary reduction of rent or the moratorium on payments for certain leases of business premises.
- **Evictions.** Eviction and foreclosure procedures affecting those in a vulnerable situation have been suspended until May 9, 2021.

These measures are summarized in the following legal flashes:

[Royal Decree-Law 34/2020: main legal consequences for businesses](#)

[Royal Decree-Law 35/2020: impact on businesses](#)

[Royal Decree-Law 37/2020: new measures on the suspension of eviction and foreclosure procedures](#)

Spain starts implementing European recovery instrument Next Generation EU

December 31, 2020 saw the publication of Royal Decree-Law 36/2020 of December 30, which incorporates various legislative amendments on public procurement, subsidies, environmental checks on projects and administrative organization, increasing the flexibility of the administrative procedures in the measures and programs of the [European recovery instrument Next Generation EU](#), approved by the European Council on July 21, 2020 and established in the [Council Regulation \(EU\) 2020/2094 of 14 December 2020 establishing a European Union Recovery Instrument to support the recovery in the aftermath of the COVID-19 crisis](#).

This European instrument, allocated €750 billion, means that Spain will receive around €140 billion in the form of transfers and loans for the period 2021-26, aimed at repairing the immediate economic and social damage caused by the COVID-19 pandemic. Part of these funds will be managed under the Spanish Government's National Recovery, Transformation and Resilience Plan.

Regulations affecting the financing of renewable energy projects

In the fourth quarter of 2020, various pieces of legislation were enacted relating to the energy sector and, in particular, of relevance to transactions for the financing of renewable energy projects:

- Order TED/1161/2020, published on December 5, 2020, regulating the first auction mechanism for granting the renewable energy economic regime and establishing the indicative timetable for the 2020-2025 period. For further information you can consult our overview at: [Publication of the Order regulating economic regime auctions for renewable plants](#)
- Royal Decree 1183/2020, of December 29, establishing the new process for granting authorization for grid access and connection to electricity transmission and distribution grids to install new renewable energy plants. The process will apply to producers, consumers, storage facility owners, and owners and managers of transmission and distribution grids.

CASE LAW

Classification of group companies' credits

The Supreme Court, in judgment 610/2020, of November 13, 2020 (ECLI:ES:TS:2020:24) interprets article 92.5 of the former Insolvency Act (now article 281.2.3 of the consolidated text of the Insolvency Act), under which *credits other than loans whose holders are shareholders* were excluded from being classified as subordinate credits. The Supreme Court states that the rule is clear and precise: the exception is limited to the shareholders with the significant participation specified in articles 93.2.1 and 93.2.3 of the former Insolvency Act (now articles 281.1.1 and 281.1.4 of the consolidated text of the Insolvency Act), but does not apply to companies that are in the same group



as the insolvent company. The SC does not admit the analogy as it considers that there is no loophole or similar reasoning. It therefore concludes that credit for property lease payments for which another company in the same group is creditor must be classified as subordinate.

Stamp duty on assignments of mortgage loans

In judgment 142/20 of October 29, 2020 (ECLI:ES:TS:2020:3699) the Supreme Court establishes doctrine regarding how the tax base of stamp duty on mortgage loan assignments is determined.

The court considers that, in cases of assignment of mortgage loans and credits in which a part of the amount has already been paid to the creditor, the tax base will consist of the outstanding principal at the time of the assignment, including expenses, compensation or other items and, therefore, the actual pending mortgage security.

This conclusion coincides with the administrative rulings of the Directorate General of Taxes since 2014 (see, inter alia, rulings V1221-14, V1262-15, V1263-15, V1079-15, V2384-15).

Right to buy back disputed debts: non-admission of flat-rate loans in the sale of portfolios

The Supreme Court, in judgment 505/2020, of October 5, 2020, (ECLI:ES:TS:2020:3164) again rejects the claim to exercise the debtor's right to buy back a debt assigned in a sale of a loan portfolio.

The SC reiterates the exclusion from the right to buy back disputed debts in art. 1335 CC of overall or flat-rate assignments, being forms of sale which, on the other hand, fall within art. 1532 Civil Code (CC). In the case in question, the contract is arranged as a whole (and not as the sum of as many sales as are the loans that are included in the portfolio). The contract has a single subject matter (the portfolio) and a single price.

The SC also bases its ruling on the following other grounds:

- › Art. 1535 CC being an exceptional rule.
- › The impossibility of setting an individual price for each debt of the assigned portfolio, without altering the parties' intention.
- › The similarity to a transfer en bloc in cases of segregating a part of the creditor's assets.
- › The analogy to the regulation in art. 25.7 of the Urban Leases Act, excluding a tenant's leasehold right of first refusal in the case of a complete transfer of the building in which the dwelling is located.
- › The literal terms of art. 1535 CC itself, which refers to a sale of "a debt" in the singular.
- › The unified nature of the consent, in relation to the subject matter and the consideration of the contract.
- › The view that, given the criteria of economy of scale, the unit price of the portfolio would never match the sum of the prices of the loans which form it.

Dismissal of a clawback action owing to justified damage

In judgment 2574/2020 of the Provincial Court of Barcelona (sect. 15) of December 3, 2020, (ECLI:ES:APB:2020:11467), a clawback is sought for payments originating from a settlement agreement which ended an inventory support contract. The Provincial Court, in view of the overall context of the agreement, concludes that as the creditor withdrew because it formalized enforcements that had already begun, meaning it would be deprived of the brand, a substantial part of the stock and the current account balances of the insolvent party, it justifies the payments being made, as these acts were undoubtedly beneficial to the insolvency estate.

Judgment 471 of the Provincial Court of Madrid (sect. 28) of October 2, 2020, (ECLI:ES:APM:2020:11674), having dismissed the view that granting security for the refinancing of the insolvent party's debt was free of charge since intragroup security was involved (in accordance



with the SC case law in this respect), rules that the pecuniary sacrifice involved in granting such security is justified because the refinancing improved the financial terms of the resulting debt and because it allowed the group companies to continue with their activity for two years after it was formalized.

Scope of the privilege in mortgage loan interest

Judgment 10034/2020 of the Provincial Court of Barcelona (sect. 15) of October 9, 2020 (ECLI: ES:APB:2020:10034) debates the scope of the privilege of a mortgage claim in relation to the remunerative and default interest covered by the security.

On remunerative interest, it considers that although the interest continues to accrue on the loan after the insolvency declaration, it will do so only to the extent of the security, which may not, in any event, cover any interest that accrues on the debt beyond five years, to the detriment of a third party (in reference to the mortgage limit established by art. 114 Spanish Mortgage Act).

On default interest, it concludes that, once insolvency has been declared, default interest does not accrue on the debts, only such interest as accrued before the insolvency declaration being covered by the mortgage security.

OTHER NEWS

Renewal of the moratorium period for debts

On December 2, 2020, the European Banking Authority (“EBA”) published the second amendment of the “Guidelines on legislative and non-legislative moratoria on loan repayments applied in the light of the COVID-19 crisis.” ([EBA/GL/2020/02](#)).

The new amendment of the guidelines allows for the “renewal” of debt moratoria until March 31, 2021, subject to new limitations, notably the fact that the moratoria cannot exceed nine months. It refers to “renewal” because the EBA stated in September 2020 that it would not extend the time limit for requesting moratoria beyond September 30, 2020. Therefore, since that date and until the second amendment of the guidelines on December 2 last, these measures ceased to be available in practice.

Equator Principles: entry into force of the latest version

The [Equator Principles Association \(EPA\)](#) announced on November 28, 2019 that it was launching the fourth version of the [Equator Principles](#) (“EP4”). The main new developments in this new version are an enhanced commitment to human rights, climate change, indigenous people and biodiversity. Also, the scope has been extended to more project-type transactions.

On October 1, 2020, the [EPA confirmed the entry into force of this new version of the Equator Principles](#), which must be implemented in all new projects commencing from October 1, 2020. According to EPA data, 114 financial institutions in 37 countries currently adhere to these principles.

For additional information on the contents of this document, please contact Cuatrecasas.

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