COMPANY RESTRUCTURING: ASSESSMENT OF THE SECOND YEAR OF IMPLEMENTATION OF THE INSOLVENCY REFORM

November 2024

CUATRECASAS

RESTRUCTURING, INSOLVENCY AND SPECIAL SITUATIONS

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INTRODUCTION

The first year of implementation of Act 16/2022, of September 5, amending the consolidated text of the Insolvency Act (the latter, the "Insolvency Act"), required a considerable adjustment effort from all market players involved in company restructuring in Spain. They were faced with a highly technical and complex regulation, which at the same time provided functional tools to achieve the intended purpose, i.e., the viability of companies in difficulty. Naturally, the courts also had to adapt to and interpret these new flexible provisions under a principle of minimum judicial intervention at certain stages. Our Assessment of the first year of implementation of the insolvency reform (November 2023) summarizes this evolution, including a detailed study of the judicial decisions on the main restructurings carried out in Spain.

Implementation in the second year has been more technical, based on the experience of all participants (advisors, experts, judges). The variety and complexity of the cases have helped resolve some doubtful issues arising in the first year while advancing the regulatory purpose. This Guide presents our assessment of the second year of implementation. We have gathered the most relevant and valuable experiences for experts in the field with the aim of providing a state-of-the-art overview for scholars and professionals. We have analyzed over 50 restructurings, focusing on the judicial decisions and selecting the most pertinent matters to further explore and understand this field.

In line with Cuatrecasas's solid commitment to knowledge dissemination, this Guide makes the technical excellence of our team of lawyers specializing in Restructuring, Insolvency and Special Situations available to the interested public. We will continue to publicly share the in-depth study of pre-insolvency situations and the evolution of the practice. We hope it will be useful and that you will join us on this path.

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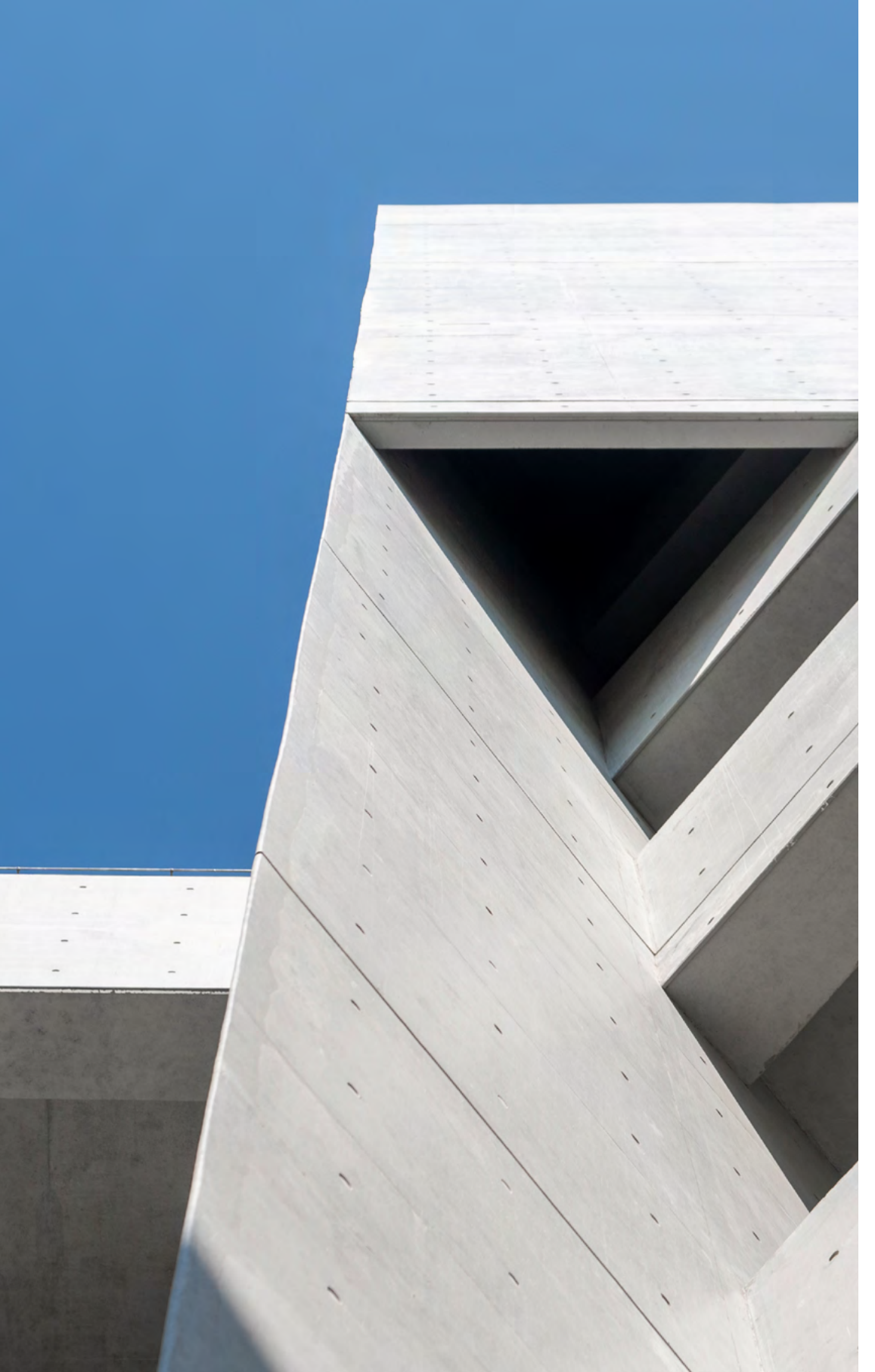

RESTRUCTURING PLANS: MAIN MARKET TRENDS

In keeping with the object of last year's guide (Assessment of the first year of implementation of the Spanish insolvency reform, November 2023), this year we present the state of play of some of the main issues arising from restructuring plans during the second year of implementation of Act 16/2022, of September 5, amending the consolidated text of the Insolvency Act. The most significant court decisions that have addressed the topics of greatest interest reflect the trends in the restructuring market, while also casting certain doubts as to the optimal solution, thus contributing to the development of the discipline.

The methodology focuses on the judicial treatment of these matters, which have set the milestones, providing a systematization conformed by the most important issues. However, judicial references must be approached with caution: while in the first year following the implementation of Act 16/2022, we highlighted the role of commercial courts to judicially sanction (*homologación*) restructuring plans with no prior adversary proceedings—with the (notable) exceptions of the Xeldist and Celsa cases—the pool of cases seen over the last year gives us deeper insight thanks to the greater number of rulings resolving challenges or objections to court-sanctioned restructuring plans. Although this has helped settled some issues, others remain unresolved. Moreover, the lack of a centralized judicial system enabling the establishment of case law has led to the inconsistent treatment of many matters, thus detracting from legal certainty in this regard. Therefore, despite the obvious technical evolution of restructurings taking place in 2024 based on longstanding interpretations, the options of many issues continue to be explored as a testing ground, following the trend of 2023. The marked increase in litigation, on the other hand, only serves to hinder the development of an end solution.

The annex attached to this guide provides a list of the restructurings analyzed. The list is in alphabetical order by debtor name and refers to each corresponding judicial resolution. Our analysis takes into account court decisions issued between November 2023 and October 2024.

Judicial review in the context of sanctioning restructuring plans

Greater judicial scrutiny.

Act 16/2022, like Directive 2019/1023 from which it derives, advocates a principle of minimum judicial intervention. This is particularly evident when it comes to approval of restructuring plans without prior adversary proceedings under articles 662 and 663 Insolvency Act. The court will approve the plan "unless it is clear from the documentation submitted that the requirements are not met" (art. 647.1 Insolvency Act). This judicial review is formal rather than substantive, which facilitates the restructuring. Thus, judicial approval is deemed imperative unless the defects are obvious, gross or contrary to public order (among others, Fridama, Ginsa Electronics, Naviera Armas, Turner Publicaciones, Terratest).

However, due to the development of expertise, judicial scrutiny for approval purposes is greater in some cases. It is not clear whether these are just a few exceptions or, on the contrary, they mark the beginning of a trend towards a more thorough review.

Some courts have made requests for clarification or correction with complementary information, either due to doubts about the actual content of the plan (to recognize its effectiveness) or regarding compliance with the minimum sanction requirements—including those under article 633 Insolvency Act (Turner Publicaciones, Fridama, Novoline).

On most occasions, courts expressly refuse to assess the parties' arguments if a procedural step has been skipped (such as Alimentos El Arco, Inmobiliaria Obanos, Codere). However, in some cases they allow some leeway to deal with such allegations, even in the context of requests for the court sanction without prior adversary proceedings. Particularly noteworthy is the Novoline case: the court assessed the arguments on the compliance with requirements under articles 638-640 Insolvency Act, but not those relating to the grounds for challenge under articles 654-656 Insolvency Act—which would have to be brought before the provincial court.

In some instances, courts have denied approval for non-compliance with the requirements, which is evidence of a more thorough assessment. Restructuring plans have been rejected for lack of viability (Industrias Bianchezza[1]), which is not only a requirement (art. 638.1 Insolvency Act), but the purpose itself of pre-insolvency instruments. Other grounds for rejection have been the absence of the legally required content and form, as well as of certification of the required majorities (Aceites Naturales del Sur). There was a notorious rejection for multiple reasons, with a significant revision of the plan: formal defect in the certification of the majorities, lack of justification of the unequal treatment in the same class, doubts in the formation of classes due to separation of financial claims, and doubts

1 Industrias Bianchezza later filed for insolvency proceedings including a wind-up plan, ruled in the order issued by Commercial Court No. 12 of Madrid dated April 26, 2024.

in the claims actually affected entailing insufficient class approval (Outlet Andalucía). After correcting these defects, the same court sanctioned a second plan (Outlet Andalucía 2).

Finally, the court rejected a request for sanction of a restructuring plan made by creditors due to doubts regarding the objective grounds. In particular, it called into question the early termination of a financing agreement based on a change of control clause (Inparsa), contrary to the majority criterion: the existence of objective grounds is mainly indicative, based on trust in the allegations of the request, without the need for meticulous substantiation. In this case, the court invited the applicants to file the request with prior adversary proceedings to hear the debtor, considering the potential consequences of the plan on the company's shareholding.

Objective grounds underlying restructuring plans

Restructuring plans are still predominantly triggered by current or imminent insolvency and, despite the Celsa precedent, debtors have made little recourse to the "likelihood of insolvency."

The Celsa case could have generated greater anticipation on the part of debtors in the promotion of restructuring plans, precisely to avoid the negative consequences ensuing in this case for the shareholders. As is known, the 2022 reform included "likelihood of insolvency" as objective grounds for restructuring plans. This solution is available up to two years before current insolvency to minimize the sacrifice of all affected interests, which is presumably lower in the initial state of a crisis. In this scenario, unlike in the event of current or imminent insolvency, debtors must approve the restructuring plan retaining definitive bargaining power.

The analyzed sample shows that restructuring plans are still predominantly triggered by imminent and current insolvency. Only in three instances has "likelihood of insolvency" been invoked as objective grounds (Fridama, Turner Publicaciones and Grupo Villar Mir). In one of them, the court ruled that illiquidity could even be evidence of current or imminent insolvency (Grupo Villar Mir). Therefore, the Celsa case has not yet had the expected consequences (in 2024), which is surprising given the implications that may result from a restructuring plan the objective grounds of which is current or imminent insolvency.

Likelihood of insolvency (7,3%)	Imminent insolvency (51,2%)	Current insolvency (41,5%)
Fridama	ACTEMSA	Big Outlet
Grupo Villar Mir	Alimentos El Arco	Busining
Turner Publicaciones	Aries Industrias del Plástico	Caobar
	Asistencias Carter	Comercial Pernas
	Bionline	Corymar
	Casa Botas	Daorje
	Codere	Ginsa Electronics
	Das Photonics 2	IMCAMEDSA
	Denef Investments	Industrias Bianchezza
	Fandicosta	Inparsa
	Farming Agrícola	Inter-fronteras Área de Servicio
	García Faura	Move Art Mission
	Grupo Ecolumber	Novoline
	Guzmán	Outlet Andalucía
	Inmobiliaria Obanos	Outlet Andalucía 2
	Naviera Armas	TDS Ingeniería
	Patrimonio Rústico El Bellicar	Terratest
	Peixemar	
	Real Murcia	
	TRALEMSA	
	WUOLADS	

As regards judicial review of requests for sanction of a restructuring plan, the focus is on the evidence underlying the objective grounds. Some courts have rejected the need for thorough proof, relying on the applicant's allegations (Guzmán, IMCAMEDSA). The reason for this is the "likelihood of insolvency" as objective grounds and the enormous number of debtor applications. In such cases, the alleged insolvency status is indifferent, as long as the objective grounds exist (Alimentos El Arco). However, in one instance, the court rejected the creditors' request for sanction without prior adversary proceedings due to doubts about the current insolvency status alleged by the applicants (Inparsa), in clear contrast to the majority (and probably correct) criterion of our commercial courts.

Debtor's notification of the opening of negotiations with creditors

Practical experience does not allow a clear pattern to be established as to the notification of the opening of negotiations and situations of insolvency, which implies that it is used in cases where potential contingencies need to be forestalled.

There is no discernible pattern as to the notification of the opening of negotiations to the competent court to reach a restructuring plan (art. 585 *et seq*. Insolvency Act). This would suggest that notification is made simply for the specific ends it pursues, namely to forestall contingencies that would seriously compromise the viability of a company that can be restructured effectively (realization of assets necessary for the business activity, enforcement of security interest, termination of contracts necessary for the continuity of the activity due to the debtor's defaults or filing for mandatory insolvency proceedings). These risks are particularly salient in situations of current insolvency, although current insolvency is a requirement only on filing for mandatory insolvency proceedings, while the others may arise in the other scenarios of objective grounds. Therefore, cross-referring data proves inconclusive when it comes to defining a tendency for situations of insolvency.

No notification of the opening of negotiations was given in any of the cases where the company was in a situation of likelihood of insolvency in contrast to 65% of cases being notified in situations of imminent insolvency and current insolvency.

Notification of the opening of negotiations		No notification of the opening of negotiations
Current insolvency	Imminent insolvency	
ACTEMSA	Big Outlet	Aries Industrias del Plástico
Alimentos El Arco	Busining	Codere
Asistencias Carter	Caobar	Daorje
Bionline	Comercial Pernas	Denef Investments
Casa Botas	Ginsa Electronics	Fridama
Das Photonics 2	Grupo Ecolumber	García Faura
Fandicosta	Industrias Bianchezza	Grupo Villar Mir
Farming Agrícola	Inter-fronteras Área de Servicio	Guzmán
Inmobiliaria Obanos	Move Art Mission	IMCAMEDSA
Patrimonio Rústico El Bellicar	Novoline	Inparsa
Peixemar	TDS Ingeniería	Naviera Armas
Real Murcia	Terratest	Outlet Andalucía
		Outlet Andalucía 2
		TRALEMSA
		Turner Publicaciones
		WUOLADS

The initiative in applying for the sanction of a restructuring plan

While it is normally the debtor who files the restructuring plan, creditor applications have not become the norm in spite of the Celsa case.

There have been no changes in the trend set in the first year, meaning that it is invariably the debtor who applies for sanction of the restructuring plan. Specifically, there is only one known case of an application of this kind by creditors, which was rejected, although the creditors subsequently reapplied with prior adversary proceedings (Inparsa). Even though the Celsa case was a starting point to build the trust of creditors applying for a sanction without the debtor's consent, it has not caused a noticeable increase in similar cases.

Likewise, no simultaneous applications been made by both debtor and creditors following the cases of competing plans occurring in 2023, where the debtor's earlier application led to its own plan being sanctioned and the creditors' application being turned down (Single Home and Transbiaga). The outcome was uneven in both of the above cases in which a full-scale confrontation arose between the debtor and the creditors. In one case, the disputes were settled following a negotiation that led to the withdrawal of the objecting creditors, without

the end solution to the interesting pleas raised ever emerging (Single Home). In the case of Transbiaga, the finality of the decision in the prior adversary proceedings in favor of the debtor did not prevent a new restructuring plan from being initiated before the same court, casting doubts about the adequacy of the first pre-insolvency solution of the case (Transbiaga).

Consensual vs. non-consensual plans

Non-consensual plans represent three quarters of the cases analyzed, which is a change in trend compared to the previous year.

It is still interesting to assess the degree of consensus among creditors in the promotion of restructuring plans. In this case, there is a change in trend. During the first year of implementation of Act 16/2022, most restructuring plans were consensual, without cross-class cramdown. Non-consensual plans approved by a majority of the classes formed, including a privileged one (art. 639.1 Insolvency Act), have been a minority. There are few examples of restructuring plans approved only by an in-the-money class (art. 639.2 Insolvency Act).

In this second year following the insolvency reform adopted in 2022, there has been a further lack of consensus among the credit classes. Thus, the number of consensual plans is inconsequential, representing approximately 27% of the analyzed plans. In contrast, non-consensual plans account for almost 73%, with equal representation of plans approved under articles 639.1 and 639.2 Insolvency Act. In these non-consensual cases, fulfilling the requirements of both paragraphs of article 639 Insolvency Act, it is indifferent whether sanction is sought by one or other means (Fandicosta, Novoline).

Consensual restructuring plan	Non-consensual restructuring plan under art. 639.1 Insolvency Act	Non-consensual restructuring plan under art. 639.2 Insolvency Act
Codere	ACTEMSA	Aries Industrias del Plástico
Corymar	Alimentos El Arco	Asistencias Carter
Daorje	Caobar	Big Outlet
Denef Investments	García Faura	Bionline
Fridama	Grupo Ecolumber	Busining
Ginsa Electronics	Grupo Villar Mir	Casa Botas
Industrias Bianchezza	Inmobiliaria Obanos	Comercial Pernas
Inter-fronteras Área de Servicio	Inparsa	Fandicosta
Patrimonio Rústico El Bellicar	Move Art Mission	Farming Agrícola
Turner Publicaciones	Novoline	Guzmán
WUOLADS	Real Murcia	IMCAMEDSA
	TDS Ingeniería	Naviera Armas
	Terratest	Outlet Andalucía
	TRALEMSA	Outlet Andalucía 2
		Peixemar

This marked trend towards a lack of consensus could arise from the lack of regulation of competing plans. The players in the restructuring find themselves facing the game theory or the prisoner's dilemma, and consequently dashing to be the first to present the plan despite the absence of consensus, increasing the recourse to article 639 Insolvency Act. It even leads to restructuring plans being filed that do not adequately respect the sanction requirements or substantive rules. All this generates an increase in litigation, a delay in secure effectiveness of the restructuring, and ultimately, a reduction in certainty.

We would like to draw attention to two cases of restructuring plans of debtors that have benefited from the special regime for smaller companies (art. 682 *et seq*. Insolvency Act), in which it is assumed that article 684.4 Insolvency Act can be applied instead of article 639, meaning that it would suffice for the dissenting credit classes to receive better treatment than the lower-ranking ones that approved the restructuring plan (Big Outlet and TRALEMSA). We consider this interpretation to be erroneous, as it resorts to the rules of absolute priority provided under article 684.4 for an extrinsic end.

Joint restructuring plans

Joint restructuring plans have continued to prevail in proceedings involving important corporate groups.

Compared to the first year following the insolvency reform, in this second year there have been fewer joint restructuring plans, developed for the individual or single sanction of several debtors within the same corporate group (*ex* art. 642 Insolvency Act), although those that have been presented are of particular significance.

Joint restructuring plans	
Codere	Naviera Armas
Daorje	Outlet Andalucía
Fridama	Outlet Andalucía 2
Grupo Ecolumber	TDS Ingeniería
Losan	Terratest

Having become an established practice in the previous year upon interpreting the Insolvency Act, there have been cases of restructuring plans with no notification being given of the opening of negotiations, in accordance with article 587 Insolvency Act (Naviera Armas, Fridama, Outlet Andalucía, Outlet Andalucía 2, Daorje), with no rulings in this regard.

In one striking case, a joint notification of the opening of negotiations was initially made for the restructuring of three companies belonging to the same group. However, the court sanctions were requested separately for each one, even though they were to be processed as a joint restructuring plan. This resulted in the issue of three sanction orders and the competent provincial court handing down three decisions after each one had been challenged individually. Moreover, each of the decisions states that the upholding of grounds for the restructuring of one company is consequential for the other two owing to their joint processing (Grupo Ecolumber).

The perimeter of claims affected by the restructuring

This is a major issue in judicial decisions. Classification of certain claims as public law claims and their role in the approval of the plan is particularly controversial.

The analysis of the perimeter of the claims affected by the restructuring plan has been a major issue during the second year of implementation of Act 16/2022. As in the previous year, this guide analyzes how trade, public law and ICO claims are affected, but also those cases where the decision not to affect certain claims is questioned.

Free delimitation of the perimeter of affected claims

As anticipated in the 2023 Guide, court decisions have focused on determining which claims are affected by restructuring plans and which are not. As is well known, determining the scope of affected claims is discretionary, thus allowing claims to be excluded, as pre-insolvency restructuring plans are not a universal solution for all liabilities. However, adequate justification must be provided as to the grounds for excluding these claims (art. 633.8 Insolvency Act).

During the first year of the reform, no court ruled on the determination of the perimeter of the claims affected by a restructuring plan—apart from the judgment by the Provincial Court of Pontevedra, which resolved the challenge in the Xeldist case.

The situation has changed in this second year. All rulings on challenges or objection at the prior adversary proceedings stage have dealt in one way or another with the justification for the perimeter of the restructuring plan: Transbiaga, Das Photonics, Torrejón Salud, Pharmex, Farming Agrícola, Iberian Resources, Vilaseca, Move Art Mission, Comercial Pernas and Grupo Ecolumber. Undoubtedly, one underlying explanation of the increase in challenges and objections at the prior adversary proceedings stage is that this issue falls within the grounds for challenging the plan based on incorrect class formation (art. 654.2 Insolvency Act), as anticipated in the Xeldist case, and has been consolidated in these judicial decisions, as well as in the majority doctrine, given that if this ground is upheld, the restructuring plan becomes completely ineffective (art. 661.2 Insolvency Act). However, only two of these rulings have accepted the challenge (Move Art Mission) or objection (Comercial Pernas) on this ground.

On the other hand, the court decisions show that the types of claims excluded and the justifications provided are varied. Thus, it is quite common to exclude essential or strategic commercial creditors so that the viability of the company is not affected (Naviera Armas, Iberian Resources, Das Photonics, Caobar, Terratest, ACTEMSA, Grupo Ecolumber). Financial creditors essential for viability have also been excluded (Naviera Armas, Torrejón Salud, Grupo Ecolumber). An indirect justification for the exclusion also stems from the exclusive inclusion of specific claims, such as only financial claims (Turner Publicaciones, García Faura, Inparsa); or specific financial products (Codere); or essential trade suppliers (Farming Agrícola); or claims from an employment relationship with an employer other than the debtor, resulting from the transfer of a business unit (Pharmex), which also adheres to a rather bold interpretation regarding the scope of claims that cannot be legally affected (art. 616.2 Insolvency Act). Small claims are also sometimes excluded (Caobar, Terratest, ACTEMSA).

There are singular cases in which leasing claims have not been affected, considering that the relevant assets are not essential for viability—as opposed to mortgage claims (Farming Agrícola). Or, conversely, mortgage claims because the mortgaged property is essential for viability and it being affected could result in enforcement (art. 651.1 Insolvency Act)

(Grupo Ecolumber). Certain claims have also been excluded under a special agreement with creditors (ACTEMSA).

Below, we analyze the exclusion of public law claims.

Trade claims

During the first year of the reform, approximately half of the restructuring plans analyzed affected trade claims.

This has changed considerably in this second year, where two thirds of the restructuring plans include trade claims. This is probably because pre-reform refinancing agreements, which were limited to financial loans, had a greater effect during the first year. The evolution shows an increased variety of restructuring options, in line with the wider range provided by the new regulation.

Trade claims affected		Trade claims not affected
ACTEMSA	Grupo Ecolumber	Codere
Alimentos El Arco	Grupo Villar Mir	Daorje
Aries Industrias del Plástico	IMCAMEDSA	Denef Investments
Asistencias Carter	Import Export Marlina	García Faura
Big Outlet	Inmobiliaria Obanos	Ginsa Electronics
Bionline	Move Art Mission	Industrias Bianchezza
Busining	Outlet Andalucía	Inparsa
Caobar	Outlet Andalucía 2	Inter-fronteras Área de Servicio
Casa Botas	Peixemar	Naviera Armas
Comercial Pernas	Real Murcia	Novoline
Fandicosta	TDS Ingeniería	Patrimonio Rústico El Bellicar
Farming Agrícola	Terratest	Turner Publicaciones
Guzmán	TRALEMSA	WUOLADS

Public law claims

The decisive role that public law claims have played in the restructuring plans this last year has become a topical issue. Not because of the number or amount of those claims, but because of the uncertainty on their classification as such—including conflicting judicial decisions. Their inclusion has proved essential to attain court sanction of restructuring plans.

In the second year of the reform, most of the plans do not include public law claims. The justification for their exclusion is not always clear from the judicial decisions, but there are some express references.

- The most common justification continues to be the tight restrictions placed on the measures that can be imposed on these claims (arts. 616.2 and 616 bis Insolvency Act), which do not bring about a decisive change towards viability (Vilaseca, TDS, Das Photonics, Tralemsa, Real Murcia CF), with some express mention of the uncertainty as to the equal treatment of claims within a class (Das Photonics). However, the exclusion of public law claims is sometimes justified by agreements with public authorities that establish a more favorable payment schedule for the debtor than one resulting from applying the legal restrictions under article 616 bis Insolvency Act (Das Photonics).
- In other cases, attention should be drawn to the debtors' failure to keep up to date with the payment of tax and social security obligations, which prevents them from obtaining the certifications required for the inclusion of public law claims, with respect to the Spanish tax agency ("AEAT") and the General Treasury of Social Security ("TGSS") (e.g., Real Murcia CF).

Public law claims affected	Public creditor
Comercial Pernas[2]	AEAT, TGSS and public bodies
Fandicosta	CDTI
Farming Agrícola	AEAT
Inmobiliaria Obanos	City council (property tax)
Real Murcia	City council (property tax) and EMUASA (Murcia water company)

On the other hand, interesting conclusions can be drawn from restructuring plans that have excluded certain claims because of their classification as public law claims. Thus, in the case of Move Art Mission, the claims of the Institut Català de Finances and the Empresa Nacional de Innovación SME (ENISA) were not affected, under the justification that they were public law claims.[3]

In other cases, a FONREC-COFIDES loan has been classified as subordinated, despite it being a participating loan, without further considerations (García Faura). In any case, this classification has been challenged, the decision to which will be issued in the coming months.

2 Comercial Pernas's restructuring plan was not sanctioned after upholding the objections to class formation at the prior adversary proceedings stage, but the impact of these public law claims did not raise any controversy.

3 Move Art Mission's restructuring plan was not sanctioned because the creditors' objection based on the incorrect determination of scope was upheld, but not due to the nature of the claims classified as public, but due to the unjustified exclusion of trade claims.

As in the previous year, some plans have affected claims classified as public law claims that have been decisive in obtaining a court sanction, particularly under article 639.1 Insolvency Act (Inmobiliaria Obanos, Real Murcia CF). The division of these claims into a privileged part and an ordinary part under article 280.4 Insolvency Act confers them great relevance within the framework of article 639.1. By having two different classes for the same public law claim, a separate class must be formed in any case within its rank (art. 624 bis Insolvency Act). Particularly, this has led to some claims deriving from the same source being divided into up to three different single-person classes due to the subordination of interests and surcharges (Inmobiliaria Obanos, with a tax property receipt). Likewise, at least due to their partially privileged status, these will be in-the-money claims, or they will receive some payment in the restructuring—with relevant consequences for the purposes of article 639.2 Insolvency Act. However, so far there have been no case where the sanction due to a public claim has been decisive. In short, owing to the classification of public law claims derived from insolvency rules, they are expected to gain greater weight in pre-insolvency situations.

This major role of public law claims evidenced last year has been further analyzed in cases that gave rise to challenges or objection for this reason. There are some interesting decisions regarding claims consisting of financing granted by public entities. In the Transbiaga case, the creditors questioned the classification as public law claims of the Instituto Vasco de Finanzas (IVF), divided into two single-person classes (privileged and ordinary)—which was essential to comply with the requirements of article 639.1 Insolvency Act. In the prior adversary proceedings, the court rejected the objection and confirmed the classification of the disputed claims as public law claims.

In the Das Photonics case, the judicial decision on a challenge to the plan confirmed the classification of the Center for Technological and Industrial Development's (CDTI) claims as public law claims while rejecting that classification for the claims of Universidad Politécnica de Valencia.

The ruling in the Vilaseca case also considered as public law claims those granted by the CDTI and others from the Ministry of Industry and the Institut Català de Finances (ICF), thus upholding the justification for their exclusion.

Recent ruling 44/2024 of commercial court no. 13 of Madrid, of May 22, issued more or less at the same time as the decisions in many of these cases and passed down within insolvency proceedings, rejected the consideration of the CDTI's claims as public law claims.

On the other hand, public law claims within the same rank have been separated into different classes (Real Murcia), in a bold interpretation of article 624 bis Insolvency Act. There was a precedent in this regard in the first year of the reform, which was upheld by the provincial court after a challenge (Das Photonics).

ICO-guaranteed loans affected by restructuring plans

After the initial uncertainty surrounding the entry into force of Act 16/2022, the inclusion of ICO-guaranteed loans has become a common practice, as evidenced by an increasing number of restructuring plans.

ICO loans affected	
ACTEMSA	Fandicosta
Alimentos El Arco	García Faura
Aries Industrias del Plástico	Grupo Ecolumber
Busining	Naviera Armas
Caobar	Outlet Andalucía
Casa Botas	Outlet Andalucía 2
Comercial Pernas	Peixemar
Daorje	Turner Publicaciones

Likewise, the Spanish tax authorities have been flexible in the approval of the measures included in the plans. For instance, they have authorized a deferral until 2034 for ICO-guaranteed loans—greater than that provided for in the relevant legal framework (Caobar). This approach is expected not only to favor the inclusion of these claims, but to have beneficial effects for debtors' viability.

Class formation

Class formation is still a central element of restructuring plans and has been questioned in almost all litigation processes, allowing for the analysis and inferences of conclusions of interest.

It is worth underlining that one of the key aspects for the viability of restructuring plans for companies in difficulty is the formation of credit classes. From a strategic perspective, class formation is important from all angles to determine the substantive content of restructuring and the measures to restore viability, and to handle the requirements for approval of the restructuring plan by the classes necessary for judicial sanction. The insolvency reform adopted under Act 16/2022 establishes general criteria for the classification of credits but leaves broad discretion to applicants seeking court sanction to determine the classes based on the characteristics and circumstances of each case.

There is an extensive pool of court orders sanctioning restructuring plans, firstly due to the flexibility allowed on determining the credit classes and, secondly, to the lack of substantive

review by the courts in cases of sanctions with no prior adversary proceedings. However, although it was necessary during the first year of practical application to resort to these orders to gain insight on this issue, there is now uncertainty about the validity of certain criteria used for class formation and accepted in cases of sanctions with no prior adversary proceedings. As expected, the evolution of practice is of particular interest in court decisions with an in-depth analysis following challenge or objection. It so happens that almost all litigation processes involving restructuring plans have questioned class formation (art. 654.2 Insolvency Act) (Transbiaga, Das Photonics, Torrejón Salud, Pharmex, Farming Agrícola, Vilaseca, Move Art Mission, Comercial Pernas and Grupo Ecolumber). The exception is one case that, in any case, did question the scope of impact on the same grounds for challenge (Iberian Resources). Therefore, our focus is mainly on the decisions that have resolved the formation of credit classes in restructuring plans, which provide more arguments and legal criteria on this matter, as they have required a deeper analysis of the adaptation of credit classes to the principles and norms governing restructuring plans.

Taking a general, highly practical approach, we highlight that, in many cases, the analysis of class formation was conducted in the context assessing the correct sanction of the plan, questioning on logical grounds whether sanction by deficiently formed classes could indirectly distort the sanction requirements of the plan. The courts, since the Xeldist case, have been recurring to the so-called "resistance test"—not provided for in the positive regulations—to assess whether the redetermination or the reassignment of credits to the corresponding classes could result in the plan being overruled as a result of exerting a decisive influence on the sanctioning rules (this test is cited in the cases of Das Photonics, Farming Agrícola and Vilaseca). In turn, one of the most recent decisions handed down in the analyzed period denied the application of the resistance test following the redetermination of the classes (Grupo Ecolumber), without even considering whether a sanction could be granted under art. 639.2 Insolvency Act following the removal of the requirements set out under article 639.1 concerning the redetermination of the classes, stating that any voting corresponding to credits reassigned to their corresponding class would be equivocal, as votes are cast based on the classes formed.

Many of the decisions that have addressed the topic of class formation have focused on the nature of the classes and the ensuing insolvency treatment, since, despite not being considered a specific reason for challenge, this determines the conformity of inclusion in the corresponding classes. Thus, the distinction between renting and leasing has sometimes been analyzed to ascertain whether a privileged class should be included (Transbiaga). Naturally, as mentioned, there has been much discussion on the public nature of the claims in relation to the separation into different classes of those ranked as privileged claims and ordinary claims (Transbiaga), or regarding the non-affectation of those ranked as ordinary claims (Das Photonics).

Very much linked to the above, other cases, rather than focusing on the undeniable nature of claims, have directly questioned whether they have been properly ranked in accordance with the rules for correct assignment. Thus, on occasion, the debate has revolved around the rank given to claims with pledges over future claims or over patents (Das Photonics), or where the creditor is a person especially related to the debtor (Das Photonics, Move Art Mission).

With regard to the above two remarks, it has also been analyzed whether the sole purpose of establishing low-value pledges to secure pre-existing claims shortly before requesting a court sanction of the restructuring plan was to give a decisive influence to the corresponding claim for approval of the privileged class, which was required for the restructuring plan to be sanctioned (Grupo Ecolumber).

We also draw particular attention to the analysis of the existence of common interest as a requirement to form classes in the same rank. Thus, it is allowed for different classes of public law claims to be included in the same rank and for ordinary commercial credits to be separated into different classes due to their dissimilar features, even when they are held by the same creditor. Likewise, it is allowed for ordinary financial credits and commercial credits to be included in the same class, noting that article 623.3 Insolvency Act merely provides general guidance, although ordinary interim financing is placed in a separate class (Das Photonics). Conversely, the formation of classes has been overruled when there has been no justification for combining claims of a different nature and interest in the same class, or for separating claims of the same nature and interest into different classes (Grupo Ecolumber, Move Art Mission, Comercial Pernas).

Regarding this common interest, it has been deemed appropriate to form a single class of credits where the interest is shared by the creditors involved, also in relation to the restriction of the scope and the excluded credits (Pharmex, Torrejón Salud).

Several cases have called into question some creditors' classification as SMEs and whether their claims are eligible to be included in the class designated for SMEs in accordance with article 623.3 Insolvency Act (Das Photonics, Vilaseca, Move Art Mission). Conversely, the non-inclusion of SME credits in the class corresponding to them has also been addressed (Move Art Mission). In this context, there are favorable rulings for the flexible use of any definition of SME provided by law (Vilaseca).

Finally, another ruling has analyzed the non-existence of a privileged individual class on account of the claim not being truly affected owing to the deferral of the maturity date to the effective date of the restructuring plan, resulting in the objection being dismissed on the grounds that any delay in maturity would affect the claim for these purposes (Farming Agrícola).

Relative subordination and class formation

This second year of practical application has presented us with a case in which intercreditor agreements and relative subordination affecting class formation have come into play (Codere). Admittedly, it is a court order sanctioning a consensual plan, approved by all the credits in each class by the rules on voting by classes in cases involving creditors bound by a syndicate agreement (art. 630 Insolvency Act), so we await a challenge allowing us to clarify all doubts. It is noteworthy, however, that the judge has not questioned the application of article 435.3 Insolvency Act, introduced by the reform, to admit a classification of credits and treatment in accordance with the subordination agreement between creditors of the same rank: "As long as it is not detrimental to third parties and the debtor is a party to the agreement, the subordination agreement will be acknowledged and enforced during the proceedings. The insolvency administrators will make the payments as provided in the agreements."

Prior confirmation of classes

During this second year of practical application of the restructuring plan regime, use of the resource for prior judicial confirmation of class formation has barely increased (arts. 625 and 626 Insolvency Act). Seemingly, this was one of the most useful practical novelties, contrary to what was predicted in the pre-reform stage (Alimentos El Arco, IMCAMEDSA, Import Export Marlina, Comercial Pernas, Terratest).

However, some cases are of great interest. Among the resolutions of requests for confirmation with a negative result, there have been cases where the lack of adequate notification to the affected creditors led to the denial of the admission to processing of a request (Terratest) or for the dismissal of the prior confirmation due to objection by legitimate parties (Comercial Pernas). Among other reasons for inadmissibility, we highlight not having presented a proposal or draft restructuring plan to which the intended class formation would apply (Terratest). Among the reasons for dismissal of the prior confirmation due to objection by legitimate creditors, some cases are based on insufficient objective justification of claims being excessively divided into multiple classes and subclasses, which distorts the majority principle (Comercial Pernas). This case continued with the request for court sanction with prior adversary proceedings, which was denied, among others, for the same reason. One request has been denied due to doubts concerning the legal nature of claims separated into a specific class, specifically those concerning the condition of interim financing according to the requirements of that additional financing, given the strategic importance that such a class would have for sanctioning the plan (Import Export Marlina).

It is also noteworthy that, in some cases, the classes notified previously differed from those later included in the finally approved restructuring plan (Alimentos El Arco).

The figure of the restructuring expert

Restructuring experts have played a dominant role.

The importance of restructuring experts is gradually being perceived in practice, with only 20% of restructurings not involving this figure. Their prominent role is likely attributable to the trust judges vested in them during the first year, and to the further functions they have served, even functions not established by law.

Restructuring plans with an appointed expert		Restructuring plans without an appointed expert
Aceites Naturales del Sur	Guzmán	Corymar
ACTEMSA	IMCAMEDSA	Daorje
Alimentos El Arco	Import Export Marlina	Denef Investments
Aries Industrias del Plástico	Inmobiliaria Obanos	Fridama
Asistencias Carter	Inparsa	Ginsa Electronics
Atunes y Lomos	Losan	Industrias Bianchezza
Big Outlet	Move Art Mission	Inter-fronteras Área de Servicio
Bionline	Naviera Armas	Torrejón Salud
Busining	Novoline	Turner Publicaciones
Caobar	Outlet Andalucía	WUOLADS
Casa Botas	Outlet Andalucía 2	
Codere	Patrimonio Rústico El Bellicar	
Comercial Pernas	Peixemar	
Das Photonics 2	Real Murcia	
Fandicosta	Terratest	
Farming Agrícola	TRALEMSA	
García Faura	Transbiaga 2	
Grupo Ecolumber	Vilaseca	
Grupo Villar Mir		

It is noteworthy that a restructuring expert has been appointed in all the non-consensual plans analyzed, that is, not only in cases of approval under article 639.2 Insolvency Act, where their presence is required because of their essential legal function, such as drafting a report on the company's value as a going concern, but also in cases involving the approval of plans under article 639.1 Insolvency Act, where the appointment of a restructuring expert is not mandatory. Indeed, cases where it is mandatory to appoint an expert include the cramdown

of classes or shareholders (art. 672.1.4 Insolvency Act), meaning that the plan would be non-consensual, a provision confirmed in practice for both cases provided in article 639 Insolvency Act. Logically, restructuring experts are scarcely present in the few consensual restructuring plans (Patrimonio Rústico El Bellicar, Codere).

One ruling that resolves on the adequacy of the plan sanctioning requirements clearly states that, unlike consensual plans, the appointment of an expert is necessary for non-consensual plans, that is, when "it extends to a class of credits that does not approve of the plan" (Torrejón Salud).

Restructuring experts have also been appointed in all joint restructuring plans except one (Fridama). There is one remarkably significant joint restructuring case that admitted the appointment of two restructuring experts: one for the holding company and another for the subsidiaries, all of which were included in a joint notification of the opening of negotiations (Losan). The appointment of two experts stemmed from their differing eligibility for appointment in the holding company, where the potentially affected liabilities were calculated according to those indicated in the notification of the opening of negotiations, without any subsequent variation allowing for a change in that appointment.

On the other hand, in clear contrast to last year's findings, there has been a marked increase in the number of cases where a restructuring expert has been appointed even without a notification of the opening of negotiations (Codere, Naviera Armas, Guzmán, Outlet Andalucía, Aries Industrias del Plástico, IMCAMEDSA, TRALEMSA, Inparsa, Outlet Andalucía 2, García Faura, Grupo Villar Mir).

Appointment, replacement and challenge of the restructuring expert

Some of the main doubts concerning the appointment and replacement of restructuring experts and the predominant role of creditors in this regard under the applicable regime were adequately resolved in the first year of practical application, as we reported in our 2023 Guide.

It has been emphasized that the appointment of the restructuring expert must be made by a judge at the proposal of the legitimate applicant as long as that expert meets the requirements, without further procedure. Any allegations to the contrary by the parties involved are not admissible, as Act 16/2022 does not provide for an objection procedure in this regard (Losan). On the other hand, some resolutions state that the objective grounds underlying restructuring plans are not a requirement for the expert's appointment (Inparsa, in the resolution on the challenge of the appointment).

As to registering the expert's appointment in the public insolvency registry (art. 672.3 Insolvency Act), despite a previous notification being made on a confidential basis of the opening of negotiations (art. 591 Insolvency Act), the courts have ruled both in favor (Losan, Das Photonics 2) and against (order of Barcelona commercial court no. 4, of July 18, 2024),

with the latter being put forward as a controversial solution in one of the main restructurings of the first year of application (Single Home). It is also noteworthy that, in one exceptional case, the registration of the expert's appointment was crucial to make up for the lack of contents in the restructuring plan, which did not specify the expert's name as required under article 633.2 Insolvency Act. In this case, it was stated that registration in the public insolvency registry meant that the rights of defense were not infringed (Pharmex).

On occasion, the expert's appointment has brought to light the planning of a new restructuring after the failure of the previous one, either due to the upholding of a challenge (Das Photonics 2) or for other reasons more closely linked to the first plan's lack of viability (Transbiaga 2).

The replacement of the expert by creditors (art. 678 Insolvency Act) has been inconsequential this year, having rarely been requested in the cases analyzed (Atunes y Lomos, ACTEMSA, Grupo Ecolumber). It has been reported that the deadline to request the replacement of the expert was set at sanction date of the restructuring plan (Atunes y Lomos) or the date of the public deed (Grupo Ecolumber), despite not being a requirement under the act. In parallel with the appointment, it is stressed that it is unnecessary to make a judicial assessment of the advisability of the expert's replacement, as an agreement may be reached if the candidate meets the requirements (Atunes y Lomos). In any case, it is made clear that the debtor is not entitled to replace the expert appointed at the request of the legitimate creditors (Atunes y Lomos, Losan).

Finally, there are few cases challenging the expert's appointment, but they are very illustrative (Naviera Armas, Inparsa). It is emphasized that the grounds for challenge are strictly those specified under article 677 Insolvency Act, namely that the expert does not meet the requirements for appointment: lack of specialization or experience, lack of civil liability insurance or equivalent protection, and in cases of incompatibility or prohibition. And, in any case, the assessment of relationships resulting in disqualification due to incompatibility or prohibition must be rigorous and based on evidence rather than mere speculation (Naviera Armas).

The restructuring expert's functions

As to the restructuring expert's functions, we draw attention to some sanction orders that have dealt with requests from applicants that extend the expert's role beyond the legal provisions.

- Numerous restructuring experts have drafted reports on the company's value as a going concern, even though the cases did not involve restructuring plans requesting court sanction under article 639.2 Insolvency Act, which is the only case where it is required (Codere, Real Murcia, Inmobiliaria Obanos, Novoline, and Move Art Mission).

- Another of their most valuable functions is to certify the threshold of affected liabilities over the total debt to grant protection against clawback actions in potential insolvency proceedings. This is of particular importance when it comes to protecting interim financing or new financing (Naviera Armas, Fandicosta, Caobar, Peixemar, Casa Botas, Villar Mir, Codere).
- In other cases, restructuring experts have issued viability reports (Naviera Armas, Busining), or valuation of securities (Codere). One expert reported on the certainty of specific debts, specifically interim financing (Import Export Marlina); although the report did nothing to increase the confidence of the judge, who dismissed the confirmation of classes due to doubts about the veracity of the debts.
- In some transactions, the restructuring expert is designated as a notification agent, centralizing all notifications issued by the court and, in case of challenge, by the court of appeals (Caobar).
- There are very few sanction orders that grant powers to experts to adopt corporate measures that have not been approved by the debtor, in which case they act as a third party designated for the purposes of article 650.2 Insolvency Act (Caobar). In other cases, the order has allowed the appointment of a third party other than the expert, namely a restructuring agent (ACTEMSA). Several sanction orders have even empowered an expert to cancel mortgages as provided in the plan (art. 650.2 Insolvency Act) (IMCAMDESA). However, in other sanction orders, the court has not granted general powers to the expert to implement the restructuring plan (Guzman). In any case, the provision of article 650.2 Insolvency Act is not intended to be enforced on requesting the court sanction, but once it has been granted.

Restructuring plans involving debt-equity swap

Except in the few plans filed by creditors, debt capitalization has not been common.

Debt capitalization is among the most prominent restructuring measures introduced by the reform of Act 16/2022. The legislature undoubtedly intended to provide an alternative route for companies' viability, thus protecting their varying interests regardless of who the shareholders are. The expression "capitalize or surrender" has become popular to emphasize the opportunity for shareholders to anticipate the loss of control in the company before implementing a restructuring plan. The absolute priority rule and debt capitalization lead inexorably to their exit from the company for the benefit of the creditors. This approach is confirmed by the express provision of a legal exclusion of the pre-emptive right in capital increases resulting from restructuring plans in the event of imminent or current insolvency, even when there is a "coup d'accordéon" (i.e., simultaneous capital reduction and increase) (art. 631.4 Insolvency Act).

However, this measure has not been implemented to its full potential: not all plans include it, even if the shareholders are out of the money. The reason is obvious enough: debtor companies file for most restructuring plans, and they will hardly include a restructuring measure that dilutes or excludes their shareholders. Naturally, and conversely, this is the most relevant measure in plans filed by creditors (Inparsa).

Restructuring plans involving debt capitalization		
Daorje	Inparsa	Terratest
Denef Investments	Naviera Armas	TRALEMSA
Grupo Villar Mir	Patrimonio Rústico El Bellicar	WUOLADS
Import Export Marlina	Real Murcia	

Therefore, the cases in which the shareholders remain as such after imposing restructuring measures on the creditors are striking—albeit predominant. They seemingly violate the absolute priority rule (art. 655.2.4 Insolvency Act), which could reflect the consequences of a negotiation with the creditors who support the restructuring plan. In some litigious restructurings, however, the court has accepted the exception to the absolute priority rule, thus allowing the lower-ranking classes and the shareholders to receive payments or maintain rights despite the adverse effect of the restructuring measures on higher-ranking classes (art. 655.3 Insolvency Act) (Transbiaga, Vilaseca). It remains to be seen whether the courts, on resolving challenges, admit as an exceptional formula the possibility of gifting by higher-ranking classes to lower-ranking classes on interpreting the absolute priority rule and its exception (Naviera Armas).

Interim or new financing

Interim and new financing have played a prominent role, particularly because of their inclusion among the affected claims.

Additional financing in the context of a restructuring, in the form of interim or new financing, has played an important role—mostly for a reason unforeseen by the legislature at the time of drafting the reform, namely its inclusion among the affected claims.

This is a fundamental tool to ensure the continuity of the business activity while the restructuring plan is being prepared (interim financing) or to ensure its implementation after its approval (new financing). These two original objectives are reinforced by the protection against clawback and its privileged ranking in the event of future insolvency proceedings.

Although significantly less than in the previous year, this mechanism has been widely used. Half of the plans include one of the two additional financing modalities, or both simultaneously, while the other half do not include any additional financing.

Restructuring plans only with interim financing	Restructuring plans only with new financing	Restructuring plans with both	Restructuring plans without interim or new financing
Alimentos El Arco	Asistencias Carter	Caobar	ACTEMSA
Guzmán	Corymar	Codere	Bionline
Import Export Marlina	Denef Investments	Fandicosta	Busining
Move Art Mission	Ginsa Electronics	Fridama	Casa Botas
	Grupo Ecolumber	Naviera Armas	Comercial Pernas
	Inmobiliaria Obanos	Novoline	Daorje
	Inparsa	Real Murcia	Farming Agrícola
	Terratest	TDS Ingeniería	García Faura
			Grupo Villar Mir
			IMCAMEDSA
			Industrias Bianchezza
			Inter-fronteras Área de Servicio
			Outlet Andalucía
			Outlet Andalucía 2
			Patrimonio Rústico El Bellicar
			Peixemar
			TRALEMSA
			Turner Publicaciones
			WUOLADS

Most of the sanction orders expressly declare the non-forfeitability of the restructuring plan, and specifically of the interim or new financing. However, there are some interesting rulings on the limited scope of judicial assessment regarding the fulfillment of the requirements for granting such protection against clawback in the event of subsequent insolvency proceedings (Guzman, Fridama).

Interim or new financing affected by restructuring plans

There is a trend to include interim or new financing in restructuring plans apparently not associated to the need for additional financing as a requirement, but for strategic purposes in the context of the formation of classes and court sanction of the plan. Claims are thus affected by interim or new financing. Although most experts have argued against this possibility, ever more cases include additional (especially interim) financing in different provinces (Das Photonics, Real Murcia CF, Alimentos El Arco, Inmobiliaria Obanos, Novoline). Their inclusion as a (single-person) class facilitates meeting the requirements of article 639.1 Insolvency Act—either because it increases the number of classes (which favors a majority) or because it is a privileged class that votes in favor. Strikingly, the interim or new financing class has voted in favor of all the transactions, which suggests that the plan reflects a previous agreement.

In some cases, the inclusion of interim financing allowed the majority of classes to vote in favor, either as an ordinary class (Das Photonics) or as a subordinated class (Real Murcia, because it was granted by a closely related person and did not reach 60% of the total liabilities affected). In other cases, its status as a privileged class may have been decisive, although there were more privileged classes that voted in favor (Alimentos El Arco); or it was in fact decisive because it was the only privileged class (Novoline). Finally, in another case, the inclusion of new financing in an ordinary single-person class was not essential for the plan's sanction, without other considerations, because the majority was reached even without its participation—at the expense of a challenge that could apply a resistance test and refine its relevance (Inmobiliaria Obanos).

Affected interim financing or new financing	Affected financing	Classification	Significance of the approval by class
Das Photonics	Interim	Ordinary	4 in favor – 3 against
Real Murcia CF	Interim	Subordinated	4 in favor – 3 against
Alimentos El Arco	Interim	Privileged	5 in favor – 4 against
Inmobiliaria Obanos	New	Ordinary	6 in favor – 3 against
Novoline	Interim/New	Privileged	3 in favor – 1 against

It is worth mentioning a restructuring plan that was approved including interim financing secured by rights in rem (pledge over future claims) in a single-person privileged class (Novoline). In its detailed analysis of compliance with the requirements for approval, the court assessed whether the interim financing was really such. It concluded that it was actually new financing, which did not prevent its inclusion in the plan. Also, the court held that its suppression would not be an obstacle to approval, since the requirements of article 639.2 Insolvency Act would be met.

The measures affecting the claims have also been disparate, although it is not always clear from the order for sanction (Alimentos El Arco). Thus, most cases include debt capitalization, either in full (Real Murcia CF) or in part (Das Photonics, 95%). Debt capitalization at the choice of the financing creditor is also provided for (Novoline). In another transaction, the plan establishes that interim financing claims will not be paid until all subordinated claims are paid (Inmobiliaria Obanos).

Finally, in the contested cases involving interim financing, the objecting creditors have not questioned its inclusion. For instance, in Das Photonics, they urged the inclusion of the relevant claims in the same class as ordinary trade and financial claims. The court rejected this request, pointing out that the specialty of these claims and their essential nature for the plan justify their inclusion in a separate class. On the other hand, in the prior confirmation of classes of Import Export Marlina, the inclusion of interim financing did play a role in the court's decision to uphold the creditors' objection, not because those claims could not be affected, but because of a reasonable doubt as to the existence of the financing. This was not a contested issue in the prior confirmation of classes of Alimentos El Arco, since the class that included the interim financing was not subject to prior judicial confirmation.

Litigation over restructuring plans

Litigation over restructuring plans has increased, with sanctions being challenged and restructuring plans being subject to prior adversary proceedings.

As expected, litigation over restructuring plans has increased, with numerous sanctions being challenged and restructuring plans being subject to prior adversary proceedings, which are expected to be resolved soon. Many contested cases have already been resolved, either by provincial courts (challenges) or commercial courts (prior adversary proceedings). This section focuses on these resolutions.

Over half of the resolved cases have dismissed all the grounds for challenge or objection (Transbiaga, Torrejón, Pharmex, Iberian Resources, Vilaseca).

Class formation (art. 654.2 Insolvency Act) has been disputed in practically all of the cases analyzed except Iberian Resources. And in all of them, the perimeter of the affected claims has been disputed, being the most commonly cited ground, although it is not established in the act as a cause for challenge, but generally accepted as a type of defective class formation. The weight of these grounds being upheld (class formation or perimeter of affected claims) naturally makes the challenge more appealing, as it would render the restructuring plan completely ineffective (art. 661.2 Insolvency Act). In any event, some rulings have applied the resistance test to ascertain whether the requirements for sanctioning the plan would have been met if class formation or the scope of affected claims had been carried out properly,

so it relates directly to the latter grounds (also provided for in article 654.2 Insolvency Act). The exception to the application of the resistance test appears in one case where the court concluded that the subsidiary application of article 639.2 Insolvency Act was not required once it had determined that the class formation was defective, thus preventing the sanction of the plan under article 639.1 Insolvency Act, as any votes cast after the classes have been determined are equivocal (Grupo Ecolumber). An upholding of this kind has only been made in four cases, either due to a breach of class formation (Das Photonics, Move Art Mission, Comercial Pernas, Grupo Ecolumber), or to the inadequacy of the perimeter of affected claims (Move Art Mission, Comercial Pernas). In Das Photonics, the perimeter of affected claims was deemed inadequate, yet to no effect after applying the resistance test. Also, in one case upholding the challenge of the grounds of defective class formation, the court extended the same ineffectiveness to the other joint restructuring plans (Grupo Ecolumber).

Only one case upheld the grounds for challenge other than class formation, namely equal treatment of claims within a class (art. 655.2.3 Insolvency Act), determining that effects would not be extended only to the plaintiffs who were, at the time, the financial creditors (Farming Agrícola). This ineffectiveness has determined the need to file for a new restructuring plan.

In general terms, in cases upholding the grounds for challenge or objection determining the plan's lack of effectiveness against all creditors or against the objecting creditors, all other grounds have remained unanalyzed, as they would not alter the outcome of the ruling. Only in one case that upheld defective class formation and the scope of affected claims did the court briefly assess some other grounds (Comercial Pernas).

Finally, owing to how much they have broadened our practical knowledge, we highlight the analysis of two grounds for challenge based on the best interest of creditors and the priority rule, both of which are among the main substantive rules of pre-insolvency restructuring plans. The breach of the best interest of creditors rule (art. 654.7 Insolvency Act) has been alleged in several cases, only two of which have been analyzed, resulting in the objecting creditors' claims being dismissed after contrasting the restructuring scenario described by the applicants with a hypothetical future insolvency liquidation scenario (Iberian Resources, Vilaseca).

The same has occurred with the absolute priority rule (art. 655.2.4 Insolvency Act), the breach of which has been claimed by numerous objecting creditors, one of which resorted to the rules of absolute priority provided in the special regime for smaller debtor companies (art. 684.4 Insolvency Act) (Move Art Mission), but this has only been analyzed in two cases (Transbiaga, Vilaseca). In both cases, the reason was dismissed on the same grounds: the application of the exception to the rule provided in article 655.3 Insolvency Act owing to the need for shareholders' participation in the share capital. The analysis was based on their subjective value for viability rather than on an objective assessment of their position.

Matter	Grounds for challenge	Admitted/ Dismissed
Transbiaga (objection)	Defective perimeter of affected claims	Dismissed
	Defective class formation	Dismissed
	Defective approval	Dismissed
	Lack of viability	Dismissed
	Unequal treatment in the class	Dismissed
	Disproportionate sacrifice	Dismissed
	Lack of equality in the rank	Dismissed
	Breach of absolute priority rule	Dismissed
Das Photonics (challenge)	Lack of notification	Dismissed
	Defective perimeter of affected claims	Dismissed
	Defective class formation	Admitted
	Disproportionate sacrifice	Not analyzed
	Breach of best interest of creditors rule	Not analyzed
	Lack of equality in the rank	Not analyzed
	Breach of absolute priority rule	Not analyzed
Torrejón Salud (challenge)	Abuse of corporate law	Dismissed
	Defective perimeter of affected claims	Dismissed
	Defective class formation	Dismissed
Pharmex (challenge)	Lack of notification	Dismissed
	Breach of contents	Dismissed
	Breach of form	Dismissed
	Claims not allowed to be affected	Dismissed
	Defective perimeter of affected claims	Dismissed
	Defective class formation	Dismissed
	Defective approval	Dismissed
Farming Agrícola (challenge)	Defective perimeter of affected claims	Dismissed
	Defective class formation	Dismissed
	Lack of equality in the rank	Admitted
	Breach of contents	Not analyzed
	Lack of viability	Not analyzed
	Disproportionate sacrifice	Not analyzed
	Breach of best interest of creditors rule	Not analyzed
	Breach of absolute priority rule	Not analyzed
	New detrimental financing	Not analyzed

Matter	Grounds for challenge	Admitted/ Dismissed
Iberian Resources (challenge)	Defective perimeter of affected creditor and claims	Dismissed
	Breach of best interest of creditors rule	Dismissed
Vilaseca (challenge)	Breach of form	Dismissed
	Defective approval	Dismissed
	Defective perimeter of affected claims	Dismissed
	Defective class formation	Dismissed
	Lack of viability	Dismissed
	Breach of best interest of creditors rule	Dismissed
	Breach of absolute priority rule	Dismissed
Move Art Mission (objection)	Defective perimeter of affected claims	Admitted
	Defective class formation	Admitted
	Inexistence of objective grounds	Not analyzed
	Lack of notification	Not analyzed
	Lack of contents	Not analyzed
	Lack of viability	Not analyzed
	Defective approval	Not analyzed
	Disproportionate sacrifice	Not analyzed
	Breach of relative priority rule	Not analyzed
Comercial Pernas (objection)	Breach of form	Admitted
	Lack of contents	Admitted
	Defective perimeter of affected claims	Admitted
	Defective class formation	Admitted
	Defective approval	Admitted
	Lack of viability	Admitted
	Breach of absolute priority rule	Admitted
	Disproportionate sacrifice	Not analyzed
	Unequal treatment	Not analyzed
Grupo Ecolumber (challenge)	Defective perimeter of affected claims	Dismissed
	Defective class formation	Admitted
	Lack of contents	Not analyzed
	Lack of viability	Not analyzed
	Breach of absolute priority rule	Not analyzed
	Breach of best interest of creditors rule	Not analyzed
	Disproportionate sacrifice	Not analyzed

ANNEX. Restructuring plans analyzed. Court decision

Transaction	Court decision	Subject matter
Aceites Naturales del Sur	Order of Jaén commercial court no. 1 47/2024, 04.03.2024	Denial of sanction of the restructuring plan
ACTEMSA	Order of A Coruña commercial court no. 2, 09.27.2024	Sanction of the restructuring plan
Alimentos El Arco	Order of Oviedo commercial court no. 1 180/2024, 05.06.2024	Sanction of the restructuring plan
	Ruling of Oviedo commercial court no. 1 106/2023, 07.13.2023	Prior confirmation of classes
Aries Industrias del Plástico	Order of Madrid commercial court no. 3 167/2024, 05.28.2024	Sanction of the restructuring plan
Asistencias Carter	Order of Madrid commercial court no. 5 207/2024, 03.20.2024	Sanction of the restructuring plan
Atunes y Lomos	Order of Pontevedra commercial court no. 3, 01.15.2024	Replacement of restructuring expert
Big Outlet	Order of Oviedo commercial court no. 1 166/2024, 04.19.2024	Sanction of SME restructuring plan
Bionline	Order of Valencia commercial court no. 2, 03.26.2024	Sanction of the restructuring plan
Busining	Order of Madrid commercial court no. 15 548/2024, 07.18.2024	Sanction of the restructuring plan
Caobar	Order of Guadalajara first instance court no. 4 384/2024 07.30.2024	Sanction of the restructuring plan
Casa Botas	Order of Pontevedra commercial court no. 1 198/2024, 06.06.2024	Sanction of the restructuring plan
Codere	Order of Madrid commercial court no. 6, 07.22.2024	Sanction of the restructuring plan
Comercial Pernas	Ruling of Pontevedra commercial court no. 3 95/2024, 10.16.2024	Denial of sanction of the restructuring plan (prior adversary proceedings)
	Ruling of Pontevedra commercial court no. 3 63/2024, 06.20.2024	Rejection of prior confirmation of classes
Corymar	Order of Albacete commercial court no. 1 220/2023, 11.22.2023	Sanction of the restructuring plan
Daorje	Order of Oviedo commercial court 246/2024, 07.05.2024	Sanction of the restructuring plan
Das Photonics	Ruling of Valencia provincial court (9th chamber) 86/2024, 03.27.2024	Upholding of challenge of sanction of the restructuring plan
	Order of Valencia commercial court no. 3 563/2023, 05.18.2023	Sanction of the restructuring plan
Das Photonics 2	Order of Valencia commercial court no. 4, 07.01.2024	Appointment of restructuring expert
Denef Investments	Order of Madrid commercial court no. 7 54/2024, 01.23.2024	Sanction of the restructuring plan
Fandicosta	Order of Pontevedra commercial court no. 1, 05.20.2024	Sanction of the restructuring plan

Transaction	Court decision	Subject matter
Farming Agrícola	Order of Palencia first instance court no. 1 85/2024, 06.14.2024	Sanction of the restructuring plan (prior adversary proceedings). Partial upholding of objections
Fridama	Order of A Coruña commercial court no. 1 248/2023, 11.06.2023	Sanction of the restructuring plan
García Faura	Order of Barcelona commercial court no. 3, 05.13.2024	Sanction of the restructuring plan
Ginsa Electronics	Order of Barcelona commercial court no. 3 504/2023, 10.05.2023	Sanction of the restructuring plan
Grupo Ecolumber	Ruling of Barcelona provincial court (15th chamber) 1122/2024, 10.16. 2024 (Ecolumber)	Upholding of challenge of sanction of the restructuring plan
	Ruling of Barcelona provincial court (15th chamber) 1121/2024, 10.16. 2024 (Frutos Secos de la Vega)	Uphholdingof challenge of sanction of the restructuring plan
	Ruling of Barcelona provincial court (15th chamber) 1120/2024, 10.16. 2024 (Uriarte Iturrate)	Uphholdingof challenge of sanction of the restructuring plan
	Order of Barcelona commercial court no. 6 130/2024, 02.16. 2024 (Ecolumber)	Sanction of the restructuring plan
	Order of Barcelona commercial court no. 6 129/2024, 02.16. 2024 (Frutos Secos de la Vega)	Sanction of the restructuring plan
	Order of Barcelona commercial court no. 6 127/2024, 02.16. 2024 (Uriarte Iturrate)	Sanction of the restructuring plan
Grupo Villar Mir	Order of Madrid commercial court no. 13 400/2024, 09.26.2023	Sanction of the restructuring plan
Guzmán	Order of Córdoba commercial court no. 1 71/2024, 02.05.2024	Sanction of the restructuring plan
Iberian Resources	Ruling of Cáceres provincial court (1st chamber) 254/2024, 06.19.2024	Dismissal of challenge of sanction of the restructuring plan
	Order of Cáceres first instance court no. 1 154/2023, 05.11.2023	Sanction of the restructuring plan
IMCAMEDSA	Order of Córdoba commercial court no. 1 310/2024, 05.31.2024	Sanction of the restructuring plan
Import Export Marlina	Ruling of Murcia commercial court no. 2 57/2024, 03.21.2024	Rejection of prior confirmation of classes
Industrias Bianchezza	Order of Madrid commercial court no. 12 697/2023, 11.20.2023	Denial of sanction of the restructuring plan
Inmobiliaria Obanos	Order of Almería commercial court no. 2 308/2024, 05.22.2024	Sanction of the restructuring plan
Inparsa	Order of Las Palmas commercial court no. 2 218/2024, 07.16.2024	Denial of sanction of the restructuring plan
	Order of las Palmas commercial court no. 2, 06.27.2024	Dismissal of challenge to appointment of restructuring expert
	Order of Las Palmas commercial court no. 2, 02.21.2024	Appointment of restructuring expert

Transaction	Court decision	Subject matter
Inter-fronteras Área de Servicio	Order of Almería commercial court no. 2 130/2023, 05.26.2023	Sanction of the restructuring plan
Losan	Order of A Coruña commercial court no. 3, 04.11.2024	Appointment of restructuring expert for the parent company
	Order of A Coruña commercial court no. 3 82/2024, 04.29.2024	Denial of appointment of restructuring expert for subsidiaries (1)
	Order of A Coruña commercial court no. 3 83/2024, 04.29.2024	Denial of appointment of restructuring expert for subsidiaries (2)
	Order of A Coruña commercial court no. 3 84/2024, 04.25.2024	Denial of appointment of restructuring expert for subsidiaries (3)
	Order of A Coruña commercial court no. 3 85/2024, 04.25.2024	Denial of appointment of restructuring expert for subsidiaries (4)
	Order of A Coruña commercial court no. 3, 04.29.2024	Appointment of restructuring expert for subsidiaries
Move Art Mission	Ruling of Barcelona commercial court no. 11 226/2024, 07.23.2024	Denial of sanction of the restructuring plan (prior adversary proceedings)
Naviera Armas	Order of Las Palmas commercial court no. 3 779/2023, 12.21.2023	Sanction of the restructuring plan
	Ruling of Las Palmas commercial court no. 2, 05.16.2024	Dismissal of challenge to appointment of restructuring expert
Novoline	Order of Madrid commercial court no. 16 340/2024, 07.30.2024	Sanction of the restructuring plan
Outlet Andalucía	Order of Seville commercial trial court no. 2 81/2023, 03.06.2024	Denial of sanction of the restructuring plan
Outlet Andalucía 2	Order of Seville commercial trial court no. 2 146/2023, 05.13.2024	Sanction of the restructuring plan
Patrimonio Rústico El Bellicar	Order of Badajoz commercial court no. 2, 10.26.2023	Sanction of the restructuring plan
Peixemar	Order of Pontevedra commercial court no. 1 197/2024, 06.06.2024	Sanction of the restructuring plan
Pharmex	Ruling of Córdoba provincial court (1st chamber) 544/2024, 05.30.2024	Dismissal of challenge of sanction of the restructuring plan
	Order of Córdoba commercial court no. 1 191/2023, 09.26.2023	Sanction of the restructuring plan
Real Murcia	Order of Murcia commercial court no. 1 250/2024, 05.02.2024	Sanction of SME restructuring plan
TDS Ingeniería	Order of Badajoz commercial court no. 1 91/2024, 02.29.2024	Sanction of the restructuring plan
Terratest	Order of Madrid commercial court no. 19 474/2024, 07.31.2024	Sanction of the restructuring plan
	Order of Madrid commercial court no. 19 381/2024, 06.21.2024	Denial of admission to processing of a request of class confirmation
Torrejón Salud	Ruling of Madrid provincial court (28th chamber) 131/2024, 04.23.2024	Dismissal of challenge of sanction of the restructuring plan
	Order of Madrid commercial court no. 13 238/2023, 05.30.2023	Sanction of the restructuring plan

Transaction	Court decision	Subject matter
TRALEMSA	Order of Madrid commercial court no. 15, 04.26.2024	Sanction of SME restructuring plan
Transbiaga	Ruling of San Sebastián commercial court no. 1 71/2023, 11.23.2023	Sanction of the restructuring plan (prior adversary proceedings)
Transbiaga 2	Order of San Sebastián commercial court no. 1 81/2024, 04.30.2024	Appointment of restructuring expert
Turner Publicaciones	Order of Madrid commercial court no. 16 272/2023, 12.15.2023	Sanction of the restructuring plan
Vilaseca	Ruling of Barcelona provincial court of (15th chamber) 701/2024 07.09.2024	Dismissal of challenge of sanction of the restructuring plan
	Order of Barcelona commercial court no. 10 479/2023 09.15.2023	Sanction of the restructuring plan
WUOLADS	Order of Seville commercial trial court no. 4 334/2024 05.09.2024	Sanction of the restructuring plan

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Chambers, 2024

"Proven track record of representing debtors in major refinancing and debt restructuring matters."

Chambers, 2023

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- Drafting and negotiation of waiver request letters and A&E agreements
- Drafting and negotiation of any kind of restructuring agreements, including restructuring plans, novation agreements, new money financing, intercreditor agreements or security documents
- Court sanction (*homologación*) of restructuring plans
- Advice on any Spanish regulatory aspects, foreign direct investments, tax or directors' liabilities related to restructuring deals

Insolvency

Insolvency law

Advice to both creditors and debtors in insolvency processes

Advice to managers and directors on duties and liabilities related to insolvency proceedings in Spain

Orderly liquidation of companies and restructuring deals approved within insolvency proceedings

Sale of business units

Advice to creditors, debtors and investors on the sale of business units in the framework of insolvency proceedings

Advice to creditors on credit bidding strategies and loan-to-own transactions approved in the framework of insolvency proceedings

Special situations

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- Drafting and negotiating unitranche financings, new money agreements, interim financing and bridge loans
- Warrants and convertible bonds
- Financing structures combining preferred equity deals
- Distressed M&A
- Negotiated solvent liquidation processes (not undergoing insolvency proceedings)

OUR PUBLICATIONS

Among our 2024 publications, we highlight our *Practical analysis of main issues in Spanish restructuring law* (in Spanish), which includes eight pieces written by our lawyers specializing in this matter at present.

Moreover, our team periodically analyzes and publishes comments and thoughts on the main court decisions and trends in the restructuring market:

Una completa SAP sobre impugnación de un plan de reestructuración **(in Spanish)**,
July 17, 2024

La afectación de la financiación interina en los planes de reestructuración **(in Spanish)**,
July 15, 2024

Una sentencia sobre la regla del mejor interés de los acreedores **(in Spanish)**,
June 26, 2024

Desestimada la impugnación de un plan de reestructuración consensual **(in Spanish)**,
May 6, 2024

Clasificación de créditos en pre-concurso: efectos en el concurso **(in Spanish)**,
May 6, 2024

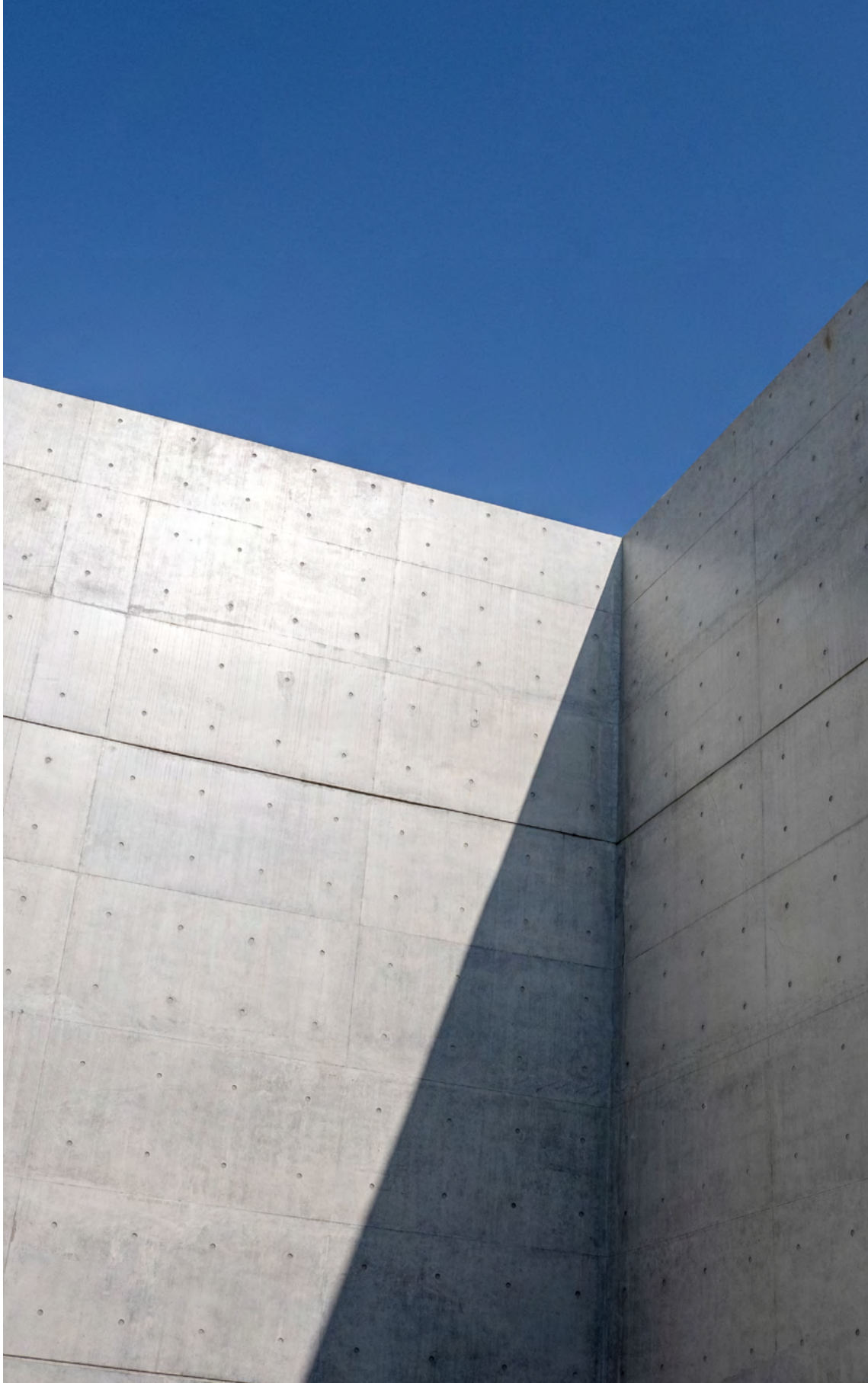
Se declara la ineficacia de un plan de reestructuración **(in Spanish)**,
May 5, 2024

Cancelación de deuda previa con préstamo avalado por ICO **(in Spanish)**,
March 21, 2024

Otra homologación de plan de reestructuración denegada de oficio **(in Spanish)**,
March 18, 2024

La homologación judicial imperativa de planes de reestructuración **(in Spanish)**,
March 14, 2024

Denegada la homologación de un plan de reestructuración consensual **(in Spanish)**,
December 11, 2024



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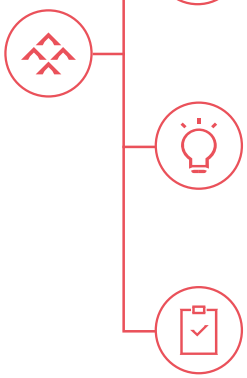

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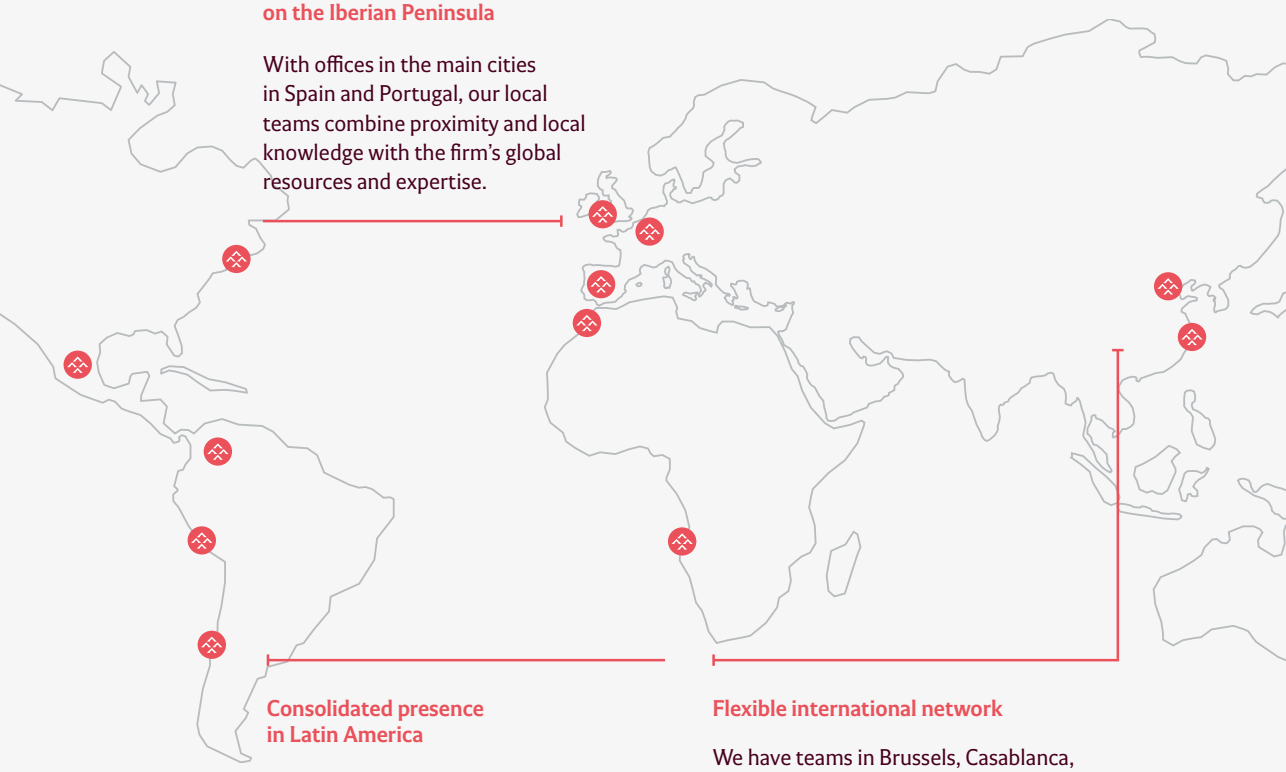

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You can also access our latest Corporate Sustainability Report.

GOLD 2023 ecovadis Sustainability Rating

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