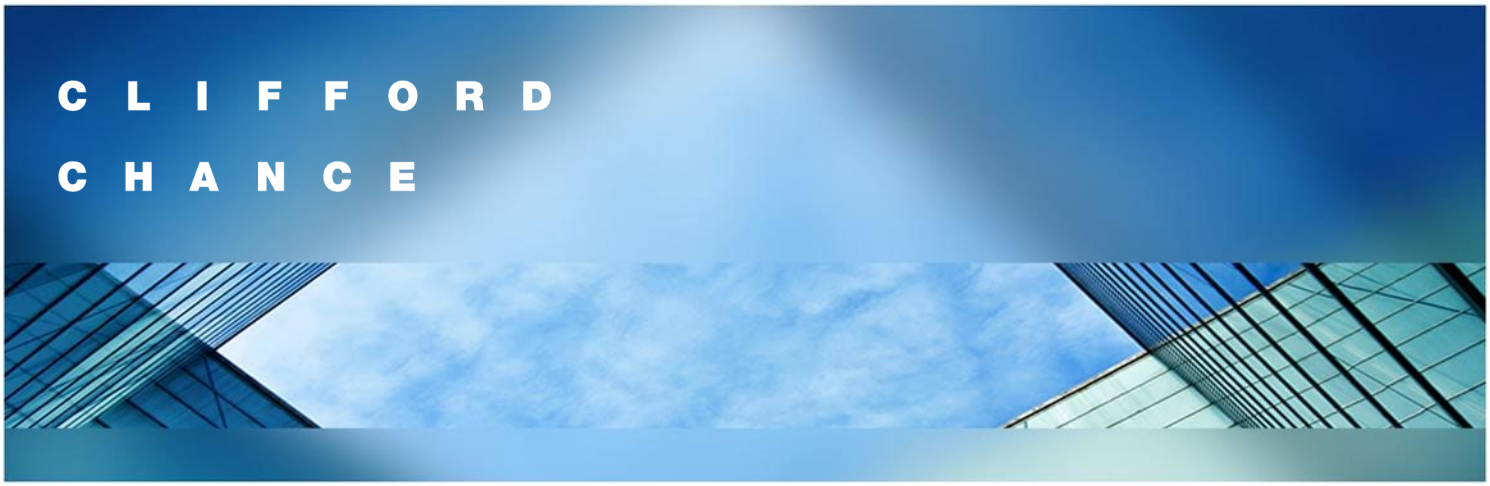

COURT APPROVAL OF RESTRUCTURING PLANS: A CHANGING TREND IN THE SPANISH COURTS

Spanish courts, which had initially applied a "flexibility principle" when reviewing restructuring plans submitted for court sanction, are now being more rigorous in the application of the legal requirements, with the result that a number of restructuring plans are now being rejected.

The new regulation on court approval (*homologación*) of restructuring plans entered into force in Spain in September 2022. In the months following the reform we witnessed a number of court decisions in which excessively flexible criteria were being applied, with the aim of enabling the restructure. This resulted in some debtors trying to push the limits of the law.

Key issues

- When debtors try to push the limits of the law, the restructuring plan can be rejected
- Courts adopting a uniform approach when reviewing the restructuring perimeter: objective criteria must be applied
- Formation of classes, what was becoming quite arbitrary for the purposes of cross class cram down, is being more rigorously examined
- Viability, as a legal requirement

Collusion with a minority of liabilities

Debtors on several occasions colluded with a minority of liabilities to form classes which enable the approval of restructuring plans which involve cross-class cram down. The best-known cases were Xeldist Congelados, S.L., Das Photonics, S.L., J. Vilaseca, S.A.U., and Alimentos El Arco, S.A.

The courts have corrected this initial trend over time and have begun to carefully scrutinise the restructuring plans put to them for approval. It is now increasingly common for plans that clearly do not meet the legal requirements to be rejected ex officio, or for challenges made by dissenting creditors after the plan has been approved to be upheld.

Definition of the restructuring perimeter

The courts are establishing an increasingly uniform approach to the definition of the restructuring perimeter. According to the Insolvency Act, the applicant (usually the debtor) can determine which liabilities it wants to restructure. This starting point had given rise to debate as to whether judicial control could be exercised in this regard, or whether the debtor could, at its convenience, decide which liabilities to restructure and which would be left intact, being outside the perimeter.

The dominant approach is established in the Judgment of 23 July 2024 from Barcelona Commercial Court No 11 (Move Art Mission, S.L.), which rejects the plan as arbitrary. While the court acknowledges some creditors can be left out of the restructuring plan, it states that such a decision requires "sound justification in this regard", applying objective criteria, and not at a whim.

Formation of credit classes

The courts are also beginning to rigorously review the criteria applied when forming credit classes. Under Spanish law, as a general rule, credits of the same insolvency rank must form a single class, unless there are reasons for not doing so, which only come into play when the liabilities do not relate to a substantially common interest. The Ruling of 6 March 2024 from Seville Commercial Court No 2 states that the law requires that there be "sufficient reasons" justifying the formation of different classes; that is, the lack of substantial commonality in the creditors' interest.

Indeed, in the context of non-consensual plans in which drag-along may come into play with a majority of classes, some debtors resorted to multiplying classes by applying subjective criteria. In the case of Naturchar, S.A., no fewer than eight credit classes were posited, based on the nature of the supplies (packaging, machinery, transport, laboratory, professional services, genus and vegetables…). The Judgment of 30 July 2024 from the Almería Commercial Court upheld the challenges brought against the plan, on the grounds that the origin of the liabilities is not sufficient as a criterion for forming different classes.

A similar case occurred in the restructuring of the Ecolumber group, where a company had formed a privileged class based on securing a creditor with a pledge after the negotiation commencement notice, and another class of ordinary liabilities, separate from the rest of the unsecured liabilities, based on the fact of the credit having originated from a share sale and purchase. The Judgment of 16 October 2024 from the Barcelona Court of Appeal upheld the challenges, on the grounds of improper formation of classes.

We have also witnessed some attempts to use interim financing, granted prior to the court approval, to create a class which helps the debtor reach a majority of classes in number. The restructuring plan of Inmobiliaria San José, S.A. shows how a debtor who has the support of only one class of liabilities (consisting of specially related persons), while all external creditors are against it, can try to push a plan through simply by inventing a third class corresponding to the financing that a creditor has just committed in the restructuring. The Ruling of 23 January 2025 from Barcelona Commercial Court No 5 rejected the approval, having established clear fraud.

The result was the same for the restructuring plan of Import Export Marlina, S.A.: in its Judgment of 21 March 2024, Murcia Commercial Court No 2 rejected it, finding that the debtor had formed a class (which it considered interim financing; a supplier who had agreed to postpone future payments) to artificially obtain the class majority required by law.

Reasonable expectation of viability

One basic premise that the courts now demand in the context of court approvals is that the restructuring plans create a reasonable expectation of viability for the company (not certainty, but at least a fair probability of success).

This criterion has led to the rejection of plans with openly liquidation-targeted content (Judgment of 28 October 2024 from Madrid Commercial Court No 14 – Compañía de Phalsbourg, S.L., and Ruling of 20 November 2023 from Madrid Commercial Court No 12 – Industrias Bianchezza, S.A.U.) and plans that do not demonstrate future viability (Ruling of 20 December 2024 from Jaén Commercial Court No 1 – Aceites Naturales del Sur, S.L., and Judgment of 23 November 2024 from San Sebastián Commercial Court No 1 – Transbiaga Transportes Especiales, S.L.).

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