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# Insolvency 2022

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## **Andorra: law & Practice**

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Cases & Lacambra

## Law and Practice

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## 1. State of the Restructuring Market

### 1.1 Market Trends and Changes

The Andorran economy is largely represented by small-to-medium sized companies (around 85% of the market), predominantly in the form of limited liability companies (LLCs), 74% of which are single-shareholder LLCs.

The restructuring market in Andorra is driven by the particularities of the jurisdiction. Therefore, it is possible to differentiate between a restructuring market with local creditors and a cross-border restructuring market involving foreign creditors. Although no official statistics are publicly available, the insolvencies announced in the Official Gazette of the Principality of Andorra (BOPA) have revealed two critical moments where the number of insolvency proceedings increased substantially:

- in 2010, as a result of the financial crisis; and
- in 2015, upon the resolution process of one of the Andorran banking entities, which triggered a negative impact on the liquidity of the Andorran financial system.

To the extent that insolvency regulations provide for certain open deadlines, the timeframe of the insolvency proceedings may vary as the volume of assets of the bankruptcy will determine the term required to form the insolvency estate (*estat de crèdits*).

Accordingly, the high percentage of small-to-medium sized companies has a significant impact on the restructuring trends, as traditionally only large business groups have had sufficient capacity to negotiate with banks – the predominant players providing financial services in Andorra. An alternative measure available to

this type of company is the sale of a branch of activity.

### COVID-19

The Andorran economy was severely hit by the COVID-19 outbreak, especially the service sector. In this context, the Andorran government adopted several measures to mitigate the economic impact of the health crisis, including, but not limited to, financial handouts or grace periods.

Specifically, concerning insolvencies, measures were implemented to postpone such situations. Act 7/2020, of 25 May, on exceptional and urgent measures in procedural and administrative matters due to the emergency health situation caused by the pandemic of SARS-CoV-2 provided for a suspension of the obligation to file for insolvency, thus completely protecting business people from any legal responsibilities arising out of the lack of application.

This measure was initially set to be in force until 30 December 2020, but was extended until 30 June 2021, by Law 16/2020, of 4 December, on exceptional and urgent measures, due to the emergency health situation caused by the pandemic of SARS-CoV-2. While an increase of insolvency applications was expected at that time, procedures remained steady.

Currently, the economy is being hit again by the current global energy crisis, which is leading to a significant increase on the price of raw materials, inflation, and elevated interest rates, triggering an economic crisis which will more likely result in a rise of insolvency proceedings in 2023.

## 2. Statutory Regimes Governing Restructurings, Reorganisations, Insolvencies and Liquidations

### 2.1 Overview of Laws and Statutory Regimes

The laws and statutory regimes applicable to insolvencies in Andorra are the following:

- Decree on insolvencies and bankruptcies of 4 October 1969, *Decret en relació a la cessació de pagaments i fallides, del 4 d'octubre de 1969* (the “Insolvency Decree”), which establishes the statutory regime applicable to the judicial insolvencies and bankruptcy proceedings in Andorra;
- Act 7/2021, of 29 April on recovery and resolution of banking entities and investment firms, *Llei 7/2021, del 29 d'abril, de recuperació i de resolució d'entitats bancàries i d'empreses d'inversió* (the “Banking Recovery Act”), based on Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms;
- Act 8/2013, of 9 May, which covers the organisational requirements and operating conditions of operating entities in the Andorran financial system, investor protection, market abuse and financial securities agreements, *Llei 8/2013, del 9 de maig, sobre els requisits organitzatius i les condicions de funcionament de les entitats operatives del sistema financer, la protecció de l'inversor, l'abús de mercat i els acords de garantia financer a* (the “Financial Act”), sets the effects of insolvency or bankruptcy proceedings in respect of netting agreements or collateral arrangements;
- Act 12/2017, of 22 June on the organisation and supervision of insurance and reinsurance of the Principality of Andorra, *Llei 12/2017, del 22 de juny, d'ordenació i supervisió d'assegurances i reassegurances del Principat d'Andorra* (the “Insurance Act”), provides specific control measures that could be adopted by the Andorran Financial Authority in case of financial hardship;
- Act 9/2005, of 21 February of the Criminal Code, *Llei 9/2005, del 21 de febrer, qualificada del Codi penal* (the “Criminal Code”), establishes as a criminal offence the actions carried out by any debtor leading to a bankruptcy situation to the detriment of third parties;
- Act 22/2021, of 17 September of the Civil Procedure Code, *Llei 22/2021, del 17 de setembre, del Codi de procediment civil* (the “Civil Procedure Code”), amends the procedural provisions stated in the Insolvency Decree to align them with the new judicial proceedings;
- Act 7/2020, of 25 May on exceptional and urgent measures in procedural and administrative matters, due to the emergency health situation caused by the pandemic of SARS-CoV-2, *Llei 7/2020, del 25 de maig, de mesures excepcionals i urgents, en matèria processal i administrativa, per la situació d'emergència sanitària causada per la pandèmia del SARS-CoV-2*, but this law is no longer in effect; and
- Act 16/2020, of 4 December on exceptional and urgent measures due to the emergency health situation caused by the pandemic of SARS-CoV-2, *Llei 16/2020, del 4 de desembre, de mesures excepcionals i urgents per la situació d'emergència sanitària causada per la pandèmia del SARS-CoV-2*, but this law is no longer in effect.

## 2.2 Types of Voluntary and Involuntary Restructurings, Reorganisations, Insolvencies and Receivership

The Insolvency Decree does not expressly distinguish between voluntary and involuntary proceedings.

Any debtor unable to comply with its payment liabilities is obliged to file an insolvency lawsuit before the Andorran Court. Additionally, any creditor of the company may apply for the initiation of such proceedings. Further, the Andorran Court, of its own initiative, may proceed to open the relevant insolvency judicial proceedings, which may be treated as judicial settlement proceedings (*arranjament judicial*) or bankruptcy proceedings (*fallida*), depending on whether the insolvency is capable of being remedied.

## 2.3 Obligation to Commence Formal Insolvency Proceedings

### Obligation to Commence Formal Insolvency Proceedings

Any debtor unable to comply with its payment liabilities is obliged to commence formal insolvency proceedings within the next eight business days.

### Liabilities and Penalties

If a company is declared bankrupt by the Andorran Court its directors may also be declared personally in bankruptcy if they acted in bad faith. It is legally presumed that directors act in bad faith if they continue the business regardless of the inability of the company to comply with its payment liabilities, rather than commence an insolvency proceeding.

Furthermore, under the Andorran Companies Act, the directors of the company are obliged to compensate the damages caused to the company in the event that insolvency proceedings

are not filed within the compulsory period established in the Insolvency Decree.

## 2.4 Commencing Involuntary Proceedings

According to the Insolvency Decree, any creditor of the company or even the Andorran Court may commence an insolvency proceeding.

Unlike the debtor who is obliged to commence the insolvency proceeding within eight business days, the creditors or the Andorran Court are not obliged to file the proceedings within any special period or circumstances.

## 2.5 Requirement for Insolvency

The Insolvency Decree establishes that insolvency occurs when a merchant is unable to meet their payment obligations and incurs an onerous financial situation that cannot be redressed.

Accordingly, insolvency is usually declared when the merchant's liabilities are higher than its assets. The Andorran Court (*tribunal de batlles*) also considers the specific situation of the debtor, in particular the number of claims filed and the use of fraudulent proceedings to artificially maintain the business.

## 2.6 Specific Statutory Restructuring and Insolvency Regimes

### Banking Entities

The Banking Recovery Act establishes that a bank is under a restructuring situation when it breaches or could breach the applicable liquidity and solvency regulations in the near future, but it is able to comply with regulations by its own means.

In such a situation, the bank must give notice to the Andorran Financial Authority (*Autoritat*

*Financera Andorrana* or AFA) in order for it to adopt ex officio measures such as:

- a formal requirement to the bank's management body to draft an action plan to redress the situation;
- the appointment of a special administrator; or
- the removal of one or more members of the management body.

Where a bank cannot redress its difficult financial situation, the Andorran Banking Resolution Agency (*Agència Estatal de Resolució d'Entitats Bancàries* or AREB) shall assess whether it has to initiate its resolution procedure.

The resolution process of a bank requires the fulfilment of the following requirements:

- that the bank is not financially viable;
- that it is reasonably unlikely that it could be redressed by measures from private stakeholders; and
- that there are reasons of public interest.

## 3. Out-of-Court Restructurings and Consensual Workouts

### 3.1 Consensual and Other Out-of-Court Workouts and Restructurings

Generally, when a debtor is involved in an insolvency proceeding, the company will probably end up in dissolution and liquidation. Therefore, it is preferable to maintain certain economic activity through a process of consensual, non-judicial or other informal restructuring, in order to preserve the value for stakeholders.

In these circumstances, companies experiencing financial difficulties will be supported by financial lenders, provided that a debt repay-

ment schedule is agreed between the debtor and these lenders, increasing guarantees to support the repayment of the principal of the debt.

Finally, since the Andorran laws do not provide specific regulation of out-of-court workouts and restructurings, it has to bear in mind that these agreements may be voided by the claw-back regime established by the Insolvency Decree.

### 3.2 Consensual Restructuring and Workout Processes

It is common practice to enter into “standstills” between the creditors and the debtor, which are intended to enable both parties to negotiate a credit agreement in good faith and to prevent creditors from bringing individual actions to enforce the debtor's assets.

The debtor, during the informal and consensual workout/restructuring process, may adopt certain undertakings and obligations such as, *inter alia*:

- not to distribute dividends or other items of remuneration on the capital of the company;
- not to incur in additional financial indebtedness other than that incurred in the ordinary course of business;
- not to make any transfer of assets; or
- not to modify the working conditions of its key employees.

Accordingly, the information that is generally provided to creditors, committees and other stakeholders during the restructuring process is related, *inter alia*, to:

- balance sheets;
- accounting information; and
- payment forecasts over the next few years.

Therefore, the changes of contractual priorities, security/lien priorities, equity-holder and intercompany priority rights, as well as the relative positions of competing creditor classes, are subject to the principle of autonomy of will. Consequently, they are freely negotiated by the contractual parties.

### 3.3 New Money

There are no Andorran legal provisions governing super-priority liens or rights accorded to new-money investors, outside of a statutory or other formal process.

However, depending on the specific restructuring proceeding, the parties can freely agree to the injection of new money on a case-by-case basis, taking into account that, under a formal insolvency proceeding, the court could apply a claw-back regime up to the last 24 months.

### 3.4 Duties on Creditors

In accordance with the Andorran case law, restructuring negotiations shall be conducted in good faith, with scrupulous confidentiality and respecting the agreed “standstills” agreements in order to achieve the execution of a settlement agreement.

In addition, creditors must be kept fully informed of the progress of the negotiation as well as the information provided by the debtor for the adoption of the relevant agreements.

### 3.5 Out-of-Court Financial Restructuring or Workout

Andorran regulations do not provide any mechanisms that permit a majority of lenders to bind dissenting lenders in out-of-court financial restructurings.

However, under the principle of autonomy of will, parties can freely agree terms in the credit agreements allowing certain majorities to bind dissenting lenders; this is a very common practice when a restructuring proceeding is being negotiated.

Additionally, due to the lack of legal provisions regarding the informal consensual processes of restructuring, the absence of cram-down features to deal with dissident creditors makes decision-making more difficult.

## 4. Secured Creditor Rights, Remedies and Priorities

### 4.1 Liens/Security

Secured creditors are entitled to take mortgages over real estate. Likewise, they may take pledges over accounts, equity shares, movable property, credit rights and intangible and intellectual property.

The Insolvency Decree establishes a special privileged regime applicable to secured creditors holding mortgages or pledges over the debtor's assets. Therefore, these assets are excluded from the insolvency estate and will be sold to the exclusive benefit of the secured creditors.

### 4.2 Rights and Remedies

In an informal consensual restructuring proceeding, secured creditors may enforce their liens/security through an agreed specific enforcement procedure. Therefore, outside the insolvency proceedings, such rights and remedies may be subject to contractual intercreditor covenants and to the terms freely agreed by the parties.



The Insolvency Decree establishes that unsecured credits must respect the principle of *par conditio creditorum*.

However, secured creditors who benefit from special privileges are not bound by the *par conditio creditorum* principle, since these creditors are not part of the insolvency state, except when the security or guarantee is not sufficient to cover all the credit.

Regarding the possibility of creditors disrupting or blocking judicial proceedings, under the judicial settlement proceeding, dissenting creditors and those who have not participated in the approval of the agreement may, within eight days of such approval, object to the judicial approval of the agreement.

### 4.3 Special Procedural Protections and Rights

Secured creditors holding mortgages or pledges over the debtor's assets are entitled to special procedural protection since these assets are excluded from the insolvency estate and are sold under a specific procedure where the amount of the sale is granted to the secured creditor.

## 5. Unsecured Creditor Rights, Remedies and Priorities

### 5.1 Differing Rights and Priorities

Neither the Insolvency Decree nor general civil rules expressly determine the preference and ranking of credits. However, the Decree provides for different classes of secured and unsecured creditors as well as the differences between the preferences and the privileges among them.

Privileges of secured creditors can be special (which applies to specific assets and, in par-

ticular, to the proceeds of their sale) or general (which applies to all debtor's assets). In this respect, it should be stressed that such privileges must be strictly interpreted.

### General Privilege

As for the general privileges, the Insolvency Decree includes a general privilege derived from the amount owed to employees.

### Special Privilege

Secured creditors holding mortgage or pledge over debtor's assets benefit from a special privilege allowing them to receive the proceeds of the sale of these assets out of the insolvency proceedings.

### Priority on Payment

The priority on payments following the sale of movable assets is as follows:

- expenses and costs of the bankruptcy administrator;
- assistance granted to the debtor and its relatives;
- privileged creditors; and
- all unsecured creditors in accordance with the percentage of their credit.

However, the priority on payments following the sale of real estate assets is as follows:

- privileged creditors related to these assets;
- mortgagees; and
- all the unsecured creditors.

Consequently, unsecured creditors are ruled by the above-mentioned *par conditio creditorum* principle, which implies that all creditors stand on an equal basis with respect to the debtor's assets.

## 5.2 Unsecured Trade Creditors

Unsecured trade creditors are kept whole during the restructuring process according to the *par conditio creditorum* principle, which refers to the creditors concurring on an equal basis.

In this respect, while single enforcement procedure among creditors is based primarily on chronological priority – known as *prior tempore, potior iure* – universal enforcement procedures like insolvency proceedings are based on equal treatment established for all creditors, *par conditio creditorum*.

Therefore, the distribution of the debtor's assets is made in proportion to the creditor's claims, up to the maximum value of the assets, without prejudice to the existence of privileged credits.

## 5.3 Rights and Remedies for Unsecured Creditors

See 6.1 Statutory Process for a Financial Restructuring/Reorganisation.

## 5.4 Pre-judgment Attachments

The insolvency administrator may carry out the required actions to preserve the rights of the debtor against its creditors and is also entitled to adopt all necessary guarantees and to constitute mortgages that have not been required by merchants in a situation of bankruptcy or judicial settlement.

Accordingly, the administrator is entitled to adopt conservative measures in order to ensure compliance with the purpose of the insolvency proceedings.

In addition, on the declaration of the insolvency proceeding, the administrator will constitute a mortgage over all the debtor's assets (present and future).

## 5.5 Priority Claims in Restructuring and Insolvency Proceedings

Employees and social security claims benefit from a general privilege over the unsecured creditors. However, secured creditors holding mortgages or pledges over the debtor's assets have priority over those general privileges.

# 6. Statutory Restructuring, Rehabilitation and Reorganisation Proceedings

## 6.1 Statutory Process for a Financial Restructuring/Reorganisation

Employees and social security claims benefit from a general privilege over the unsecured creditors. However, secured creditors holding mortgages or pledges over the debtor's assets have priority over those general privileges.

## 6.2 Position of the Company

As far as the position of the company during the insolvency proceedings is concerned, the Insolvency Decree establishes some differences in relation to:

- the effects of the judicial settlement or bankruptcy declaration in the management and disposal of the debtor's assets; and
- the possibilities for the debtor continuing to carry out their activities.

## Effects in the Management and Disposal of the Debtor's Assets

In bankruptcy and in judicial settlement proceedings, the debtor is restricted in terms of the management and disposal of their assets. However, the consequences of this limitation on the management and disposal of the debtor's assets vary depending on whether the bankruptcy or settlement is declared.

In the bankruptcy proceedings, the debtor is deprived of the administration and disposal of their assets, since the administrator is empowered to exercise the debtor's rights and actions concerning their assets during the bankruptcy proceeding.

However, in the settlement proceedings, the assistance of the administrator is required for all acts relating to the management and disposal of the debtor's assets.

Therefore, the consequences of the limitation of the management and disposal of the debtor's assets are less severe for the debtor in the settlement procedure.

## **Possibilities for the Debtor to Continue With Their Activity**

The Insolvency Decree establishes different conditions and possibilities for both the bankruptcy and the judicial settlement proceeding.

In the judicial settlement, the debtor may continue their activity or carry on their business with the authorisation of the court, as long as the court deems it appropriate. However, the court, may withdraw this authorisation discretionally.

On the contrary, in the bankruptcy procedure, the continuation of the debtor's business or activities may be authorised by court:

- for liquidation purposes;
- when the public interest is required; or
- when the creditors' interests require it.

This authorisation will be given for renewable periods of three months.

## **6.3 Roles of Creditors**

See 6.1 Statutory Process for a Financial Restructuring/Reorganisation and 5.1 Differing Rights and Priorities.

## **6.4 Claims of Dissenting Creditors**

See 6.1 Statutory Process for a Financial Restructuring/Reorganisation and 4.2 Rights and Remedies.

## **6.5 Trading of Claims Against a Company**

In an insolvency proceeding scenario, the claims against a company cannot be traded since the Andorran insolvency regulations do not recognise this transaction.

However, in an out-of-court restructuring scenario, when parties are negotiating a refinancing agreement, they are free to negotiate the possibility of the creditors transferring their claims. In this sense, the debtor can only transfer their claims with the prior authorisation of the creditors.

## **6.6 Use of a Restructuring Procedure to Reorganise a Corporate Group**

See 8. International/Cross-Border Issues and Processes.

## **6.7 Restrictions on a Company's Use of Its Assets**

See 6.2 Position of the Company.

## **6.8 Asset Disposition and Related Procedures**

The administrator formulates the insolvency estate and carries out the relevant transactions in relation to the execution of the assets.

As a general rule, the purchaser acquires the assets free and clear of claims as the court rules

the release of charges and encumbrances over the debtor's assets. However, if the creditor has a special privilege over the assets, such encumbrances shall be maintained after its execution.

In order to enable them to execute their functions, the Insolvency Decree provides extensive powers to the administrator in order to enforce the claims, sell the debtor's goods, and to execute all kind of actions that may be necessary. However, the administrator requires the authorisation of the court in order to execute a transactional agreement on a movable or immovable right.

The creditors can bid for assets being sold as long as they pay the applicable fee to be able to bid and comply with Andorran regulations on public auctions. Since the Insolvency Decree does not prohibit creditors bidding for assets being sold, they can act as a stalking horse in a sale process. Furthermore, all the negotiations prior to the restructuring proceedings are not binding for the insolvency proceeding as the proposed agreement must be approved in respect of 60% of the debtor's liabilities.

## 6.9 Secured Creditor Liens and Security Arrangements

Guarantees and encumbrances cannot be unilaterally released pursuant to such a procedure.

## 6.10 Priority New Money

See 3.3 New Money.

## 6.11 Determining the Value of Claims and Creditors

Although the administrator carries out the listing and valuation of the claims, it is generally done by means of balance sheets, accounting information, payment projections over the next few years and other evidentiary documents.

## 6.12 Restructuring or Reorganisation Agreement

See 6.1 Statutory Process for a Financial Restructuring/Reorganisation.

## 6.13 Non-debtor Parties

As a general rule, following such statutory procedure, the liabilities from the non-debtor parties cannot be released. However, in accordance with the autonomy of will principle, non-debtor parties can be released from liabilities by entering into an agreement with the creditors.

## 6.14 Rights of Set-Off

Creditors may not exercise rights of set-off, off-set or netting in a proceeding in accordance with the *par conditio creditorum* principle.

## 6.15 Failure to Observe the Terms of Agreements

The agreed restructuring plan can be voided by the court due to:

- the non-performance of the debtor;
- the discovery of fraud resulting from a simulation of the assets;
- the discovery of fraud resulting from an exaggeration of the liabilities; or
- the conviction of the debtor for fraudulent bankruptcy after the approval of the agreement.

Additionally, it should be noted that non-fraudulent debtors may be rehabilitated, justifying full compliance with the agreement approved by their creditors. Therefore, if the debtor does not observe the terms of the agreed restructuring plan, the fraudulent debtor may not be rehabilitated.



## 6.16 Existing Equity Owners

The existing equity owners cannot retain any ownership or other property on account since they must comply with the *par conditio creditorum* principle and must respect the order of priority of claims established in the Insolvency Decree.

However, they may only retain ownership of those claims that have special privilege.

## 7. Statutory Insolvency and Liquidation Proceedings

### 7.1 Types of Voluntary/Involuntary Proceedings

The Insolvency Decree does not distinguish between involuntary and voluntary proceedings regardless of whether the proceeding has been initiated at the request of the debtor or of the creditor and is appropriate in respect of any debtor, whether a natural or legal person.

The debtor, any of their creditors and the court ex-officio are entitled to request for the declaration of cessation of payments (*declaració de cessació de pagaments*). In all cases, the debtor has the duty to request a declaration of cessation of payments within the eight days from the general cessation of payments.

### Initiating Insolvency Proceedings

The insolvency proceeding in Andorra is initiated by the filing of a written request for the declaration of cessation of payments before the court. The declaration of cessation of payments entails either the bankruptcy (*declaració de cessació de pagaments i fallida*) when the debtor's activity is not viable or the judicial settlement (*declaració de cessació de pagaments i arranament judicial*)

in cases where the debtor's activity is technically viable.

The jurisdiction of the court is extended to all prejudicial civil, the administrative or labour jurisdiction directly related to the insolvency proceeding. Consequently, all pre-existing proceedings against the debtor will be suspended.

The court appoints a judge responsible for monitoring and deciding on the operations and management. In turn, the judge will appoint:

- one to three insolvency administrators; and
- one to three accounting experts or controllers.

Upon the appointment of the administrator by the court, they may adopt the preservation measures deemed necessary to ensure the integrity of the debtor's assets.

The insolvency administrator is obliged to inform the judge on the development of the viability of the debtor every three months.

### Impact of an Insolvency Process

As far as the impact of the insolvency process is concerned, the commencement of insolvency proceedings does not generally have an impact on a lender's rights to enforce any security or guarantee, as long as its claims are guaranteed by means of a security, like mortgage or pledge (either ordinary as possessory or non-possessory nature of financial collateral arrangement), bonds or special privileges as provided for in insolvency rules, and up to the value of such specific guarantee or security (any amount of the claim exceeding the value of the guarantee will have the nature of an ordinary claim).

There are specific timeframes for enacting the enforcement of a mortgage securing claims (two months from the date of the cessation of payments) by the creditor. For claims secured by pledges, the enforcement is not subject to any specific term and may be immediately executed by the creditor.

## Order of Creditors and Special Privileges

In respect of a creditors' order, the Insolvency Decree and the general civil rules do not expressly determine the preference and ranking of credits. According to the insolvency rules and Andorran case law, a distinction is made between special privileges (*privilegis especials*) and general privileges (*privilegis generals*) over movable assets (*béns mobles*) and real estate assets (*béns immobles*). Consequently, creditors would be paid in the following order:

- creditors granted a special privilege over movable assets (pledges along with bonds and certain specific privileges, such as those afforded to the sellers of movable assets);
- creditors granted a special privilege over real estate assets (mortgages and concrete privileges, such as those in favour of architects, real estate asset sellers and real estate asset acquirers to recover the price paid plus legal interests on the termination of the sale agreement);
- creditors granted a general privilege (such as the privilege provided to workers for their salary amounts); and
- the rest of the creditors, pro rata of their respective credits upon verification and admission by the insolvency administration.

In the case of special privileges (claims secured by means of mortgages, pledges, bonds or any other special privilege over movable or real estate assets), creditors are favoured with a

segregated enforcement right, which allows the enforcement of the specific guarantee on the creditor's own benefit regardless of the development of the insolvency proceeding(s).

## Claims

Once the debtor has been declared insolvent by the court, the creditors have 30 days to claim their credits before the insolvency administrator. Upon the expiration of the 30-day period, the drawing up of the insolvency state is in progress (analysing the approval or rejection of the relevant credit claims). Once this period ends, they shall be deposited with the Court of First Instance in order to be analysed, and subsequently creditors shall be notified accordingly. If the insolvency administrator does not recognise the credit claim to the insolvency estate, the recommended course of action is to lodge a statement of defence (*escrit de contesta*) in order to obtain recognition of the credit claim.

Furthermore, Andorran legislation does not provide for an accelerated insolvency proceeding nor for a specific timeframe, unlike other jurisdictions. Therefore, the timeframe of the insolvency proceedings will vary depending on its complexity and the number of credit claims.

The effects of the cessation of payments on the debtor's economic rights will differ from case to case and need to be assessed, namely:

- in the event of judicial settlement, the debtor will maintain the rights of management and disposal of their assets, the exercise of which will be subject to the intervention of the insolvency administrators, via their authorisation or approval; and
- in the case of bankruptcy, exercise by the debtor of the rights of management and dis-

posal of their assets will be suspended by the insolvency administrators.

In respect of the completion of the judicial settlement and bankruptcy proceeding, see **7.3 Organisation of Creditors or Committees**.

## 7.2 Distressed Disposals

See **6.2 Position of the Company** and **6.8 Asset Disposition and Related Procedures**.

## 7.3 Organisation of Creditors or Committees

Upon the completion of the insolvency state (*estat de crèdits*) in the judicial settlement, the debtor will submit its proposal (*concordat*) in writing to the court. Failing that, the judicial settlement will become bankruptcy. Within three days of the completion of the insolvency state, the court will summon all the creditors included in the insolvency state to attend a creditors' assembly (*assemblea*).

The creditors' assembly will be chaired by the court, assisted by the insolvency administrators and the secretary. Creditors may attend the assembly either in person or through a third party with special power of attorney.

The creditors' committee (*junta*) is formed when  $\frac{2}{3}$  of the debtor's liabilities are represented. In the event that a meeting stands adjourned because the quorum requirement is not met, a second call will be made on the same terms as the first one, within 20 days. If the second call is also unsuccessful, the procedure will be terminated.

If the proposal for a composition or settlement submitted by the debtor is not accepted by the creditors, the proposal submitted by any creditor may be discussed and, if accepted by a majority representing 60% of the liabilities, it shall be

submitted to the debtor's consent. The debtor may ask the court to be granted a period not exceeding eight days to deliberate on the proposal submitted. If none of the proposals are accepted, the procedure shall be transformed into bankruptcy.

Whether the bankruptcy or the conversion of the settlement into bankruptcy is declared, the creditors will be constituted in a state of union (*estat d'unió*); the insolvency administrator will proceed with the operations of settlement of the assets and at the same time formulate a statement of claims (*estat de crèdits*). When the settlement and distribution operations have been completed, the creditors shall be summoned by the court for a final meeting, during which the administrator will give an account in the presence of the debtor. After this meeting, the creditors' union (*estat d'unió*) will be dissolved as of right and the creditors will recover the individual exercise of their actions.

## 8. International/Cross-Border Issues and Processes

### 8.1 Recognition or Relief in Connection With Overseas Proceedings

The Andorran legal framework provides for the recognition or other relief in connection with restructuring or insolvency proceedings in another country, but a distinction is made between the judgments (*sentències*) and other rulings.

The judgments can be recognised in Andorra by means of the exequatur proceeding. The foreign judgment is subject to confirmation by the High Court of Justice of Andorra (*Tribunal Superior de Justícia d'Andorra*) and the approval of the exequatur entails verification by the Civil Chamber of the High Court of Justice (*Sala Civil del*

*Tribunal Superior de Justícia*) of the following requirements pursuant to the foreign judgment:

- the competence of the court that has given the ruling;
- the regular nature of the foreign procedure, including the right to jurisdiction (under the Andorran Constitution);
- the application of the competent law in compliance with Andorran conflict rules;
- conformity with national and international public order; and
- the absence of any fraud from an Andorran legal standpoint.

Other rulings must meet the condition of the reciprocity in all cases.

## 8.2 Co-ordination in Cross-Border Cases

In cross-border cases, Andorran courts have not entered into protocols or other arrangements with foreign courts to co-ordinate insolvency proceedings. Even in the case of insolvency proceedings brought in an EU member state, the provisions established by the Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings do not apply in Andorra.

## 8.3 Rules, Standards and Guidelines

See 2.1 Overview of Laws and Statutory Regimes.

## 8.4 Foreign Creditors

Foreign creditors are not dealt with in a different way in proceedings in Andorra, in accordance with the principle of equality of treatment.

## 8.5 Recognition and Enforcement of Foreign Judgments

See 8.1 Recognition or Relief in Connection with Overseas Proceedings in respect of the

requirements for recognition of judgments made against the debtor in another country.

The enforcement of a foreign judgment which has been previously recognised follows the same process as the judgments issued within the jurisdiction.

The enforcement procedure is carried out by a bailiff (*Saig*), who is empowered by law to bring the necessary measures to search assets of the debtor that are located in Andorra in order to seize and to sell them by means of a public auction.

# 9. Trustees/Receivers/Statutory Officers

## 9.1 Types of Statutory Officers

There are the following key figures in insolvency proceedings:

- one to three insolvency administrators appointed by the court; and
- one to three accounting experts will be appointed as controllers (also from amongst creditors) whose position is voluntary and unpaid.

In all cases, the relatives of the debtor, up to the fourth degree of consanguinity or affinity, cannot be appointed as administrators or controllers.

## 9.2 Statutory Roles, Rights and Responsibilities of Officers

The rapporteur of the court (*ponent tribunal de batlles*) will be appointed as the person responsible for monitoring and deciding on the operations and management of the insolvency proceeding. The rapporteur of the court may freely appoint the administrators or controllers and



may also remove them in accordance with their criteria.

The insolvency administrator or insolvency administrators will have the obligation to inform the rapporteur of the court on the development of the viability of the debtor subject to judicial settlement or bankruptcy, every three months.

The controllers will verify the accounts and assist the rapporteur of the court supervising the operations of the insolvency administrators. The controllers may also verify the status of the proceeding as well as the revenues obtained, and the payments transferred.

### 9.3 Selection of Officers

See 9.2 Statutory Roles, Rights and Responsibilities of Officers.

## 10. Duties and Personal Liability of Directors and Officers of Financially Troubled Companies

### 10.1 Duties of Directors

The debtor has the duty to request a declaration of cessation of payments (*declaració de cessació de pagaments*) within eight days from the date of general cessation of payment, and failing that, the Criminal Code establishes the offence of insolvency providing for penalties of up to three years imprisonment based on the following assumptions:

- the debtor may not conceal their assets or carry out acts of disposition of assets or generate preferential claims with the aim of frustrating in whole or in part the effectiveness of any judicial, extrajudicial or administrative attachment or execution procedure;

- if, in addition, the bankruptcy is caused voluntarily, this bankruptcy shall be considered a criminal offence; and
- if, in respect of the first point, the person who is criminally or civilly liable for any offence that, after its commission and with the aim of avoiding their civil liabilities deriving from it, involves the carrying out of acts of disposition or agreements that decrease their assets, in order to become totally or partially insolvent, the debtor will be considered the perpetrator.

Anyone who, either personally or as the administrator of a legal entity, is aware of an increase in their debts, or for any other reason is unable to pay their debts, before the commencement of a bankruptcy proceeding, must be punished by imprisonment of two to five years provided that:

- a distorted picture is provided by the balance sheet;
- that person subtracts, for their own benefit, assets intended for the insolvency statement;
- they destroy or deteriorate assets that could have been incorporated into the insolvency statement;
- they incur obligations in breach of the duty to act with the diligence of a prudent businessman and loyal representative;
- they dispose of property or assets of the company or of itself at a price below the market price established at the time; and
- the damage or destroy the books of trade in order to make it impossible or difficult to verify outstanding debts.

Besides that, a debtor who restores the assets of the company before the completion of the insolvency proceeding shall be exempt from punishment, without prejudice to the civil liabilities.

## 10.2 Direct Fiduciary Breach Claims

On the basis of the Insolvency Decree and Andorran case law, the creditors cannot assert direct fiduciary breach claims against the debtor. Accordingly, all claims should be substantiated before the same court as the insolvency proceeding.

## 11. Transfers/Transactions That May Be Set Aside

### 11.1 Historical Transactions

The main risk areas for lenders upon the insolvency of the borrower, the security provider or the guarantor relate mainly to the enforcement of the financing agreement and the guarantees provided by the security provider and the guarantor. Claw-back risk must also be monitored. Under the claw-back regime established in the Insolvency Decree, the court is entitled to set aside any transactions of any nature entered into by the borrower within the 24 months prior to the initiation of its insolvency procedure and are considered to be prejudicial to the borrower's insolvency estate, and that fulfil either of the following.

- They fall into any of the following categories:
  - (a) transactions carried out through agreements where the borrower's obligations largely exceed those of its counterparty;
  - (b) transactions in which the total prepayments of non-matured debts are verified;  
or
  - (c) all mortgages or guarantees granted over assets of the borrower after the cessation of payments date for securing pre-existing debts of the insolvent entity.
- They are gratuitous acts done a maximum of six months prior to the date of cessation of payments declared by the Andorran judge.

### 11.2 Look-Back Period

See 11.1 Historical Transactions.

### 11.3 Claims to Set Aside or Annul Transactions

The individual creditors can assert their claims to set aside or annul transactions by means of a civil proceeding substantiated before the same section of the court of the insolvency proceeding.

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