

## Amendments to the Spanish Insolvency Act: court homologation and claims held or transferred by SAREB

Banking and Capital Markets Department, Gómez-Acebo & Pombo

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Act 26/2013, passed on 27 December 2013 and published in the Official Journal of Spain on 28 December 2013 has amended the provisions of the Spanish Insolvency Act (the "SIA") related to out-of-court restructuring. In particular Act 26/2013 modifies the 4th Additional Disposition of the SIA which allows to, upon certain circumstances, force extensions to dissident financial creditors in Spanish restructurings through the intervention of a Court (hereinafter, the "**Court Homologation**").

As outlined in previous notes, the majority required for a Court Homologation is 55% of the debt of the pre-insolvent company held by financial entities. This literal wording gave rise to a number of questions, for instance, to which kind of credits and to who should apply the majority (ie what was the meaning in this context of the reference to "debt held by financial entities"?). The question was in fact significant in the case of credits held by the Spanish Bad Bank SAREB (SOCIEDAD

DE GESTIÓN DE ACTIVOS PROCEDENTES DE LA REESTRUCTURACIÓN BANCARIA, S.A.).

Act 26/2013 has now introduced a new paragraph in section 1 of the 4th Additional Disposition of the SIA, stating that claims transferred to SAREB and held by SAREB or by transferees or assignees of SAREB shall be considered for the purposes of the Court Homologation as claims held by financial entities and therefore counted for the required majority. Therefore, it is now clear that the claims held by SAREB, or held by assignees or transferees of SAREB, will have to be counted for the quorum of 55% required for the Court Homologation.

This also means that both SAREB and the entities holding claims acquired from SAREB can be forced to extensions of a refinancing agreement through a Court Homologation if they have voted against the agreement (and provided that the rest of the conditions contemplated in the SIA have been met).

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