

Another significant judgment on toll roads project financing

Madrid, May 2025

We refer to our notes *Sponsors' support agreements in infrastructure project financing*¹ and *Project finance. A new judgment in the saga of the Spanish toll roads lawsuits*² relating to previous judgments on the same subject, namely *support agreements* creating certain funding obligations on the sponsors of a toll road financed by a syndicate of lenders through a typical project finance structure. These obligations are usually undertaken *vis-à-vis* the concessionaire company, its HoldCo and the lenders.

The Madrid Court of Appeal (MCA) has issued a judgment³ overturning a first instance decision that had dismissed the claims brought by the creditors of a Spanish bankrupt toll road against one of its sponsors⁴, a major Spanish construction company. The MCA, aligning with the general view of the Supreme Court and its own precedent on the same toll road, upheld the creditors' action, although it reduced the amounts claimed⁵.

These are in our opinion the main takeaways from this recent judgment:

- Creditor lenders of a bankrupt toll road concessionaire or its HoldCo have legal standing to seek payment from the sponsors for the benefit of the insolvency estate when the insolvency administrator has failed to act. The MCA also determined that, in this case, the derivative action had been properly filed by the lenders.
- The Supreme Court judgment 117/2020 of 19 February is applicable to the present case⁶.
- All agreements within the project finance structure (sponsors or support agreement, loan agreements, security package, etc.) constitute "a legally organized unity" and must be interpreted "jointly".
- The sponsors' financial obligations to provide funds to the concessionaire or its HoldCo were a condition for the project's financing aimed at guaranteeing the "timely repayment of loans".
- The sponsors had forcefully submitted that, by definition, project finance is a nonrecourse debt, meaning that their obligations are not repayment

¹ https://www.almoquera.net/files/uqgd/1360d0_7911bf16523b49039915ac36f5e50783.pdf

² https://www.almoquera.net/files/uqgd/1360d0_707e5dbdbb8f4a639f7b094a9e4a22a4.pdf

³ Judgment 111/2025 of 15 April. J Almoguera Abogados acted as legal counsel for the creditors in this lawsuit and in that commented in our November 2024 note.

⁴ The lawsuit was originally filed against all the sponsors, but a settlement was reached with all of them except one.

⁵ The reasons for this are too specific to be explained in this note; they stem from the MCA's interpretation of certain contractual provisions and its assessment of the evidence.

⁶ See our note mentioned in footnote 1.

guarantees, but rather conditional obligations enforceable only under very specific circumstances and while the project is ongoing. However, the MCA held that these obligations are enforceable even after the project's failure and the concessionaire's loss of the State concession to operate the toll road.

- The obligation to contribute funds to HoldCo is not subject to a prior decision at HoldCo level as to whether to receive such funds by way of a capital increase or a participative loan. The MCA found that the "legal form" in which the funds are to be received falls outside the scope of the case and must be addressed instead within the insolvency proceedings.
- The sponsors strongly argued that their obligations were unenforceable because the lenders were entitled to receive funds from the State under the so-called RPA⁷, which had been pledged in their favour. However, the MCA ruled that any funds the lenders had received or may receive from the State pursuant to the pledge of the RPA have no bearing on the resolution of the case.
- The obligation to contribute funds when a certain refinancing ratio is not met remains enforceable even if no refinancing has actually occurred.

⁷ *Responsabilidad Patrimonial de la Administración*, this to say a compensation payable by the State due to the rescission of the administrative concession.