

## **Intragroup transactions and insolvency**

Madrid, March 2022

A company (Lateral) paid part of the debt of its parent company (Global) and of its subsidiary (CCH) *vis-à-vis* a financial entity (Ibercaja) around a year before being declared insolvent.

The insolvency court decided to rescind the payment as detrimental to Lateral's insolvency estate<sup>1</sup>. It found that Lateral had paid a third-party debt without a consideration and there was therefore a non-rebuttable presumption of detriment pursuant to the Insolvency Act<sup>2</sup>.

The insolvency court's judgment was challenged by Ibercaja and reversed by the Court of Appeal of Madrid (CAM)<sup>3</sup>.

The CAM started by reminding that, according to Supreme Court's case-law, the interest of the group does not *per se* justify the disposal of assets or the assumption of liabilities by one of the group companies. For such acts not being qualified as detrimental to the insolvency estate and thus capable of being rescinded the company itself must have obtained an economic benefit as a result, at least an indirect one.

The CAM then analysed whether Lateral obtained any economic advantage by partially paying the debt of Global and CCH. It noted that:

- (i) Lateral had an interest to support Global as the latter used to provide financing to Lateral; it was Lateral's *source of income*. Furthermore, Lateral had an outstanding debt to Global that was reduced because of the payment to Ibercaja.
- (ii) Lateral's payment entailed the lifting on the liens on several CCH's properties. As CCH was a wholly owned subsidiary of Lateral, by saving CCH's real estate Lateral was ultimately safeguarding the value of its investment in that company, *i.e.* its own assets.

Accordingly, the CAM concluded that payment by Lateral of Global's debt was reasonably *justified* as beneficial to Lateral's assets and therefore should not be rescinded.

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<sup>1</sup> Art. 71.1 of the former Insolvency Act (art. 226 of the Recast Insolvency Act) provides for the rescission of any act carried out by the debtor within two years prior to the declaration of insolvency that is detrimental to the insolvency estate.

<sup>2</sup> Art. 71.2 of the former Insolvency Act (art. 227 of the Recast Insolvency Act).

<sup>3</sup> Judgment of the Court of Appeal of Madrid 476/2021 dated 3 December 2021.