European Perspective in Brief

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Europe has struggled mightily during the last several years to triage a long series of critical blows to the economies of the 27 countries that comprise the European Union, as well as the collective viability of eurozone economies. Here we provide a snapshot of some recent developments relating to insolvency and restructuring in the EU.

Spain—The capital structure of the Asset Management Company for Assets Arising from Bank Restructuring ("SAREB") established in late November 2012 by the Fund for Orderly Bank Restructuring (*Fondo de Reestructuración Ordenada Bancaria* ("FROB")) in connection with the Spanish banking sector's recapitalization and restructuring process has been completed. SAREB was created as a limited liability stock company for a term not to exceed 15 years. It is governed by the provisions of Law 9/2012 of November 14, 2012, on Restructuring and Resolution of Credit Entities ("Law 9/2012"); by Royal Decree 1559/2012 of November 15, 2012, which established the Legal System for Asset Management Companies; and by other private law regulations.

The exclusive purpose of SAREB is the ownership, management, and administration (whether direct or indirect), as well as the acquisition and sale, of distressed assets that have been transferred to it by: (i) financial institutions which required public assistance from FROB when Royal Decree 24/2012 on Restructuring and Resolution of Credit Entities (now repealed by Law 9/2012) entered into force; and (ii) institutions that require public funds, according to the Bank of

Spain's judgment and independent analysis of the capital needs and the quality of the assets of the Spanish financial system (carried out within the framework of the Memorandum of Understanding on Financial-Sector Policy Conditionality executed by Spanish and European authorities on July 20, 2012).

SAREB will be managing total assets of more than €50 billion after acquiring the assets of Group 1 entities (i.e., banks that have already been nationalized: Bankia, Catalunya Bank, NCG Banco-Banco Gallego, and Banco de Valencia) for approximately €36.7 billion and the assets of Group 2 entities (i.e., banks that require public capital: BMN, Liberbank, Caja3, and CEISS) for approximately €14 billion, all according to parameters defined by restructuring plans approved by the European Commission on November 28, 2012.

Germany—On January 3, 2013, the German Ministry of Justice circulated draft legislation that would establish procedures to govern the coordination of insolvency proceedings of affiliated companies. Existing German law does not provide for a joint approach to such insolvencies but is instead structured to accommodate companies on an individual basis. Under current law, an insolvency petition must be filed in the court of the district where the center of a group member's economic activity is located. This often results in the involvement of multiple insolvency courts and the appointment of multiple officeholders to administer the insolvency proceedings of group members. As a result, it is frequently difficult to achieve the best results for stakeholders in cases where corporate functions serving the whole group have been allocated to a single group member before insolvency proceedings or where similar dependencies exist among group members. Close cooperation of group members following the filing of an insolvency petition may not be possible if different courts and officeholders are involved, although such cooperation may be desirable for economic reasons. The proposed legislation is intended to change this, consistent with broader EU legislative activity promoting closer cooperation between courts and officeholders in insolvency proceedings of group companies carrying on economic activity in different member states.

The German ministry's proposed legislation provides for a single insolvency court to have jurisdiction over all the members of the group. Which particular court shall have such jurisdiction depends on a number of factors, including: (i) a finding by the court that the petitioning group member is of sufficient significance to the group to warrant commencement of joint proceedings in the district where the center of that group member's economic activity is located; and (ii) the interests of creditors. The court presiding over joint proceedings may generally appoint a single insolvency administrator for all group members. The court may also appoint a joint creditors' committee. However, each group member's insolvency proceeding will be administered separately—the draft legislation does not provide for the substantive consolidation of group members' estates. In cases involving the appointment of multiple insolvency administrators, the court may appoint a coordinating administrator to harmonize the joint proceedings, including by means of a joint insolvency plan. Finally, in cases involving multiple insolvency courts and officeholders administering the proceedings of group members, the courts and officeholders will be obligated to exchange relevant information and to cooperate generally.

Other recent European developments can be tracked in Jones Day's *EuroResource*.