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Change of position by the Spanish Supreme Court.

Secured creditors cannot demand default interest after the opening of insolvency proceedings.

Spain's Supreme Court recently handed down a judgment changing its position on the accrual of default interest on secured loans after the opening of insolvency proceedings (Supreme Court, Civil Chamber (*Sala de lo Civil*) judgment 227/2019 of 11 April 2019).

This decision, which contradicts a ruling from Spain's highest court just a few months earlier (Supreme Court, Civil Chamber judgment 112/2019 of 20 February 2019), indicates that secured loans can only continue to earn loan interest after the opening of insolvency proceedings (up to the limit of the value of security) and not default interest.

For now, this is the only determination in this way by the Supreme Court (so we cannot really speak of it as case-law), and it is too soon to know what impact it will have in practice. However, if this principle is upheld, this would herald a very significant change, because to date creditors owed secured loans (mainly banks and investors that acquired mortgage debts at a discount) had the possibility of charging default interest after the opening of insolvency proceedings (up to the limit of the value of their security). If this new position of the Supreme Court is confirmed, only default interest accrued before the opening of insolvency proceedings could be considered secured (within the agreed limit of liability).

This judgment also raises a multitude of questions to be answered, such as for example whether, given that default interest cannot accrue after the opening of insolvency proceedings, it will be possible to at least charge the loan interest accrued after the opening of such proceedings in those cases where loans were accelerated before the insolvency, or whether it will be possible to claim loan interest up to the limit of the maximum mortgage liability fixed in the loan deed for default interest.

The next judgments by the Supreme Court will have to be scrutinised closely, to see whether it confirms this position and, if so, to find out how the accrual of loan interest after insolvency will work from now on, although we are already aware that many insolvency practitioners are starting to apply this principle

Contacts

For further information
please contact:

Borja Fernández de Trocóniz
Partner

(+34) 913996020

borja.ftroconiz@linklaters.com

Juan Oñate
Counsel

(+34) 913996081

juan.onate@linklaters.com

Authors: Borja Fernández de Trocóniz, Juan Oñate.

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Linklaters, S.L.P.
Calle Almagro, 40
E-28010 Madrid

Telephone (+34) 91 399 60 00

Facsimile (+34) 91 399 60 01

Linklaters.com