

Resolution of the DGRN on the registration of foreign insolvency proceedings

On Monday 10, August, the Spanish *Boletín Oficial del Estado* (BOE) published the Resolution of June 11, of the *Dirección General de los Registros y el Notariado* (DGRN), revoking a decision of the *Registro de la Propiedad de San Javier No. 1*, whereby registration of two English judgments declaring bankruptcy was denied. Registration was refused on the ground that, pursuant to the interplay of Articles 38.1 and 39 of Regulation 44/2001, 4 of the Spanish *Ley Hipotecaria* (Mortgage Act) and 10.1 of the Civil Code, it is necessary to obtain a prior Spanish court order enacting «un asiento procedente conforme a la legislación hipotecaria pertinente» (translated, I guess that would be “a legitimate mortgage registration entry under the relevant mortgage legislation”). On the contrary, in the appellant’s opinion direct registration is available as provided by Council Regulation (EC) 1346/2000 of 29 May 2000 on insolvency proceedings.

According to the DGRN the proper resolution of this action requires identifying the applicable rules and their respective scopes. In this sense the DG indicates that, contrary to what is stated in the decision under consideration, Regulation 44/2001 does not apply as Article 1 excludes insolvency proceedings from the substantive scope; nor is it applicable Article 10.1 of the Civil Code, being a provision which contains a conflict rule determining the law applicable to the creation and effectiveness of real rights; an issue that does not arise in the instant case. The answer to the question must actually be sought in the international rules on insolvency proceedings contained in Regulation 1346/2000. Article 16 of the Regulation establishes automatic recognition: “Any judgment opening insolvency proceedings handed down by a court of a Member State which has jurisdiction pursuant to Article 3 shall be recognised in all the other Member States from the time that it becomes effective in the State of the opening of proceedings”. Therefore, the system is clearly at odds with the rule stated in the Spanish *Ley Concursal* 2003 (Insolvency Act 2003) on the effectiveness in Spain of foreign judgments, Art. 220, which requires the exequatur procedure under the *Ley de Enjuiciamiento Civil* 1881 (Civil Procedure Act 1881) be attended prior to registration.

Given the primacy of EU regulations, the applicability of the solutions set out in the Spanish Insolvency Act depends on whether the instant case falls outside the scope of Regulation 1346/2000: but the answer is a clear “no”. Far from it: having examined the circumstances of the case the application of Regulation 1346/2000 is indisputable. According to this conclusion, the refusal of the inscription on the grounds that it is necessary to obtain a Spanish court order approving the foreign judgment prior to its registration can not be shared, and the Registrar’s decision must be revoked.

Parties are entitled to apply against this DGRN’s resolution before a civil court within two months.