IAN FLETCHER INTERNATIONAL INSOLVENCY LAW MOOT 2024

NUZILIA BANKRUPTCY COURT

In re: La Buena Tienda, S.A., Debtor.	Case No.: 24-12712

I. INTRODUCTION

1. This is a matter being heard before the Nuzilia Bankruptcy Court, a court of first instance. The key insolvency statute is the Insolvency Statute of the State of Nuzilia 1978 (the "Nuzilia Insolvency Statute"). Nuzilia is a common law jurisdiction and, as such, its binding legal principles include judge-made or common law. Nuzilia incorporated the UNCITRAL Model Law on Cross-Border Insolvency ("MLCBI") into its insolvency statute in 2022 and is the first jurisdiction to adopt Article X of UNCITRAL Model Law on Recognition and Enforcement of Insolvency-Related Judgments (to avoid uncertainty as to whether relief under the MLCBI extends to recognition of insolvency-related judgments).[1]

2. On February 1, 2023, La Buena Tienda commenced a bankruptcy proceeding, under Chapter 10 of the Bankruptcy Code of Utopia (the "Chapter 10 Case").[2] The Chapter 10 Case was commenced after Rhapso, Inc., a creditor of La Buena Tienda, commenced an involuntary bankruptcy proceeding against La Buena Tienda in Spain. On May 2, 2023, La Buena Tienda filed a petition under the Nuzilia Insolvency Statute seeking recognition of La Buena Tienda's Chapter 10 Case.

[1] The Court does not expect to hear substantive arguments as to the effect of Article X.

[2] Chapter 10 proceedings in Utopia broadly resemble proceedings under chapter 11 of the United States Bankruptcy Code, except that only a debtor with its center of main interests in Utopia is eligible to commence Chapter 10 proceedings.

3. On May 18, 2023, Judge Arthur Solomon of the Nuzilia Bankruptcy Court held an initial case conference to consider whether to (a) grant recognition of the Chapter 10 Case, as a foreign main proceeding, and (b) subsequently recognize the orders of the Utopian Bankruptcy Court, including its *Order Confirming Chapter 10 Plan of Reorganization*. In short, La Buena Tienda contends that its Chapter 10 Case is eligible for recognition as a foreign main proceeding and that the Nuzilian Court should recognize the Chapter 10 Plan of Reorganization.

4. At the hearing, Rhapso, Inc., a Nuzilian corporation and creditor of La Buena Tienda, appeared and opposed recognition. Rhapso's claim against La Buena Tienda is a claim for damage caused to a clothing warehouse and its contents, caused by chemical pollutants spilling over from La Buena Tienda's adjacent clothing manufacturing facility. (*See* Section III below).

5. Specifically, Rhapso argued that recognition should be refused because:

(a) Although no court in Nuzilia has decided the issue, the relevant time for considering La Buena Tienda's center of main interests ("COMI") is the time of the opening of an insolvency proceeding where a debtor has its COMI. Since Rhapso had already filed an involuntary insolvency proceeding in Spain against La Buena Tienda[3] one month prior to the commencement of the Chapter 10 proceedings, when La Buena Tienda's center of main interests ("COMI") was in Spain, La Buena Tienda's Chapter 10 Case was not a foreign main proceeding and La Buena Tienda's COMI shift (and Chapter 10 proceedings) constituted an abuse of process and an

[3] Insolvency proceedings in Spain are called "*concurso de acreedores*". They are called "*necesario*" when they are forced by one of the creditors. In this case, Rhapso, Inc. had already filed the involuntary petition against La Buena Tienda before the Commercial Court of Madrid (who had also issued an order admitting the petition) before La Buena Tienda filed for its Chapter 10 in Utopia. It is the responsibility of the Spanish court to serve the order admitting the petition on the affected debtor; however, the Commercial Court of Madrid had not served that order on La Buena Tienda by the time the debtor filed for its Chapter 10 proceedings in Utopia. The proceeding nonetheless exists as a matter of Spanish law, irrespective of notice to the debtor.

illegitimate attempt to evade the Spanish proceedings (which remain pending before the Spanish court);

(b) recognition of La Buena Tienda's Chapter 10 Plan of Reorganization would be manifestly contrary to Nuzilia's public policy, on the basis that:

i. La Buenda Tienda engineered jurisdiction in Utopia for the purposes of avoiding Rhapso's claim in Spain as well as the priority in ranking this claim would have under a Spanish insolvency proceeding. In this regard, 50% of the claim of the creditor that requests the involuntary proceedings in Spain is granted priority ("*crédito privilegiado general*") in ranking and is therefore preferential over ordinary claims;[4]

ii. La Buenda Tienda also engineered jurisdiction in Utopia for the purposes of avoiding the Spanish tax authority's claim against La Buena Tienda as a consequence of a sanction for the environmental breach. In this regard, the European Directive 2004/35/CE of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remediation of environmental damage, motivated the enactment in Spain of Law 26/2007 on Environmental Liability. This law obliges businesses to cover reparation costs (a penalty) when they have caused environmental damage through negligence or fraud, as in the case of La Buena Tienda. The penalty amounted to €2 million.

iii. the Chapter 10 Plan seeks to compromise a Nuzilian climate change

[4] Take into account that under a Spanish insolvency proceeding for La Buena Tienda, preferential claims (in this case, mainly Rhapso and the Spanish Tax Authority) could not be compromised under a plan ("*convenio de acreedores*"), as neither of them would vote in favor of any plan that affects their claims.

levy claim of c.$1 million without the consent of the Nuzilian Tax Authority (to whom the climate change levy is payable). Under Nuzilian law, the climate change levy ranks as a preferential debt and preferential debts cannot be compromised in a Nuzilian restructuring plan without the preferential creditor's consent. (*See* paragraph 34 below.)

6. Not surprisingly, La Buena Tienda disagreed. La Buena Tienda contends that:

(a) at all relevant times, its COMI was in Utopia;

(b) the appropriate time for evaluating COMI for purposes of recognition of a foreign main proceeding is at the time of the commencement of the ancillary proceeding seeking recognition of a foreign proceeding under the MLCBI; and

(c) recognition would not be contrary to Nuzilian public policy and, in any event, would not be manifestly so.

7. Pursuant to the Nuzilia Insolvency Statute, at the end of the preliminary hearing, both parties requested consideration of the case by a wider bench of three judges, given this proceeding involves questions of major public importance and public policy, with potentially wide ramifications. Judge Solomon agreed and directed La Buena Tienda, as petitioner, and Rhapso, as respondent, to file supplemental briefings in accordance with the 2024 Ian Fletcher Rules on the following issues:

(a) Whether La Buena Tienda, at the relevant date for recognition, had its COMI in Utopia and therefore whether the Chapter 10 Case is eligible for recognition as a foreign main proceeding; and

(b) Whether recognition of the Chapter 10 Plan and the terms therein would be manifestly contrary to Nuzilian public policy, such that the Court should refuse recognition under Article 6 of the MLCBI.

8. A hearing will be set at a date to be determined by the Bankruptcy Court's Registrar.

II. THE EVENTS LEADING UP TO THE COMMENCEMENT OF INSOLVENCY PROCEEDINGS

9. La Buena Tienda is a multinational corporation, formed under Spanish law on December 1, 1980. La Buena Tienda operates internationally in 50 geographical markets with 3,000 stores. Its stores focus on fast-fashion clothing for men, women, teenagers, and children as well as home furnishings. La Buena Tienda, proud of its Spanish heritage, has always maintained an office in Puerta del Sol in the very center of Madrid, Spain. At its height, La Buena Tienda, in 2010, reported operating profits of $850 million. Additionally, since its founding, it manufactured all of its clothing in a facility just outside of Madrid. According to the founders of La Buena Tienda, essential to its products, was a tag in each product that said – *Fabricado en Madrid* (*i.e.*, Made in Madrid). La Buena Tienda believed owning its own manufacturing facility was essential to streamlining the production process, ensuring faster turnaround times and greater flexibility in responding to fashion trends.

10. While La Buena Tienda had been on the leading edge of many brick and mortar retail trends, it was slow to embrace and adopt an e-commerce platform. The company's reluctance to compete in the e-commerce space left the company, and its management, ill-prepared to deal with the global pandemic in 2020. Additionally, following the end of the pandemic, supply chain issues, inflation, increased interest rates and lower consumer demand all served to worsen La Buena Tienda's situation. By the end of 2022, La Buena Tienda reported an annual net loss of $350 million.

11. Since 2001, La Buena Tienda had an office in Arcadia, Utopia. Its Arcadia office served as a central office managing distribution of its inventory globally. After La Buena Tienda opened its Arcadia office, it amended its bylaws and operating agreement. In La Buena Tienda's revised operating agreement, the agreement provided that certain management decisions must be

made by a majority vote of the Chief Executive Officer, Chief Financial Officer, Chief Talent Officer, Chief Technology Officer, and Chief Operating Officer. The Chief Executive Officer and Chief Operating Officer were located in Madrid; the Chief Financial Officer and Chief Talent Officer were located in Arcadia; and the Chief Technology Officer was tax resident in Spain but worked 3 months per year from Arcadia and 2 months per year from Nuzilia. The operating agreement provided that the board meetings could either occur in person or virtually. All board meetings have occurred virtually since the Covid pandemic. Additionally, the Chief Executive Officer kept sole control over strategic decisions. All the books and records of La Buena Tienda are maintained on a cloud-based storage site, with hard copies of critical documents maintained both in Arcadia and Madrid.

12. Given that the Chief Financial Officer and his accounting team were in Arcadia, all of La Buena Tienda's payments to vendors were processed in Arcadia. La Buena Tienda, however, had bank accounts in Arcadia, Madrid, and Nuzilia.

13. La Buena Tienda is presently the issuer of two series of notes: $500,000,000 of 4.75% Utopian Notes due 2025 (the "2025 Notes") and €900,000,000 of 5.00% Euro Notes due 2026 (the "2026 Notes"). The proceeds of the notes were transferred directly to a bank account in Arcadia, with funds then transferred to Madrid for any European operating expenses. Both series are governed by indenture agreements. The 2025 Notes are governed by Arcadia law and designated Arcadia as the forum for any disputes related to the notes. On the other hand, the 2026 Notes are governed by Spanish law and designated Madrid as the forum for any disputes. Additionally, the 2026 Notes required that La Buena Tienda maintain an office or agent in Madrid for the purpose of service of process.

14. In the offering memorandum for the each of the notes, La Buena Tienda indicated

that all administrative operations occurred in Arcadia. The indentures do not prohibit La Buena Tienda from moving its COMI or registered office without the noteholders' consent, nor require it to inform the note trustee of any such change.

15. The definition of "Events of Default" under both notes included any restructuring or liquidation, whether voluntary or involuntary, filed in Utopia, Spain, Nuzilia or any political subdivision thereof. In discussing default and insolvency risk, the offering memoranda for both notes warned of the possibility of a Utopian bankruptcy. Specifically, it provided:

> *if we are unable to pay our indebtedness, including our obligations under the notes, then we may be subject to bankruptcy proceedings in Utopia. Utopian bankruptcy laws are significantly different from and may result in less favorable treatment to creditors than those of Spain*.

16. The 2025 Notes and 2026 Notes provided La Buena Tienda with a much-needed cash infusion to modernize its business strategy. At the direction of La Buena Tienda's CEO, Carlos Feller, while some of the funds were used to modernizing its e-commerce platform (one of the company's biggest competitive disadvantages), none of the funds were used to upgrade its manufacturing facility in Madrid. With a focus on fast-fashion and new products being produced each month, Feller did not want to close the facility to install upgrades or make repairs because of the negative short-term impact in the company's sales and financials. As a result, although La Buena Tienda kept up with modern employee safety standards, its machinery, including the drums for storing dye and other chemicals used in the manufacturing process, have not kept up with modern standards.

17. Additionally, given the precarious financial position, Feller (given his sole control on certain strategic decisions) determined the company could not use its limited funds to purchase or lease a new modern manufacturing facility.

18. As La Buena's Tienda's cash flow decreased, in the fall of 2023, the board decided that it was necessary to consolidate its operations, as maintaining offices in Madrid and Arcadia was becoming prohibitively expensive. Thus, it transferred all its remaining fifty employees in Madrid to Arcadia, including its CEO and COO. The CTO was also required to spend at least 7 months per year in Arcadia, being able to commute from Spain the rest of the year. Additionally, it sold its office building in Madrid. For corporate purposes, however, it maintained a mailing address in Madrid[5]. After the sale of its office building, La Buena Tienda notified its customers and creditors of its new mailing address in Madrid. This notice also indicated all customer service inquires and account payable inquires would be forwarded to, and managed by, employees in the Arcadia office.

19. In connection with this consolidation of operations, in October 2023, La Buena Tienda's board approved a resolution which contained the following language: "*La Buena Tienda's center of main interest is located in Utopia.*" In connection with that resolution, La Buena Tienda received an opinion letter from the Córdoba Abogados law firm opining that notwithstanding that its business is registered in Spain, La Buena Tienda's COMI was in Arcadia.

III. DISPUTE BETWEEN LA BUENA TIENDA AND RHAPSO

20. In 2022, in the heat of the Spanish summer, a boiler exploded in La Buena Tienda's clothing manufacturing facility just outside Madrid. This in turn burst drums of stored chemical dyes which leaked across to the adjacent property, a large clothing warehouse owned by Rhapso. Almost all the clothing in the warehouse was ruined; the warehouse required partial reconstruction.

21. Rhapso alleges that La Buena Tienda and its board of directors acted negligently in failing to ensure chemicals were stored correctly, away from the boiler. It also alleges that the

[5] This mailing address was provided by a Spanish company who provides for corporate addresses to foreign companies in prestigious locations in Spain; in this case, the address provided was still in the center of Madrid.

board – and in particular La Buena Tienda's CEO – cut corners on safety in order to maximize profits and that dangerous practices have increased in recent months as La Buena Tienda's financial difficulties have worsened. Indeed, despite being advised in June 2022 that La Buena Tienda needed to only close its manufacturing facility for 3 days, to move the drums and upgrade the boiler, Feller refused to close the facility. According to Feller, the facility has never closed since it opened and was not going to do so under his management – especially during the summer, as La Buena Tienda was manufacturing clothing for the critical back-to-school season. The CEO directed his employees to find another solution, but none was ever found.

22. Rhapso seeks $8 million damages in respect of the ruined clothing, damaged warehouse and loss of anticipated profit. It also seeks punitive damages given La Buena Tienda's dangerously negligent practice of storing powerful chemicals close to the boiler.

23. The $8 million damages sought by Rhapso before a Madrid first instance Court includes; (i) $2 million in emerging damage ("*daño emergente*"), and $6 million for lost profit ("*lucro cesante*"). Rhapso provided an expert report with its claim by a top accounting firm calculating (and proving with all the relevant documents) in-depth both concepts of damages that are awarded by Spanish Courts[6]. Following the instructions of Rhapso's foreign lawyers (used to requesting punitive damages in their jurisdictions) and despite contrary advice from the Spanish lawyers, Rhapso requested an additional amount of moral damage ("*daño moral*") of up to $5 million.

IV. CREDITOR FILES AN INVOLUNTARY PETITION (*SOLICITUD DE CONCURSO NECESARIO*) IN SPAIN

24. In accordance with the Spanish Insolvency Act, the jurisdiction to open an

[6] Spanish Courts would not usually consider additional damages such as "punitive damages" that are awarded in other jurisdictions.

insolvency proceeding in Spain corresponds to the territory in which the company has its COMI. The concept of COMI in Spain, as an EU member state, is defined under the Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings (recast).

25. In Spain, there is a rebuttable presumption that the COMI is located in the place of the company's domicile. Article 45.2 of the Spanish Insolvency Act expressly provides that, "*For these purposes, the change of address registered in the Commercial Registry within the six months prior to the application for bankruptcy will be ineffective, regardless of the date on which it was agreed or decided*."

26. This is the reason why Rhapso, Inc. filed for the involuntary insolvency petition of La Buena Tienda in Spain (more specifically, before the Commercial Court of Madrid).

27. The Commercial Court of Madrid had also issued an order admitting the petition. However, this order was not sent to La Buena Tienda by the time La Buena Tienda filed its Chapter 10 proceeding in Utopia (see footnote 3).

28. The involuntary insolvency proceedings under Spanish law includes: (i) a 5-day term for La Buena Tienda to oppose the involuntary insolvency filing (and/or claim lack of jurisdiction, if that were the case), (ii) a trial before the Commercial Court in which the necessary proof may be admitted and practiced, and (iii) finally, the order declaring (or not) the involuntary insolvency filing.

29. For now, given delays in Spanish Courts caused by strikes of judges and Court clerks (two successive strikes within the first half of 2023), La Buena Tienda has just claimed lack of jurisdiction of the Spanish Courts but no further advance in the proceedings has been made.

V. DEBTOR COMMENCES FILES A VOLUNTARY PETITION FOR RELIEF UNDER CHAPTER 10 OF THE UTOPIAN BANKRUPTCY CODE

30. On February 1, 2023, La Buena Tienda commenced the Chapter 10 Case by filing a voluntary petition for relief under Chapter 10 of the Utopian Bankruptcy Code. La Buena Tienda mailed a notice of the commencement of the Chapter 10 Case to all creditors, including Rhapso at its corporate headquarters in Nuzilia.

31. In connection with the commencement of the Chapter 10 Case, La Buena Tienda's CEO filed a declaration in the Utopia Bankruptcy Court stating that the primary reason for its filing in Utopia was its financial distress and covenant defaults under the 2025 Notes and 2026 Notes. As a result of the defaults, the agent under the notes, at the direction of the noteholders, sought to accelerate the notes and demanded repayment. Additionally, the public reporting concerning the chemical leak in its manufacturing facility tarnished its public image, impacting sales. Indeed, in its target demographic, sales declined by more than 40% in the months following the leak.

32. Rhapso timely filed a proof of claim against La Buena Tienda on February 15, 2023. Its claim was for $8 million in damages plus up to $5 million in moral damages, as described above.

33. On March 15, 2023, La Buena Tienda filed its Chapter 10 Plan. The Chapter 10 Plan provided for a holistic restructuring of La Buena Tienda's capital structure and debts. In the Chapter 10 Plan, La Buena Tienda seeks to reject hundreds of above-market leases. To position itself to compete in a competitive e-commerce market, equity interest holders are contributing a combined $100 million to develop a cutting-edge online platform that allows customers to virtually try on clothing using artificial intelligence to create personal aviators. Each customer's online "closet" will display the latest current trends on their personal aviator and allow each customer to order the displayed items with one-click.

34. As noted, the Chapter 10 Plan seeks to compromise a Nuzilian climate change levy

claim of c.$1 million, without the consent of the Nuzilian Tax Authority. Under Nuzilian law:

(a) the climate change levy is an environmental tax designed to make businesses operating in Nuzilia more sustainable, by deterring them from consuming energy;

(b) the climate change levy is charged on electricity and gas (according to each kilowatt hour of usage) and is payable to the Nuzilian Tax Authority annually in arrear;

(c) the climate change levy ranks as a preferential debt under the Nuzilia Insolvency Statute; and

(d) section 4(4) of the Nuzilia Insolvency Statute provides that "Neither the company nor its creditors may approve any proposal for a restructuring plan (or proposed modification to a restructuring plan) which compromises a preferential debt, except with the concurrence of the preferential creditor concerned".

35. La Buena Tienda's Chapter 10 Plan seeks to compromise the climate change levy claim as a general unsecured creditor, to be paid 15% of the principal amount of its claim, with the remainder released.

36. The Chapter 10 Plan also seeks to compromise Rhapso's claim for 15% of the principal amount of $8 million, with the remainder released.

37. The same applies to the €2 million sanction in Spain derived from the environmental damage and the application of the Spanish Law on Environmental Liability. The Chapter 10 Plan seeks to compromise the claim derived from the sanction for 15% of the principal amount of €2 million, with the remainder released (including in respect of those subsidiarily liable: La Buena Tienda's directors).[7]

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[7] Under Spanish law:

- directors of a company with its COMI in Spain have a duty to file for insolvency proceedings within two months of becoming aware – or when they ought to have been aware – of the company's insolvency;
- directors can be held liable for all debts that are not covered with the assets of the insolvent company under Spanish insolvency proceedings; when considering such liability, there is a rebuttable presumption that the directors did not file for insolvency proceedings in due time;
- formal insolvency proceedings (such as a "*concurso de acreedores necesario*") do not allow for third party releases;

38. In connection with the filing of the Chapter 10 Plan, La Buena Tienda also filed a motion seeking to estimate Rhapso's claim for the purposes of voting. Although served with notice of the motion, Rhapso did not contest the estimation motion and, on April 5, 2023, the Utopian Bankruptcy Court granted the motion and fixed Rhapso's claim, solely for the purposes of voting, in the amount of $8 million (mainly excluding the moral damages). Additionally, although served with a ballot, Rhapso did not vote on the plan. (There is no dispute that Rhapso was sent and received all documents relating to the Utopian Chapter 10 case and the present Nuzilian recognition proceedings.)

39. On April 21, 2023, La Buena Tienda filed with the Utopian Bankruptcy Court a declaration in support of confirmation of its Chapter 10 Plan that included a tabulation of votes of each class of claim. This indicated that the General Unsecured Creditor class (of which Rhapso ostensibly formed part) overwhelmingly voted to reject the plan. All other impaired classes voted in favor of the plan (i.e., by the requisite 2/3 majority within each class, other than the General Unsecured Creditor class). No objections were filed by any plan creditors. (Please assume that the Chapter 10 plan documents were comprehensive and did not lack information.)

40. On May 1, 2023, notwithstanding that the General Unsecured Creditor class rejected the plan, the Utopian Bankruptcy Court approved the Chapter 10 Plan (the "Confirmation Order"). For a plan of reorganization to be confirmed, it must meet the specific requirements of Section 1029 of Chapter 10. To satisfy the requirements of section 1029, all impaired classes must

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- directors would be subsidiarily liable for the €2 million penalty in Spain under the Spanish Law on Environmental Liability (to the extent not repaid by the debtor); and
- directors' subsidiary liability in respect of the €2 million penalty (which is a public claim) cannot be released by a Spanish plan (within formal restructuring or insolvency proceedings).

Under Nuzilian law, recognizing non-consensual third-party releases does not raise any issue of public policy; the Court does not expect to hear argument on this point. However, the directors' choice to pursue Chapter 10 proceedings in Utopia and to seek extensive releases for directors and shareholders may raise fiduciary duties issues, upon which the parties may wish to address the Court.

accept the plan. Section 1029(b) allows the confirmation of a plan over the objection of an impaired class if the "*plan does not discriminate unfairly, and is fair and equitable, with respect to each class of claims or interests that is impaired under, and has not accepted, the plan*." 10 Utopian Bankr. Code § 1029(b)(1). When a plan is confirmed pursuant to Section 1029(b) it is referred to as a "cramdown." A cramdown may be necessary under certain circumstances to foreclose the possibility that a small minority would prevent confirmation of the plan.

VI. DEBTOR FILES A PETITION UNDER NUZILIAN LAW SEEKING RECOGNITION OF THE CHAPTER 10 CASE AS A FOREIGN MAIN PROCEEDING

41. On May 2, 2023, La Buena Tienda filed a petition under the Nuzilia Insolvency Statute seeking recognition of La Buena Tienda's chapter 10 proceeding and, specifically, seeking the enforcement of the Confirmation Order.

A. La Buena Tienda's COMI

i. *Applicable Statutes*

42. Under the Nuzilia Insolvency Statute:

(a) "'Foreign main proceeding' means a foreign proceeding taking place in the State where the debtor has the center of its main interests": Article 2(b);

(b) "In the absence of evidence to the contrary, the debtor's registered office … is presumed to be the center of the debtor's main interests": Article 16(3); and

(c) explanatory guidance to the legislation provides that (a) the above presumption does not prevent the court from calling for or assessing other evidence if the conclusion suggested by the presumption is called into question and (b) if there appears to be a separation between the place of the debtor's registered office and its alleged COMI, the party alleging the center of main interests is not at the place of registration will be required to satisfy the court as to the location of the COMI and the Nuzilian court will be required to consider independently where the debtor's COMI is located.

43. To date, there has been no Nuzilian case on what factors should be used to ascertain a debtor's COMI or what weight of evidence is required to rebut the registered office presumption

– e.g., whether the court requires sufficient evidence that COMI is somewhere else, or whether the presumption is merely indicative for speed and convenience and can be readily rebutted.[8]

ii. ***Arguments to be Addressed***

44. Was La Buena Tienda's COMI in Utopia or in Spain?

45. What is the applicable date upon which COMI should be assessed?

B. **Grounds for Refusal to Recognize the Chapter 10 Plan**

i. ***Applicable Statutes***

46. The Nuzilia Insolvency Statute provides that "[n]othing in this Law prevents the court from refusing to take an action governed by the laws of Nuzilia if the action would be manifestly contrary to the public policy of this Nuzilia". Article 6. Public policy is not defined in the Nuzilia Insolvency Statute. The Nuzilia Bankruptcy Court has not previously interpreted this section of the Nuzilia Insolvency Statute and what is included within the meaning of "public policy." The law does provide, however, that a party challenging a petition based on Article 6 of the Nuzilia Insolvency Statute bears the burden of persuasion in demonstrating that recognition is manifestly contrary to Nuzilian public policy.

ii. ***Arguments to be Addressed***

47. Do the terms of the chapter 10 plan violate the public policy of Nuzilia or Spain? And, if so, must the Nuzilia court refuse to recognize the Chapter 10 proceeding and enforcement of the Chapter 10 plan?

VII. **RELEVANT TEXTS**

48. UNCITRAL Model Law on Cross-Border Insolvency

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[8] In the absence of any applicable Nuzilian authority on point, it is appropriate to consider the construction of the MLCBI by non-Nuzilian courts. Article 8 of the MLCBI provides that "[i]n the interpretation of this Law, regard is to be had to its international origin and to the need to promote uniformity in its application and the observance of good faith."

49. Article X of the UNCITRAL Model Law on Recognition and Enforcement of Insolvency Related Judgments

50. Guide to Enactment of the UNCITRAL Model Law on Cross–Border Insolvency, U.N. Gen. Ass., UNCITRAL 30th Sess., U.N. Doc. A/CN.9/442 (1997)

51. Digest of Case Law on the UNCITRAL Model Law on Cross-Border Insolvency (2021)

52. Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings (recast). The concept of COMI under Spanish law derives from the concept of COMI under this EU regulation.