



# Insolvency and restructuring in the Spanish real estate and construction sector: Martinsa-Fadesa

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# Introduction

Martinsa-Fadesa is one of Spain's largest main real estate and construction groups. Formed in 2007 by the merger of the companies Fadesa Inmobiliaria and Martinsa, the company went into administration on 15 July 2008 after failing to service its outstanding debts. Martinsa-Fadesa, created through Martinsa's debt-financed €3.5 billion takeover of Fadesa in 2007, decided to file for administration proceedings under Spanish law after failing to raise the €150 million of fresh equity needed to complete a €4 billion debt refinancing deal with the banks. Its search for funds included a petition to the Institute of Official Credit (a government-owned corporate entity attached to the Ministry of Economy and Finance of Spain), which was refused. Martinsa-Fadesa then filed for creditor protection, owing €5 billion and forcing banks to admit to an initial €550 million in related bad loan provisions.<sup>1</sup>

Martinsa-Fadesa told regulators it had insufficient cash flow to meet interest payments and pay suppliers, blaming the 'clear recession that the Spanish economy is suffering at the moment'.<sup>2</sup> In a press statement, it declared: 'This decision has been taken due to the grave cash-flow difficulties created by the inability to obtain a 150 million euro loan which the company needed for liquidity and to continue normal development of its projects.'<sup>3</sup> However, it said it remained 'viable', with assets valued at €10.8 billion at the end of 2007. With the ongoing crisis in the Spanish property market and wider economy, the value of its assets has since continued to decrease.

Martinsa's filing for administration added fuel to a heavy sell-off of shares on the Madrid stock exchange, with Spain's highly leveraged construction, infrastructure and property groups suffering the most. Martinsa-Fadesa SA became the first publicly traded Spanish developer to seek protection from creditors when a decade-long real estate boom ended in 2007. Under the country's insolvency provisions, the company has carried out a restructuring process that has seen its direct workforce reduced from 821 to just 250 workers, as well as having repercussions for a significant number of suppliers and customers.

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<sup>1</sup> Three of Martinsa-Fadesa's creditor banks – Banco Popular, Caja Madrid and La Caixa – said that they had made provisions totalling €542 million against their exposure to the company.

<sup>2</sup> Martinsa-Fadesa, press release.

<sup>3</sup> Martinsa-Fadesa, press release.

Martinsa-Fadesa SA (Martinsa-Fadesa) is a Spanish real estate developer and construction group. The company specialises in the development of residential and commercial property projects, including hotels, shopping centres and golf courses, as well as industrial projects. Martinsa-Fadesa owns around 28 million square metres of land for development and has a presence in 21 provinces in Spain. The company is also active on the international market, with operations in the Dominican Republic, France, Hungary, Mexico, Morocco, Poland, Portugal, Romania and Slovakia, among others. It has also sales offices in the United Kingdom, Germany and Ireland. In 2007, the company employed 821 workers.

In 2006, the Martinsa Group, an unlisted construction company, launched a friendly takeover bid (previously agreed by the two companies) for 100% of Fadesa, a publicly traded peer. Martinsa was a much smaller company in size with a business model based on working with a limited number of core staff and subcontracted teams carrying out construction and other tasks. Fadesa, on the other hand, worked on the basis of an integrated business model with few subcontracted functions. The most important motivating factor in the takeover was to exploit Fadesa's significant portfolio of land for development and to maximise the combined strength of both companies. In order to acquire 100% of Fadesa's shares, at the time valued at just over €4 billion, Martinsa sought credit of over €2.5 billion from various banks. In February 2007, the takeover was finally authorised by the Board of the Spanish Securities Commission (Comisión Nacional del Mercado de Valores (CNMV)<sup>4</sup>).

Despite the initial good performance, in the first quarter of 2008, the CNMV reported the total value of the company to be €129.9 million, compared to €325 million in 2007. As indicated in the company's financial information (first quarter of 2008), the activity of the company was affected by the 'expanded refinancing process of its acquisition debt' and 'the hardening of the financial conditions for clients'. The company's results were affected 'by the impact of the Tender Offer, which implies greater financial cost, due not only to acquisition costs, but also to the countable effect of the revaluation of inventories'.

The company was therefore faced with a position of having to service loans taken up to finance the purchase of a valuable asset (in the shape of Fadesa) at a time when, as a result of market conditions brought on by the financial crisis, this asset as well as the underlying health of this market sector were being eroded to an unprecedented degree. The company thus faced excessive liabilities, lower sales resulting in a lack of liquidity and a decline in the value of its assets at a time when the banks were no longer willing or able to further extend their credit facilities to the company.

At the time of filing for administration proceedings, Martinsa-Fadesa had debts of €5.2 billion, but assets which were valued at €10.8 billion at the time. However, €6.6 billion of the company's assets were in the form of land ownership, and €3.2 billion was tied up in projects under construction. Given the state of the market, the value of these assets was falling by the day, while the debt was fixed, in nominal terms at least. In financial terms, for the fiscal year that ended 31 December 2008, Martinsa-Fadesa SA's total revenue decreased by 48% to €625.8 million.

The current administration process only affects Martinsa-Fadesa SA in Spain, and not the international branches of the company in other countries.

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<sup>4</sup> The Comisión Nacional del Mercado de Valores (CNMV) is the agency in charge of supervising and inspecting the Spanish stock markets and the activities of all the participants in those markets. The purpose of the CNMV is to ensure the transparency of the Spanish market and the correct formation of prices in them, as well as to protect investors.

After about a decade of boom, Spain's residential housing market collapsed in 2007 amid rising interest rates, oversupply and tougher lending conditions. As a result, many small construction companies and property developers have either filed for protection or been absorbed by larger groups. Large companies have also been affected, as real estate firms and construction companies have taken on a great deal of debt in order to finance their growth, which has increased their financial risk aggravated by the fall in demand. The number of companies entering administration in 2007 has more than doubled compared with the previous years and this trend continued in 2008. The problems facing the construction companies and property developers are having a 'ripple effect', affecting other businesses such as suppliers, which have also been forced to downsize their workforce.

## Effect of the financial crisis

2,864 companies went into insolvency in 2008, a 182% increase over 2007.

38% of these were building or real estate companies:

- 387 real estate developers, 423% up on 2007
- 692 building companies, 280% up on 2007

Large cases:

- Martinsa-Fadesa: debts of more than €5 billion
- Habitat: €2.3 billion debts
- Llanera: €700 million debts

Major restructuring rescues:

- Inmobiliaria Colonial: €7 billion debts restructured
- Metrovacesa: €2.1 billion debt exchanged for equity

Source: KPMG, 'From boom to bust: Lessons from the Spanish property crisis', *Frontiers in Finance: Turbulent Times*, March 2009.<sup>5</sup>

During the good years, Spain's housing boom was a driving force behind economic growth. Between 1998 and 2007, the gross value added of the construction sector grew at an average annual rate of 5.9%, thereby exceeding the 3.8% growth in gross domestic product (GDP). During that time, construction reached a 10% share of national GDP, twice the overall figure for the eurozone. In 2007, Spain was building around 700,000 new housing units a year – more than France, Germany and Italy combined. Now, new house building has fallen to about one-fifth of its peak level. According to Eurostat, on the basis of a comparison between November 2007 and November 2008, the working day adjusted index of production for construction was 1.8% lower in Germany, 2.2% lower in France, 5.7% lower in the UK and 9.7% lower in Spain.

The significance of the construction sector is even greater in terms of employment. The sector was responsible for 25% of all new jobs created between 1998 and 2007, and in 2007 it employed over 2.6 million people, accounting for 13.9% of all employees. At one point the sector had around 475,000 companies and 2,790,000 workers.<sup>6</sup> It was clear to market commentators that this level of growth and indeed employment was not sustainable in the long term, and yet, until the bubble burst, the number of companies and workers continued to grow. The proliferation of companies was due to the high level of subcontracting and lack of regulation. According to trade unions representing workers in the sector, the tendency among companies to rely on the 'outsourcing' of labour (in which the construction workforce is recruited through subcontractors and other intermediaries) has made work in the construction sector increasingly insecure, with worsening working conditions, access to training and career development.

<sup>5</sup> Data from INE (Instituto Nacional de Estadística), Ministry of Economy and Treasury Spain, February 2009.

<sup>6</sup> Estimated figures of companies and workers provided by the trade unions.

Employment in the construction industry suffered an 8% decline in the second quarter of 2008, a 13% decline in the third quarter and a 20.7% slide in the fourth quarter. According to social security statistics, between January 2007 and January 2008 some 25,000 fewer workers were employed in the construction sector. The data collected by the Spanish Labour Force Survey (Encuesta de Población Activa (EPA)), which includes all working people, even those not affiliated to the social security system, reflects an increase of 71,000 workers in the construction sector during 2007. As houses are completed, construction will decline further, and up to one million construction jobs may be lost as a result.

The employment in the sector is characterised by the temporary character of the contracts and the high proportion of foreign workers present.

Martinsa-Fadesa had a high exposure to Spain's residential market, where house sales have been drastically affected due to credit restrictions, excess supply and expectations that house prices will continue to fall. Martinsa-Fadesa decided to enter administration, in part due to its consideration that the Spanish economy is already in recession and house sales will fall further. The company's excessive liabilities and lower sales have resulted in a lack of liquidity and a decline in the value of its assets (homes and other buildings) that forced it to file for creditors protection in order to continue trading.

The Spanish insolvency law, the Ley Concursal (Law 22/2003 of 9 July 2003) came into effect on 1 September 2004. The Ley Concursal provides for a single legal proceeding for situations of crisis caused by the insolvency of a common debtor. All types of insolvency proceedings in Spain have now been consolidated into one (a *concurso*), which will have different outcomes for the company, depending on the financial status of the debtor.

The *concurso* is the only proceeding that applies to both civil debtors and traders, regardless of whether they are natural or legal persons. Its main purpose is to satisfy creditors' claims as far as possible, although to achieve this, the insolvency law encourages solutions that allow the company to continue in business and jobs to be saved.

The aims of the insolvency proceedings (*concurso*) depend on whether the company (debtor) is being rescued or liquidated (bankruptcy): creditors may agree with the company that the company's operations should continue or that its management be vested in a third party. The objective of the rescue (*convenio*) is to restructure the debt to allow the company to continue trading. The company makes an arrangement with the creditors to reduce its debt over a certain period of time, up to the limitations set by the Insolvency Act (a debt reduction of not more than 50% and/or a stay of proceedings of not more than five years); liquidation will occur only if a valid creditors' agreement cannot be concluded. In the situation of liquidation, the objective is to sell the company's assets to repay as much of the debt owed to the creditors as possible.

## Legal procedure

The normal procedure begins with filing an insolvency petition with the Commercial Court (*Juzgado de lo Mercantil*) of the capital of the province where the entity's registered office is located. The role of the judge is to direct the insolvency proceedings, open and close the proceeding, ensure that the necessary formal procedures are carried out, supervise the actions taken by the administrators and resolve any disputes arising at any stage of the proceeding.

When the insolvency proceedings are voluntary (*concurso voluntario de acreedores*), such as in the case of Martinsa-Fadesa, the directors file the insolvency petition. An insolvency petition must be filed in writing and accompanied by the relevant documents. By law, a company must apply for insolvency within two months, starting from the date when there is knowledge of a critical situation. This is particularly important because if a creditor is able to get a judge to force such a measure, directors risk losing all their personal property because they failed to act with due diligence.

The declaration of insolvency must then be published in the Official State Gazette (*Boletín Oficial del Estado*) and in a daily newspaper in the province in which the debtor is located. It must also be registered with the Registry for Insolvency Proceedings (*Registro de Procedimientos de Insolvencia*).

In the case of a voluntary *concurso*, all business decisions relating to the company will be overseen by court-appointed administrators (a lawyer, an economist and a representative of the creditors). Their role is an interesting one, as they have to provide information to and cooperate with the judge while also representing the general interests of all the creditors and supervising the administration and disposal of the company's assets. In the case

in hand, during the proceedings, Martinsa-Fadesa's management retain their posts and run the business, though all significant decisions, and expenditure above a certain limit, will have to be approved by the administrators. By filing for voluntary administration, the company avoided being subject to a takeover by a team of administrators in the running of the business, which is what would have happened if one or more of its creditors had imposed the insolvency procedure on the company.

An insolvency petition can be filed if a company is unable to pay its debts as they become due (known as current insolvency) or if it foresees that this will happen in the near future (imminent insolvency). The judge in charge of the Martinsa-Fadesa insolvency proceedings accepted the company's request to go into voluntary administration because of Martinsa-Fadesa's 'state of imminent insolvency', brought about by a collapse in sales. This move protected the company from its creditors and allowed it to continue trading until a restructuring plan is agreed by the court-appointed administrators.

As indicated above, the voluntary administration process allows companies in administration, such as Martinsa-Fadesa, to discount some debts by 50% and delay payment of others by up to five years. A judge decides which creditors 'lose out'. When a company is officially in administration, creditors can then start preparing to line up with their claims. For example, in the case of Martinsa-Fadesa, home buyers who have paid money to Martinsa-Fadesa but have no property to move into will become ordinary creditors if they do not have a bank guarantee. Creditors had a month from the beginning of September 2008 to register their claims with the administrators. In order to inform interested parties (creditors) about the *concurso* and new developments, a website was set up (<http://www.administracionconcursalmartinsafadesa.es/index.htm>).

It is expected that the judge will close the common phase of the process in September 2009 with the resolution of any incidents and complaints lodged in the administrators' report (reportedly more than 800 in the case of Martinsa-Fadesa).

After the conclusion of this 'common phase', the next phase will be the agreement that will see the creditors voting on the suggested timeframe for payments that have already been submitted to the judge. The company proposes paying its entire debt in eight years as opposed to the five years dictated by law. In order to receive authorisation from the judge, Martinsa-Fadesa needed written support from the public authorities stating the importance of the case in economic terms. The proposal has finally received the support of the Ministry of Economy and Treasury based on the fact that 'company activity has an effect on the market at national level' as a publicly traded company, operating in different Spanish regions and abroad.<sup>7</sup>

According to the Spanish insolvency law, as soon as the agreement is ratified by the creditors, the company is considered to have overcome the *concurso*, although the liquidation of the debts will take place for a number of years afterwards.

## Insolvency and redundancies

According to Article 64 of the Insolvency Law, the opening of an insolvency proceeding does not in itself constitute grounds for the termination of contracts, and contractual clauses that authorise the parties to terminate a contract on these grounds are invalid. Contracts may be terminated on other grounds, such as breach of contract, but in

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<sup>7</sup> Information made public in the press: <http://ecodiario.eleconomista.es/legislacion/noticias/1080525/03/09/Economia-allana-camino-para-que-juez-autorice-plan-de-viabilidad-de-Martinsa.html>.



these cases, once an insolvency proceeding has been opened, requests for terminations of contract must be submitted to the judge in charge of the insolvency proceedings.

Employment contracts are affected by the insolvency proceeding in as much as the power to approve redundancies and modify working conditions is transferred to the judge, who also has the power to reduce compensation agreed upon in the event of the termination of contracts.

In the case of insolvency proceedings, employees become ‘creditors’ with special priority regarding the settlement of outstanding debts relating to them (as regulated in the Insolvency Law<sup>8</sup>). This means that any outstanding wages, compensation relating to the termination of employment contracts and any other payments or compensation due to workers receive priority treatment for payment out of any remaining or realised assets.

In order to guarantee the payment of wages and compensation owing to workers made redundant by enterprises in a state of crisis or considered to be insolvent, there is a specific mechanism for payment through a Wage Guarantee Fund (FOGASA) consisting of the contributions made by all public and private enterprises employing workers. The fund acts as a guarantor for the payment of wages and compensation to workers made redundant by enterprises owing to insolvency, suspension of payments, bankruptcy and competition between creditors. In such cases, the amounts owed to workers are paid out of the fund, which then becomes a creditor to the company. The fund defers and pays in instalments the debts of the company concerned so that the company may continue to operate with the workers who have not been made redundant. Thus, this mechanism avoids the liquidation of assets and the closure of the insolvent companies, as well as safeguarding some of the jobs at risk.

## Recent reform

In January 2008, experts warned that the number of firms filing for bankruptcy protection almost tripled last year, as builders and real estate developers have faced insolvency at record pace. PriceWaterhouseCoopers said 2,864 firms filed for administration last year, 1,849 more than in 2007.<sup>9</sup> It was feared that if the number of companies filing for bankruptcy were to continue to increase at the same rate, the already struggling system of commercial courts would become paralysed.

Against this background, the government passed a reform of the law in March this year (Royal Decree Law 3/2009 on urgent measures concerning tax, finance and insolvency<sup>10</sup>) to speed up the administration process for ailing companies and to protect debt-repayment deals between banks and firms filing for creditor protection. It is a partial reform of the legal framework in order to guarantee a more agile, less costly procedure, as well as to guarantee a greater efficiency of the existing procedure as far as results are concerned. It encourages companies and creditors to reach agreements, eliminating unnecessary procedures and reducing costs. Some of the new aspects are highlighted below:

- the costs are being reduced, e.g. court fees, publication of numerous notices, the court procedural representative’s fees, the fees of the *concurso* managers, etc.;
- this new reform also fosters out-of-court restructuring processes in those cases where they will clearly support the company to continue trading;

<sup>8</sup> Law 22/2003 of 9 July 2003.

<sup>9</sup> PriceWaterhouseCoopers, press release, January 2008.

<sup>10</sup> Real Decreto-ley 3/2009, de 27 de marzo, de medidas urgentes en materia tributaria, financiera y concursal ante la evolución de la situación económica (BOE de 31 de marzo).

- this recent reform allows, for example, the judge to resolve the process in writing, and not through hearings, as was the case until now. The reform also allows big *concursons* (those with more than 300 creditors) to vote for the agreement to take place in writing in a given timeframe without having to organise a meeting with the creditors.

# Administration process, restructuring and redundancies

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Table 1 provides a summary outline of the process of administration at Martinsa-Fadesa. This is followed by a description of the process of carrying out redundancies at the company in order to meet the requirements of the administration proceedings.

**Table 1: Outline of the administration process at Martinsa-Fadesa**

November 2006	On 2 November 2006, Promociones y Urbanizaciones Martín, SA and Huson Big, SL (Martinsa) officially launched a takeover bid on 100% of Fadesa's shares at €35.7 per share,* a total value of €4.045 million. On 6 February 2007, the CNMV board definitively approved the takeover. In the extraordinary meeting held the following day, Fadesa's board of directors unanimously approved a positive report on the takeover.
7 May 2008	Martinsa-Fadesa focused on the process of debt refinancing, finished on 7 May 2008 with an agreement with 45 credit institutions and coordinated by La Caixa, Cajamadrid, Ahorro Corporación Financiera, Morgan Stanley, Royal Bank of Scotland and Banco Popular.  This agreement unified the debt contracted for the acquisition of Fadesa and a large part of the operating debt, setting out the terms of payment. The debt refinanced by Martinsa-Fadesa amounted up to €4,000 million, of which €2,579 million corresponded to the credit for the acquisition of Fadesa, and €1,422 million to the refinancing of operating debt. Therefore, of the €5,201 million of total debt of the company, more than €4,000 million was refinanced.** This agreement depended on the company raising €150 million before July 2008.
7 July 2008	Deadline for securing the €150 million credit.
14 July 2008	Martinsa-Fadesa stopped trading in the stock market.
15 July 2008	Martinsa-Fadesa filed for voluntary administration.
16 July 2008	Martinsa-Fadesa presented the application to the Registry.
24 July 2008	The judge accepted the company's request to go into voluntary administration.
October 2008	Submission of the viability plan ( <i>Plan de Viabilidad</i> ).
August 2008	First collective redundancies approved by the judge, affecting a total of 312 workers. This includes around 80 workers who opted for voluntary dismissal.
January 2009	Announcement of a second round of collective redundancies.
March 2009	Conclusion of the second collective redundancy agreement, affecting 259 workers.

\* Martinsa-Fadesa, 2006 results report.

\*\* Martinsa-Fadesa, first quarter of 2008 report.

The first collective redundancies were agreed on 4 August 2008 and affected a total of 312 workers, including around 80 workers who opted for voluntary dismissal. This first lay-off plan or redundancy procedure (*Expediente de regulación de Empleo* (ERE)) tried to adjust the workforce to the actual volume of activities of the company.

The redundancy procedure (when a group of employees are dismissed due to a 'collective' reason, such as restructuring, economic crisis or closure) requires the agreement of the workers' representatives or, failing this, prior official authorisation. By law, the duration of the consultation period with the workers' representatives and trade unions ranges from 15 to 30 days where they discuss the company's proposed decision and possible measures to support the employees affected. If no agreement has been reached by the end of this consultation, the employer

may still proceed with the decision concerned, but it will be subject to official authorisation from the labour administration as part of the redundancy procedure. Workers subject to collective dismissal in Spain are entitled to compensation of a minimum of 20 days' pay for each year of service, which, in cases of insolvency, is covered by the Wages Guarantee Fund (FOGASA).

In the case of Martinsa-Fadesa, the consultation process for the first redundancy concluded with an agreed compensation of 36 days' pay for each year of service (20 days paid by FOGASA and 16 by the company), with the debt to FOGASA to be repaid by 2015. This agreement was ratified by the judge on 12 August 2008.

A second round of collective redundancies was announced in January. The company held meetings with workers' representatives with a view to reaching an agreement. In the first meeting on 26 January 2009, the company presented the trade unions and workers' representatives with its proposal, which affected 283 jobs. This started as an 'informal' negotiation, as the collective proceeding (formal submission of information) was not yet presented to the judge. The company was looking for a pre-agreement with the trade unions and workers' representatives to accompany the formal documentation to be submitted to the judge. This pre-agreement was expected to speed up the proceedings. The conditions for the redundancies were also dependent on the timing of the agreement. The administrators, following consultation with the company, argued that given the worsening economic situation of the company in the last few months, the agreed compensation for the first collective redundancy procedure could only be matched if an agreement was reached in a week. Failing that, the provisions would then depend on the judge's decision. The Workers' Committee at that point requested more information on the scope of the lay-off plan and type of staff affected. On a further meeting on 29 January 2009, the administrators were informed that the initial proposal was rejected by all the workers in the different company offices. This rejection was motivated by the perceived insufficient justification of the projected redundancies, which appeared to only focus on the financial conditions for the redundancy payments without discussing other aspects (such as the social plan, early retirement, etc.). The Workers' Committee requested the provision of detailed documentation that justified the company's decision to further reduce its workforce and decided not to continue negotiations until the information was submitted to the judge.

The second redundancy procedure finally concluded with a total of 259 workers losing their jobs, 55% of the total workforce and around 90% of the workforce in the company's offices in La Coruña (Fadesa). Today, the former Fadesa head office only has a staff of 19, compared to 450 in 2006. In this concrete case, it is worth noting the lack of local or regional intervention during the negotiation. Workers' representatives resented the 'lack of interest' from the local and regional authorities in Galicia given the effect of these redundancies in the local and regional labour market.

This second lay-off plan was considered to be necessary due to the expected further decrease of the company's activity in the next couple of years until the market recovers, as well as a need to adapt the company structure and make it more flexible (centralising functions, closing down regional offices and increasing productivity). Collective redundancies affected all departments, offices and types of staff.

According to the business plan, the company is expected to generate €5,069.7 million in the next eight years, although during 2008 there will be a negative cash flow due to the finalisation of projects, the administration process and the restructuring of the workforce.<sup>11</sup>

In addition to the lay-off plans, the company will focus on managing its land portfolio as the main element to generate revenue (up to €3,699.3 million). Martinsa owns 27.6 million square metres of land that can potentially

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<sup>11</sup> Information made public in the press.

be developed. The plan also highlights internationalisation as a priority to respond to the difficulties of the property market in Spain, focusing on the development of their business interests abroad.

Restructuring has led to a reliance on subcontracting certain aspects of the business (occupational health and safety, IT and construction) and therefore changing Fadesa's business model, which was characterised by an 'integral' service. This was heavily criticised by the trade unions, as it does not contribute to the creation of stable jobs in the sector.

Martinsa-Fadesa consulted the trade unions and workers' representatives on the redundancies. In the case of the offices without any elected social representation, the company asked the workers to nominate a representative(s) (number depending on the size of the workforce in the particular office). However, representatives of the Workers' Committee argued that although the 'consultation' did happen, it mainly focused on discussing the conditions for the redundancies. There was no discussion on ways of avoiding the collective redundancies or mitigating the consequences, by, for example, resourcing or accompanying social measures aimed at redeploying or retraining those workers made redundant by the company. The redundancies were seen by the company as the only feasible option to keep the company viable and to respond to changes in the economic climate affecting demand and profitability in the construction sector. On this point, trade unions pointed out that the drastic reduction of the company portfolio of projects clearly limited the possibility of suggesting, for example, temporary redundancies, as this could have resulted in the workers being worse off in case the business climate does not improve and workers cannot be reintegrated after a certain period. It was also argued that the fact that the company is undergoing an administration process could have affected worker confidence in its future and therefore their likelihood to accept partial employment options rather than redundancy packages. As the *concurso* was still in progress, the possibility remained open that the company could ultimately have to cease trading. This contributed to 80% of workers opting for voluntary dismissal during the first phase of the redundancy procedure.

There is no information available on the situation of those workers who have been made redundant. There were no special measures to support these workers. The arguments put forward by the company were that there was no money, and due to the downturn in the market, no scope for relocation or redeployment plans.

At national level, the Spanish government launched 'Plan E'<sup>12</sup> to tackle the effect of the financial crisis in the Spanish economy. Plan E contains a series of tax measures that are expected to be a direct support to families, as well as providing support for public works projects, thereby indirectly supporting the construction industry. As part of this, Plan E introduces direct 'job creation measures', such as the Local Investment Fund, endowed with €8,000 million, which doubles investments in all Spanish municipalities. The initial plans unveiled in February were positively received by the social partners. In a press conference on 6 May 2009, the first vice-president of the government, María Teresa Fernández de la Vega, provided a first evaluation of this initiative, stating that 'nearly all the projects have been already passed and they will create more than 242,000 jobs, and 92,000 of them will be new contracts'.<sup>13</sup> The Local Investment Fund is used to finance a set of actions that, given their features, are expected to revitalise the sector and to enhance job creation and preservation.

The Ministry of Industry, Tourism and Trade signed an agreement with social partners in May 2009 for the creation of an industrial observatory for the construction sector. The observatory will monitor the situation in the sector as a whole, identifying strengths and weakness to inform policy development.

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<sup>12</sup> Spanish government website: <http://welcome.plane.gob.es/>.

<sup>13</sup> Council of Ministers, Spanish government website: [http://www.la-moncloa.es/IDIOMAS/9/ActualidadHome/06052009\\_PlanE.htm](http://www.la-moncloa.es/IDIOMAS/9/ActualidadHome/06052009_PlanE.htm).

The case of Martinsa-Fadesa represents one of the most significant insolvency proceedings in Spain in recent times, not only because of the size of losses involved and the impact on the local economy in La Coruña, where the operational headquarters of Fadesa are based, but also because it clearly demonstrates the fall-out of the financial crisis in several different ways. When Martinsa decided to launch its friendly takeover of Fadesa, this appeared to be an entirely valid business decision, based on a buoyant, albeit overinflated, property market. Although the company had to extend itself significantly with heavy borrowing, the value of the assets purchased appeared to justify this investment and creditors were happy to lend. However, as the financial crisis hit, credit facilities were being withdrawn from the company at the same time as its assets were declining in value and the property bubble burst as consumers were becoming affected by similar difficulties in obtaining access to credit. Although the different aspects of the financial and economic crisis are difficult to disentangle in the construction sector in particular, one can guess that Martinsa would not have faced the same difficulties had it not been for the highly leveraged purchase of Fadesa just before the market hit its downward slide. One might say that industry insiders should have been able to predict the imminent end of the Spanish property bubble, but it is easier to predict these developments with hindsight than in advance, particularly as the credit crunch was significantly triggered by developments external to the Spanish market.

Another particularly interesting feature of the Martinsa-Fadesa case is linked to the specificities of Spanish insolvency law. Although the system is designed to give companies the opportunity to ensure their continued operation by filing for insolvency themselves and working with administrators, creditors and the legal system to avoid bankruptcy by essentially renegotiating loan and repayment terms – thus also safeguarding employment to some extent – the system appears at the same time to have brought about interference with the general context of labour law in place for redundancies not triggered by company insolvency.

Indeed, the application of insolvency law in the case of linked collective redundancies mixes two very different legal systems – that of labour law and that of civil law, giving a judge in the commercial court the right to make final decisions on redundancy matters which would otherwise have been in the purview of the company and indeed collective negotiations.

The judicial nature of the process limits the autonomy of the social partners to negotiate during the process, as opposed to the administrative nature of a normal collective redundancy regulated by the Workers Statute. In the case of redundancy proceedings not triggered by insolvency, the procedure starts when the company sends a written communication to the labour authority and opens a 30-day bargaining period with workers' representatives over the precise terms of the dismissal. The communication to the labour authority and to the legal representatives must be accompanied by all the necessary documentation justifying the reasons for the dismissals and the measures that are to be adopted, in the terms prescribed by the regulation. If an agreement is reached, it is notified to the labour authority, who certifies it. If an agreement is not reached, it is up to the labour authority, who has to decide (through strict controls) whether the procedure is to be accepted or rejected. In a normal procedure, there is a certain pressure on the employer side to reach an agreement with the trade unions, as only in this case can they be sure that the administrative authorities will not oppose the planned redundancies. In an insolvency case, the existence of a pre-agreement with trade unions and workers' representatives can help to move the process along, but as it is an out-of-court agreement it does not have the same guarantees and can be modified by the judge. The fact that the decision is taken by the judge of a commercial court can also have an effect on the quality of the process. In a normal collective redundancy, the process is overseen by a work inspector from the public administration (*Secretaria General de Trabajo*) with particular knowledge on labour matters and



requirements to follow in collective redundancies. For example, the social plan is assessed from the perspective of the workers' protection, ensuring its potential applicability and not just as a mere formality.

Although in insolvency law there is a requirement for any claims by employees to have priority over those of other creditors, it is a long and drawn-out process which can not only lead to employee confidence being undermined, but also provides the judge with final authority over the level of payments to be received. In the case of Martinsa-Fadesa, the payments agreed were relatively generous and above the legally prescribed minimum for redundancy payments, but this is not guaranteed in every case of this nature. Within this framework, there appears to be a distinct possibility for workers affected by insolvency to be treated less favourably than in other cases of redundancy, although this was not true for the workers of Martinsa-Fadesa.

Also of significance in this case has been the apparent lack of involvement on the part of the local and regional authorities to find alternative solutions for workers made redundant, particularly at Fadesa's offices in La Coruña, but it was not possible to ascertain whether this was linked to the legislative nature of the procedure (through the insolvency processes) or other reasons to do with the size or nature of the restructuring.

*This case study is based on the analysis of documents, information in the media as well as interviews carried out in the first half of 2009 with the following: a representative of the National Federation of Construction, Wood and Associated Trades (FECOMA-CCOO), which is affiliated to the Trade Union Confederation of Workers' Commissions (Confederación Sindical de Comisiones Obreras, CC.OO); a representative of the Metal, Construction and Associated Trades Federation (Federación Estatal de Metal, Construcción y Afines, MCA-UGT), which is affiliated to the General Workers' Confederation (Unión General de Trabajadores, UGT); the president of the Workers' Committee; and a representative of the National Confederation of Construction (Confederación Nacional de la Construcción, CNC). Representatives of Martinsa-Fadesa declined to take part in the interviews but were given the opportunity to review the case study and provide inputs.*

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