

€50BN NPL MARKET BOOSTING LAWYERS, BUT COLLECTING FEES IS DIFFICULT

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The Spanish NPL market – where deals have an average value of up to €1.5 billion – has become increasingly sophisticated with portfolios packaged to attract specialist investors

Billions of euros worth of non-performing loans (NPLs) are being sold in Spain, a trend that is generating a considerable amount of work for law firms, but some lawyers bemoan the fact that ensuring clients pay for the legal advice that has been provided can be difficult.

"Spain is one of the most active markets for NPL sales, because there are many sellers willing to divest this type of product, in order to improve their position and obtain liquidity," says Marcel Enrich, partner at Baker McKenzie in Madrid. In 2017, around €50 billion worth of NPLs were sold in Spain and this trend is attributable to a number of factors. Before 2008, Spain was the largest market in Europe for real estate development and generated an incredibly high amount of debt, which then needed to be financed. Freshfields partner Ana López says "activity in the real estate market prior to the crisis and the consolidation of the financial sector" have been the main reasons for the large number of NPL sales.



Borrowers defaulting

"When the crisis hit Spain, borrowers started to default on their loans and left the banks with a lot of NPLs on their balance sheets," says Pedro Marques da Gama, partner at Pérez-Llorca. The development of the NPL market in Spain since then has resulted in it becoming an attractive proposition for investors. As Enrich explains: "The Spanish market has become sufficiently sophisticated – with the portfolios packaged according to the type of underlying asset – to attract specific investors."

As a result, Spanish lawyers are seeing a range of NPL transactions being completed. "The value greatly depends on the seller, size and characteristics of the portfolio being sold," says Marques da Gama. In recent years, the average value of NPL transactions in Spain has been €400 million to €800 million. However, Cuatrecasas partner Iñigo Rubio says that, more recently, there have been deals valued at more than €30 billion and, consequently, the "average amount has gone up to €1 billion - €1.5 billion".

Worth the effort?

The NPL market has proved very lucrative for lawyers, especially the top-tier firms in Spain. Enrich says there are opportunities for law firms to act for sellers and for "potential investors in tender processes to acquire NPL portfolios". But there is a view that, with the exception of firms predominantly working for selling banks, the NPL market works best for lawyers on the purchasing side. Garrigues partner José María Gil-Robles, says: "Fees are substantially larger for jumbo deals, but at the same time they involve a lot of effort, so I'm not sure if the risk-reward ratio on them is the right one."

NPL transactions can be complex for lawyers because they require expertise and experience in many different, and not necessarily related, fields of law. Marques da Gama says: "Explaining how the courts work in Spain to sophisticated hedge fund managers is also a challenge." In addition, lawyers also have to contend with SPA (sales & purchase agreement) negotiations and tax structuring, says Enrich. He adds: "The lack of documentation regarding NPLs is also common in the Spanish market."



Unpaid bills

From a transactional perspective, it is necessary to have large, experienced teams of lawyers to not only deal with acquisitions, but develop the best recovery strategy during the due diligence process, according to Cuatrecasas partner Iñigo de Luisa. He adds: "From the commercial perspective, conflicts of interest are complex to handle and 'picking the right horse' is not easy."

In addition, law firms can face problems ensuring they are paid for the legal work they do. Meanwhile, helping clients to understand the mechanics of NPL deals can also be difficult. Gil-Robles says: "It's a challenge to be paid for what we've done and to be able to explain to newcomers how the market works."