

BANKING SECTOR DISPUTES SURGE IN SPAIN AND PORTUGAL

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Cases relating to sale of bank shares as well as clauses in loan agreements on the rise in Spain, while BES fallout and swap agreement-related disputes increasing in Portugal

Dispute resolution teams in Spain and Portugal are being flooded with work due to a dramatic increase in banking sector-related cases.

In Spain, there has been a rise in disputes relating to the sale of shares in banks, as well as an increase in cases concerning clauses in loans that stipulate minimum interest rates. Meanwhile, the dramatic collapse of Portugal's Banco Espírito Santo (BES) last year has been coupled with a surge in disputes related to "swap agreements" in the banking sector.

José María Alonso, managing partner of Baker & McKenzie's Madrid office, says that, with regard to banking sector litigation, one of the major trends has been consumer-related claims. Alonso says a significant number of claims have been "filed in connection with the sale of preferential shares of regional banking institutions that have lost their value as a result of the sector's restructuring – clients are claiming against banks for providing inadequate information at the time of sale,

particularly with regard to the risks associated with the investment”.

Mis-selling

Herbert Smith Freehills partner Eduardo Soler-Tappa has also observed an “increased willingness” to bring claims in the banking sector. He adds: “This is not due to the financial crisis of recent years, but paradoxically due to the emergence of new business opportunities.”

Meanwhile, Alfredo Guerrero, partner at King & Wood Mallesons, has observed a rise in financial disputes concerning the “mis-selling of financial products”.

A large number of firms in Spain are expecting their dispute resolution and their banking and finance practices to grow in the coming year – research has shown more than half (51 per cent) of partners expect their dispute resolution practice to grow in 2015, while slightly more than a third (36 per cent) are anticipating growth in their banking and finance practice.

It is a similar story in Portugal. The collapse of BES has generated dispute resolution work for the vast majority of the country’s biggest law firms (see our Litigation & ADR annual report on page 38). Fernando Aguilar de Carvalho, partner at Uria-Menéndez-Proença de Carvalho says: “The BES crash in July 2014, with the subsequent intervention of the Bank of Portugal, has also had a very significant impact in the litigation arena, with practically all major law firms being somehow involved in the resulting litigation.” De Carvalho adds that there has been a “surge” of banking sector disputes relating to swap agreements.