

DISTRESSED ASSET SALES NEED INNOVATION

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Sales of distressed assets for small sums means lawyers have to be innovative to ensure contracts include indemnities to safeguard against unforeseen liabilities

Madrid has been the scene of a number of complex sales of distressed assets with some companies being sold for nominal prices, according to Rodrigo Martos Prat, partner at corporate boutique Gallego, Martos & Quadra-Salcedo. He believes such deals require lawyers to draw up contracts that include a greater emphasis on indemnities against unforeseen liabilities.

"We have worked on several deals recently where big multinational companies have sold off underperforming Spanish assets in non-core business sectors as an alternative to winding-up the activity," he says. "What has been particularly interesting about these transactions is that they are paid for exclusively by equity – with low purchase prices – and undertaken by highly specialised investors who are trusted to turn around companies."

Martos Prat says that these transactions have been carried out on a "tailor-made" basis and are based on the assumption of liabilities by the purchaser – including debt, workforce and other liabilities of a company. This is balanced with the seller providing some final support to the business that is being sold to help it overcome a reasonable interim period in which the purchaser will

undertake restructuring measures to enable the business to become sustainable. The success of these transactions often depends on the suitability and capacity of the bidder to be able to turn around a flagging business.

"Such deals present unique legal challenges," Martos Prat observes. "Due diligence is a vital aspect and we need to undertake in-depth research in order to find the embedded contingencies." As such, lawyers working on these deals have to be innovative when drafting documents to include indemnities as price adjustments are limited. "After all, if the offer price for an asset is €1 and due diligence finds further liabilities, the price can't really be reduced any further," Martos Prat concludes. "Bidders need confidence that a business can be successfully restructured."