NEW RESTRUCTURING LAW FAILS TO HELP SMALLER BUSINESSES

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Left to right: Pablo Albert (BDO Abogados), Nuria Gómez Hervas (Globalcaja), Sabina Díaz (Natra) and José Manuel Sánchez de la Torre (Banco Mare Nostrum)

Left to right: Alfonso Díez de Revenga (ING Direct), José Ramón Couso Pascual (Sareb), Gonzalo Atela (RBC Investor Services España) and Belén Alonso Gómez (BBVA)

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Spain's new restructuring and refinancing law helps big businesses but not the smaller companies that form the backbone of the country's economy

Spain's new restructuring and refinancing law – which aims to avoid bankruptcies – is good for large companies, but does little for smaller businesses, attendees at an event staged by Iberian Lawyer heard.

Pablo Albert, litigation and restructuring director at BDO Abogados, said the focus is generally on that the collapse of large firms steals the limelight. But he added there should be greater emphasis on saving small and medium-sized firms, as they are the ones that drive the Spanish economy. The current system is good for large companies but not smaller ones, and it would be difficult to see large banks, getting involved in saving smaller firms, he said.

The new law means, in accordance with recommendations by the European Commission, the European Central Bank and the IMF, creditors may now convert part of a firm's debt into capital, without the risk of a minority creditor blocking the proposal.

Iberian Lawyer invited a select group of lawyers and bankers to discuss the reform. The discussion involved an analysis of the risks and opportunities the reform represents, what mechanisms banks have at their disposal and whether the measures will bring about an increase in litigation.

"The reform is not aimed at us, in Spain, rather the reform is conceived for those investment funds that want to enter Spain," according to Nuria Gómez Hervas, legal advice director at Globalcaja. "The reform will spur investment in distressed firms and assets because, under the previous arrangement, it was impossible for assets in receivership to be the target of an investor interested in striking an agreement to acquire a firm," according to José Ramón Couso Pascual, financial assets legal director at Sareb. The measure is an urgent one, he added, as some refinancing processes collapsed because they could have led to bankruptcies. Under the reforms, more bankruptcies could be avoided with a system of refinancing and debt restructuring. The reform is an acknowledgement of the failure of the receivership system, according to some participants.

The purpose of the reform is to avoid major bankruptcies. "The practical and immediate aim is to prevent the bankruptcies of large companies, such as Spain's large real estate developers, which lack access to a method of refinancing," according to Alfonso Díez de Revenga, director of ING Direct's bankruptcy advisory. Firms entering receivership without access to refinancing are not able to escape receivership, he added.

Participants highlighted the fact that debt recapitalisation is a tool that has not been used in Spain where there has not been a tradition of implementing such a measure. It was suggested that banks could become experts in all sectors and sit on the board with the same level of responsibility as a result of being backed by their capital.

Banks reluctant to refinance

Debt refinancing is one option for companies facing bankruptcy, but banks will be reluctant to refinance when the resources necessary are immense, according to José Manuel Sánchez de la Torre, legal director at Banco Mare Nostrum. Attendees discussed the fact that small and medium-sized firms view banks as partners, but banks end up doing the business of managing large debt and the problem is passed along and not solved. Receivership would previously cause panic within a firm and its suppliers, and the new system will mitigate that panic, and empower banks as business partners, attendees heard.

Some legal advisers put smaller companies into a receivership and abandon them without talking to the bank, and if a company is left without refinancing options the degree of chaos that can be created is enormous, said Alfonso Díez de Revenga, head of legal, restructuring and litigation at ING Direct. The reform therefore provides security for firms and the opportunity for crisis resolution, while also creating opportunities for foreign investment funds looking for a foothold in Spain.