

PESCANOVA: INSOLVENCY, CRIMINAL CHARGES AND POTENTIAL JAIL TERMS

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Category: [Archive](#)



Freshfields and CMS Albiñana & Suárez de Lezo among players advising in the wave of mandates arising from the unceremonious sinking of Spain's global fishing company

When Spanish fishing company Pescanova filed for insolvency earlier this year, it became the latest seemingly solid company to suffer the effects of the economic slowdown. It later emerged that Pescanova's problems ran much deeper than simple economics.

The international legal ramifications from the collapse are still unravelling. Pescanova operations stretch from South America and Africa to Asia and the EU, including Ireland, France, Greece and Italy, as well as a branch in the US. There are already court procedures underway in Brazil, Chile and Argentina, while the situation is becoming more apparent in Spain.

The biggest involvement to emerge so far has been from Freshfields Bruckhaus Deringer and CMS Albiñana & Suárez de Lezo. The UK firm has been mandated to advise on the restructuring of

liabilities for the business. CMS Albiñana & Suárez de Lezo, meanwhile, has been handed the instruction by Pescanova to represent it in relation to the Spanish market regulator Comision Nacional del Mercado de Valores (CNMV), as well as possible against its auditors, BDO. Established in 1960 in the Spanish port of Vigo as a fish processing plant, over the next few decades Pescanova expanded to 20 other countries and was listed on the Madrid Stock Exchange in 1985. The company has a fleet of more than 120 boats, making it one of the biggest fishing businesses in the world.

However, the banking crisis hit hard. The company's insolvency petition has declared debts of €1.5bn (the real figure is believed to be much higher sources say), making it one of the largest insolvencies ever in Spain, only beaten in debt size terms by the collapses of real estate outfits Martinsa-Fadesa and Reygal Urbis. In addition, Pescanova's financial problems were not helped by losing a large amount of fish stock in Portugal after construction faults.

What has been slightly different about this case is that the culture and approach of the business as a whole, pre-insolvency, has plunged Pescanova into wider controversy.

When the filing was made, Pescanova's independent administrators, Deloitte replaced the Pescanova Board, while the actions of the company's Chairman, Manuel Fernández de Sousa and the Board are being inspected by regulators and auditors. For instance, there are claims that Fernández de Sousa offloaded half of his holding in the business (which has been estimated to be in excess of €25m) in the months before the filing, without meeting legal obligations to inform regulators.

Worse was to come. Fernández de Sousa was charged with falsifying information and insider trading by the Spanish Supreme Court in May; allegations he denies but could mean he ends up behind bars. Regulators have also begun scrutinising Pescanova over possible misconduct and that it did not file its accounts for the most recent financial year on time.

There has been some hope, however. Pescanova has been attempting to put in place a line of credit with banks to help keep the firm operating. Most recently a group of banks, including Bankia, Sabadell, Popular, NCG Banco, CaixaBank, BBVA and Santandar, were said to be willing to sign-off a €55m loan. UBI Banca also signed an agreement to provide financing. Likewise, Fernández de Sousa survived a vote last month by the Administrative Board to maintain the position of Chairman. He has been in the role for almost 30 years, meaning the vote helps maintain some consistency.

KPMG was recruited to undertake a thorough review of Pescanova's accounts, and the fallout from the company's insolvency has started to provide a flood of instructions for law firms in Spain. The depth of the work is unconfirmed but – as seen with similar insolvencies – it could be a long process with creditors, shareholders and other related parties lined-up for claims.

A host of other law firms are thought to be involved in acting for various banks and other stakeholders, say sources. These include Araoz & Rueda, Ashurst, Cremades & Calvo-Sotelo, Garrigues and Yvancos & Abogados, all of which to have been instructed on matters related to the insolvency, but have declined to comment.

Out of the mandates, Yvancos & Abogados is perhaps the most eye-catching. The firm has launched a criminal case on behalf of shareholders against Pescanova, the Board, auditors, creditors and even the CNMV over various claims of false accounting, insider trading and general inaction.

The Criminal Code, enacted in December 2010, allows Spanish business entities to be held liable for their actions for the first time. In theory, any company found guilty could be hit with bans from public tendering, the winding-down of the business, or even prison sentences for individual officers. But to date there have not been any notable cases brought against a corporate entity.

The decision to bring a criminal case against the company is the most high-profile example to date and may be the first in a long line of others, say lawyers.