RESTRUCTURING THE FINANCE SECTOR - FRESHFIELDS

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A significant knock on effect of the economic crisis that has so deeply affected Spain´s real estate and construction business sectors is the continuing ability of the lending financial institutions to maintain liquidity and to ensure capital adequacy requirements, says Miguel Loran, tax partner at Freshfields Bruckhaus Deringer.

'The impact of the credit crunch has meant that some of the financial institutions that in the past have engaged in significant lending to property companies may now have an emerging need to cover their own capital positions as borrower companies assets decrease in value.'

The Spanish finance market has already seen leading banks improve their capital positions through the listing of their industrial property portfolios, such as La Caixa's listed investment entity Criteria, and similar deals are in the pipeline, or undertake complex sale and leaseback transactions, as in the case of Banco Santander, he notes.

La crisis que ha afectado al sector inmobiliario y de la construcción ha llegado también al sector financiero, afirma Miguel Loran, socio de Freshfields. Por consiguiente, las instituciones financieras están estudiando nuevas formas para mantener el capital adecuadamente, asegurando la liquidez y reduciendo posibles responsabilidades. Esto lleva aparejadas implicaciones fiscales que hay que tener en cuenta.

'But there is also emerging an increasing emphasis within the finance sector on improving regulatory capital through reorganisations of the businesses and assets, and all of this inevitably implies significant tax exposure, which may, again, need to be mitigated to maximise the ability to raise capital.'

Lorán suggests that some of the major real estate company financings of the past two years may also now require re-analysis, as asset values continue to fall, and that institutions will inevitably be looking to limit the potential impact of what may become non-performing loans or even distressed debt.

'These are sophisticated organisations and capital adequacy is in some respects a widereaching topic which touches on different specialities. Any analysis therefore requires an extensive exploration of institutions regulatory, finance and tax positions with a deep interaction with banks accountancy rules, which may not always be an easy task,' he says.

In a business environment in which mergers and acquisitions are no longer driving the deal market, asset values are no longer rising, and in which the finance institutions themselves face potential liquidity issues, the ability to realise capital will always however take priority.