

THE SPIRIT OF NEW LEGISLATION, FRANCISCO PROL

Posted on 01/07/2005



Category: [Opinions](#)

Tags: [bankruptcies](#), [implementation](#), [implementing](#), [inconsistencies](#), [interpretation](#), [introduction](#), [jurisdictions](#), [liberalisation](#), [particularly](#), [transactions](#)



Francisco Prol argues for a more flexible approach to adapting new legislation.

The enactment of new legislation usually causes some kind of protest. Some feel uneasy about the changes proposed, while others complain they are already obsolete.

Aunque acepto el reto de tener que acostumbrarme a aplicar leyes nuevas, agradecería a los legisladores algo más de flexibilidad para adaptarlas a los nuevos tiempos y al variable entorno social. Considero que para aplicar la ley debería haber un proceso menos formalista y una normativa más clara y transparente.

Both have a point. While there are obvious risks in the creation and application of new laws, any attempt at applying legislation which is out-of-step with current thinking – or tries to recreate legal approaches from the past – usually proves to be an outright failure.

So, while I accept the challenge of implementing new laws, I would welcome more flexibility in adapting them to our changing times and new social environment. In my opinion, this requires a less formal approach when applying the law and legislation which is clearer and more transparent. This is particularly true for the commercial laws regarding trade and financial markets.

Transparency and informality

In recent years, the legislator has brought in a series of statutes updating the Spanish legal system. This spirit of renewal is most welcome, even by those older lawyers who, like myself, studied 'some' years ago.

In its section on financial markets, the Royal Decree 5/2005 mirrors the principles of transparency, contractual freedom and, in-line with other countries, reduces the more formal legal processes. This approach has resulted in an increase in domestic transactions which would otherwise have taken place in jurisdictions with simpler legal frameworks.

By removing some of the formalities surrounding the issue of bonds by listed companies and creating new guarantees in some financial operations, the law is levelling the playing field between Spain and other markets. However, it is worth noting that the liberalisation of issuance and placement of securities may leave some important operations outside the control and authority of Spanish regulators.

Increased flexibility

The Spanish legislator has also tried to improve the economic situation with the introduction of the new Insolvency Act. While the law has aroused some criticism, change was overdue. The legislative maze regarding bankruptcies - with legal texts from the 19th century - and the system for managing and organising insolvency proceedings made new legislation an imperative.

The new Act is more or less successful, but there are some errors in its terminology and the regrettable omission of regulation which is of paramount importance to credit and loan operations.

But why are the legislators reluctant to review new legislation when often some small changes would help the ongoing interpretation of the new laws?

This thought leads me to make an appeal – or a suggestion - to the legislators to end their reluctance to changing the wording of new statutes where there are inconsistencies and, thereby, providing simplicity and clarity. Some recent regulations have been modified. So, if we can revise and upgrade basic principles of the law, why are we so reluctant to approach and change specific terms of the most recent laws? I believe that this process would benefit the entire legal community, resulting in clearer interpretation and therefore more accurate implementation.

Francisco Prol is a partner with Prol & Asociados, Madrid.

[Click here to read the article in Spanish](#)