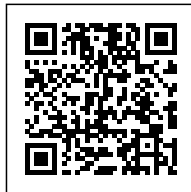


THE STING IN THE TROIKA'S TAIL

Posted on 20/05/2013



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In this world, they say, you don't get something for nothing. So when Portugal was given its bailout by the Troika, there were bound to be a long list of repercussions. While crippling austerity measures were expected, there are some lesser-known provisions whose potential impact is just surfacing.

Under various austerity packages imposed, the Troika included the opening up of what it terms as "closed" professions to competition, namely auditors, architects, engineers, pharmacists and, of course, lawyers. And Portugal's bailout agreement is no exception. But lawyers admit that no one paid much attention at the time as it's written in rather vague terms.

However Portugal's legal profession is now on the brink of a radical overhaul, which could mean the end of the traditional provision of legal services as we know it. While the 'when, what and how far' are very much up in the air, there is no question that change is inevitable. Some see it as an opportunity, others a threat. Looking at the radical changes that have happened in UK, say lawyers, the fact that it is starting to happen on home ground has taken many by surprise.

Terms and conditions

Under its MoU obligations, Portugal has already been reforming its judicial system to speed up the backlog of cases, and is working on a new Civil Procedure Code. But its commitments stretch far beyond that. It must review and reduce the number of regulated professions, and eliminate barriers

affecting the exercise of activity that are not justified or proportional.

At the start of this year, the Government put forward a proposed regulation to the Portuguese Bar Association (OA) to amend its charter, including a specific provision allowing for MDPs and non-lawyer external investment of up to 25 percent.

"The OA is adamantly against it," says José-Miguel Júdice, a Partner at PLMJ and a former OA President. "A draft has been prepared for the charter, but the pressure from lawyers has been very strong, and the President of the Bar Association took the opportunity to say that he refused to apply the law and the draft has subsequently disappeared." The feeling is that the Government already has enough problems without adding a fight with the Bar Association.

"It's not a priority for the OA," says Rogério Alves, who works in association with ABBC and also a former Bar Association President, "and I don't see any law firms waving the banner for change." While lawyers acknowledge the reasoning behind certain proposals, they say that what the Troika wants seems to go far beyond what is proportionate and, most importantly, actually necessary. But while the motivation is primarily competition, if legal services are liberalised then the belief is that it should bring money into the country and help get the economy restarted. "So it's not really about the law," says leading expert John Flood, Professor of Law and Sociology at the University of Westminster, London, UK, "but about the economy."

Opportunities and challenges

As the Portuguese Government's intentions are still very much up in the air, lawyers are not, as yet, up in arms. But in the current climate, the benefits of allowing external investment are not going unnoticed. "I understand the rationale behind it," says Júdice, "as it gives some room for important investment for law firms balancing their debt to capital ratios."

But lawyers are looking at MDPs and external investment with some suspicion, he says. First, because it would increase competition at a moment in which the market is collapsing, mostly in corporate, capital markets and real estate. And second, because of the risks involved. Self-regulation is one of the foundations of the legal profession, say lawyers, and the worry is that relinquishing regulation to the Government and opening up to outside capital impacts on the independence of the profession and increases the risks of conflicts of interest.

One thing is to have an accountant in your office, assisting you in these matters; the other is having that accountant as your shareholder, says Alves. "We need to think about our relationship with the clients and what it is that makes our profession different to others, as we could pay a huge price if we change the alma mater of our activity."

The other example

Portugal's Iberian counterpart has in fact been open to a quasi-integrated form of MDP and external investment since its Professional Services Law took effect in 2007 – although only the big accounting firms have taken advantage, namely Deloitte, Ernst & Young, KPMG and PwC. The Spanish market remains very much law-firm led, and until recently, none had taken advantage of the option of external investment.

However, Ecija just became the first to announce an injection of external investment by a private equity house, although others have done so in secret, say lawyers. This follows the firm's split last year, with part branching off to form the Ecix Group.

The motivation for external investment now, Ecija say, is financial stability, giving them the ability to grow at a much faster rate. "We can also make ambitious moves that would otherwise be much more difficult, especially in this climate," explains Hugo Écija, Managing Partner, "and having investors is also a great way to get clients as they are the first ones interested in your profitability, and provide ongoing referrals."

Whether others will follow suit remains to be seen, but Écija believes that in the coming years we will see more players opening themselves up to investment, although this may not be an option for some. "We have the advantage of having only a few partners who are all around the same age," he

adds, "but where you have a lot of partners at different stages of their careers it's going to make it much more difficult to align objectives."

While no proposals as radical as Portugal's are set to hit Spain in the near future, there are reforms in the pipeline that are concerning the profession. The Government proposes uniting the role of lawyer and procurador, reducing the number of Bar Associations from 83 to 17 – one per autonomous region, only allowing lawyers who go to court to be a part of a Bar Association and with malpractice suits being dealt with by the Government.

"The Bar Associations are firmly against these ideas," says Pedro Yúfera, Dean of the Barcelona Bar Association. So far, all they have received is a PowerPoint outlining some proposals, and there is no draft stating exactly what the Government's intentions are. "Everybody is of course talking about it and the belief is that they are trying to make the sector more competitive," says Yúfera. "But given the numerous problems in Spain, the process has thankfully been stopped until at least September – and then we will see."

International pioneers

The Troika's sting in its bailout conditions originally led the Council of Bars and Law Societies of Europe (CCBE) and the American Bar Association (ABA) to voice concerns to Christine Lagarde, IMF Managing Director, about the extent of the impact of these far-reaching reforms in the legal profession, notably in Greece, Ireland and Portugal.

While Greece's initial reaction was to ignore the Troika's request as interfering where they weren't needed, it is now said to be considering a move to multidisciplinary practices, say lawyers. And since 2012, Italy is open to Alternative Business Structures (ABSs) and in the midst of a reform of the entire profession.

Ireland's radical Legal Services Regulation Bill, however, has gained the most attention. Among others, this will introduce multidisciplinary practices (MDPs) and an external regulatory authority, namely the Government. "But Ireland has been very slow in doing things and still hasn't passed the Bill," says Flood, "and I believe the main sticking point is over the wisdom of having Government regulation."

Look further afield, however, and the effects of liberalisation can be seen. Australia has the first publicly listed law firm on its stock market, and the UK has undertaken radical reforms to its legal profession with its so-called 'Tesco's Law', including the introduction of ABSs and the ownership of law firms by non-lawyers.

"We now have about 120 ABSs approved, and a few hundred in the pipeline," says Chris Kenny, Chief Executive of the UK Legal Services Board. "Many of those are existing firms looking to get investment, but there are some new entrants as well."

The majority, he says have entered into areas such as personal injury, and there are a very wide range of models, from retail supermarkets (the Coop), financial services, Telecoms (BT) and even undertaking businesses. "There are lots of opportunities to cross sell legal services in those settings," says Kenny, "and law firms get to build long-term client relationships."

The question is whether it is these new firms coming into the market that has altered it, or whether it is how other law firms have responded to them. "ABSs have brought about a new level of creativity and innovation to the market, as new entrants are putting out other types of services such as online, subscription based, or even 'all you can eat' legal services for a fixed price, and this is driving the traditional law firms to think outside of the box."

Kenny also believes we may see Iberian firms heading their way to take advantage. One Lisbon Managing Partner told Iberian Lawyer off the record that they have been looking at the opportunities for getting funding in London, with BAS registration, to start low value high volume claims work. Another impact has been on the professionalisation of law firm management, says Chris Scoble from Esprima, a specialist in developing management skills in law firms. "As non-lawyers can now be partners, roles on Management Boards can now be filled from outside the profession. This begs the question of whether lawyers are in fact the best people to run law firms, if they have the necessary

skills to continue running them or whether they should leave elements of firm management to non-lawyers."

No stopping now

Liberalising the profession should be seen as a positive opportunity, says Flood, and not a threat to law firm monopoly. But in Portugal, lawyers believe that for such a small market, such big moves are unnecessary – it would not implement their growth and it won't affect the deficit. "We have many strong competitive law firms here, both domestic and international, and clients are using beauty parades and putting incredible pressure on us with regards to fees," says Júdice. "This is not a market where the legal profession is abusing a dominant position, not at all."

Lawyers say that the MDP model is created thinking of law firm mergers and acquisitions and big investment, which is something that is not happening in Portugal. "I don't believe things are going to change in the short-term as the country has so many other problems to deal with – it's a very distant scenario," says Alves. "Even the Troika isn't pushing for it."

The proven policy response, however, in a crisis climate is to enable more competition, says Kenny. "If a business model is struggling then it won't be sustainable in the long-term, and this could give struggling firms the tools and flexibility to respond in tougher conditions." The EU has in fact commissioned a study looking at whether MDPs should be a staple in the European professional services market, pursuant to the EU Services Directive.

Therefore, whether or not Portugal will ever go as far down the road as the UK remains to be seen. But what is clear is that change is inevitable, no matter how much the profession fights against it. The only question is when it will happen and how far it will go.

En este mundo, dicen que uno no recibe nada sin dar algo a cambio. Por lo que cuando se culminó el rescate en Portugal (la Troika), estaba claro que habría una serie de condiciones. No sólo se introdujeron medidas de austeridad, sino que además se presentaron una serie de provisiones menos visibles, cuyo impacto está ahora notándose.