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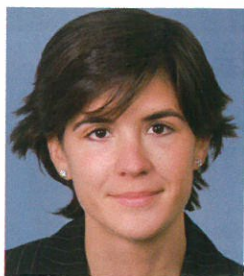
Time to review law firm fees?

New faces

The client base of law firm banking and finance departments is rapidly changing as a host of new finance providers enter the market – meanwhile, Spanish takeovers of Portuguese banks are causing some concern in Lisbon

The banking and finance sector is not what it used to be. With new finance providers entering the market offering increasingly innovative products, there is growing pressure on law firms to alter the way they operate in order to meet changing client demands. Lawyers now have to be more adaptable and their ability to handle an increasingly diverse range of legal matters is becoming increasingly important. There is now an expectation that banking and finance lawyers should closely cooperate with their colleagues in other departments as the drive to be more efficient and innovative intensifies.

Among the key features in the sector last year have been restructurings and refinancings, as well as a growing tendency for clients to access the international financial markets. “We have seen restructuring transactions in the last year, as well as a number of corporate sector refinancings,” says Clifford Chance partner José Guardo. “We’re also seeing leveraged finance deals.” Meanwhile, Freshfields partner Ana López says it is often unclear when embarking on banking



“You need a team that can adapt – commercial banks and non-regulated entities are different and every deal is different.”
Ana López
Freshfields

and finance-related work what instrument will be used. “It could be US law, or it could be UK law,



a banking deal or a structured finance transaction,” she adds.

Due to volatility in the market, it is often difficult to predict how a deal will develop, says Allen & Overy partner Ignacio Ruiz-Camara. He adds: “The last year has been a good year, October to the end of 2015 was very busy – there is less domestic capital markets work, but we are still seeing some high-yield bonds-related work.”

NPL market booming

There were a significant number of corporate restructurings and corporate refinancings in the last 12 months, according to Uría Menéndez partner Ángel Pérez López. He continues: “There have been small acquisition finance deals, large restructurings and a boom in the commercial real estate sector which has triggered finance deals – there has also been considerable growth in the non-performing loan (NPL) market.” Gómez-Acebo & Pombo partner Rafael Aguilera says there has been a decrease in major restructuring work, though there has been a lot of mid-market restructuring.

“The implementation of amendments to the insolvency law has provided certainty to players and made restructurings more possible; there has also been real

estate financing work,” he adds.

Acquisition finance and leverage finance work in the infrastructure and renewables sector has been a feature of the last year, according to Jones Day partner Fernando Lillo. He adds that securitization in relation to consumer loans has also provided opportunities. Meanwhile, Lillo says there is “lots of work” in Brazil, Mexico, Peru, Colombia and Chile.

Cuatrecasas, Gonçalves Pereira partner Fernando Mínguez says that, generally, there is a more optimistic mood in the banking and finance sector. He continues: “It was another year of restructuring and consolidation in the sector and there will be another round of concentration to come – this concentration process will deliver a significant workload for M&A lawyers.” However, Mínguez adds that there are some reasons to be “gloomy” about the future. “There will be fewer institutions, the next round of stress tests will mean banks will be forced into doing something.” Guardo says that, for this reason, direct lending will increase: “We will not be as focused on traditional lenders, funds are interested in a wide-range of transactions, whether that be as a part-lender or a sole-lender.”

There is more innovation and more new products in the banking and finance sector, according to

Ruiz-Camara. However, he adds that the traditional banks will also be more active in the coming year. Mínguez argues that while Spain will have a far more concentrated banking sector, the more traditional banks will not dominate the sector as they have in the past: "Restructuring processes have let the other alternative lenders in." However, one partner says there are questions about what will happen to direct lenders from a regulatory perspective. Guardo

claims that more deregulation is needed in the banking and finance sector.

Funds are more demanding

The work of banking and finance lawyers is changing, according to López. "You need a team that can adapt – commercial banks and non-regulated entities are different and every deal is different." Aguilera says that the traditional finance providers in the market increasingly see legal services as a

commodity and this has impacted on fees. He adds: "New finance providers – particularly funds – are normally more demanding of lawyers than traditional finance providers and ask for innovative solutions." The market for banking-related legal services has become much more competitive, according to Ruiz-Camara: "No instruction is guaranteed for any law firm."

New finance providers require from law firms an "innovative

Spain: What are the biggest challenges clients in the banking and finance sector currently face?

"From the banks' perspective, the challenge is to stand out in this new competitive environment, as there is a high level of competition between all finance providers who want to be involved in the financing structures of large-size corporates. For corporations, the challenge is to make the best out of this competitive environment by benefiting from this new credit availability at the lowest possible cost. However, mid-size corporations may still have trouble financing their activities through traditional financing methods and may therefore resort to alternative financing providers." **Alejandro Osma, partner, Pérez-Llorca**

"We have noticed that companies continue to resort to alternative sources of financing rather than conventional financing from banks. Those alternative sources of financing are quicker and more flexible than the banks and make it easier for companies to access credit." **Gonzalo Martín de Nicolás, partner, Herbert Smith Freehills**

"Political uncertainty. At this point, no one can predict the new government or when it will be chosen. The political situation not only causes uncertainty for potential investors and financial institutions, but also means required economic measures cannot be implemented." **Guillermo Yuste, partner, Araoz & Rueda**

"Clients face a scenario in which commercial banks, funds and capital market structures deal with the same potential borrowers. Each of the players or structures have pros and cons, but the goal for companies is always the same: achieving finance in an efficient manner. Certain regulatory issues regarding 'shadow banking' or 'eBanking' sometimes require new and imaginative solutions." **Javier Menchén, partner, Ramón y Cajal Abogados**

"The lack of profitability is the biggest challenge for the banking and finance sector globally and especially in Europe. Other issues are data analytics, digital transformation and cybersecurity." **Francisco Uribe, partner, KPMG**

"Some specific products that are under discussion (such as swaps), debt refinancing and restructuring, and distance selling of financial services." **Álvaro Marco, legal department director, BDO Abogados**

"How to obtain a reasonable return on equity in view of the huge capital requirements they are subject to and the competition in the market to invest their liquidity." **Antonio Navarro, partner, Broseta**

"A number of foreign financial entities are reluctant to embark on new transactions in the Spanish market until the political situation is clarified. Additionally, we understand there will be changes to the way transactions are structured in light of the new regulation on pre-insolvency." **Antonio Marimón, partner, Marimón Abogados**

"Banks are facing increasing competition from new players that are disrupting financial services in a variety of ways, while having to deal with low interest rates that impacts on their operating margin. Thus, digitisation and rethinking of investment services are issues that banks need to tackle promptly." **Xavier Foz, partner, Roca Junyent**

"Political uncertainty and the risk of going back on economic reform in the domestic market. Bigger trends are perhaps the scarcity and cost of capital and the cost of adapting to ever-increasing regulation." **Joaquín Sales, partner, King & Wood Mallesons**

"Regaining confidence. It must adapt products to the precedent case law that has been developed gradually as a result of the new litigation trend in the retail sector, which is building clear and transparent products. The demand for financial services will be determined by this new customer who has an outstanding grasp of their rights in financial contracts. But above all they will be a mainly digital customer, so the financial sector must adapt to the digital transformation process of bank services." **Oscar Arredondo García, partner, Cremades & Calvo-Sotelo**

"Lenders are facing tough competition in the market as there is a lot of liquidity. Low margins are forcing financial market players to seek new and alternative ways to approach their clients. It is time for innovation, not just understood as technology, but as the ability to develop new structures that differentiate players from competitors." **Abraham Nájera, partner, CMS Albiñana & Suárez de Lezo**

"In terms of regulatory requirements imposed by local and EU regulators, Spanish financial institutions are currently facing the necessity of implementing additional human and technical resources within their structures in order to deal with new obligations." **Miguel Prado, senior associate, Deloitte Abogados**

"Regulatory compliance together with Fintech disruption are the biggest challenges. Clients' main challenge is to ensure that they can demonstrate compliance with increasingly complex legal requirements, without their business suffering a major cost." **José Luis Lorente, counsel, Bird & Bird**

approach, outstanding service and specialised advice in many practice areas, and they are generally prepared to pay the corresponding legal fees and build a lasting relationship," says Pérez López. Lillo says that Jones Day's banking practice in Madrid has grown substantially in recent years: "We have doubled the number of lawyers in the last three years with lateral hires – we have recruited banking, derivatives and securities specialists at partner and senior associate levels."

Baker & McKenzie partner Rafael Bazán says: "The banking sector scenario has shifted from banks – which are decreasing in number – to hedge funds and private equity firms as major investors taking the lead in banking and real estate transactions. We are increasing our collaboration with our London and New York offices to meet the needs of these new clients with regard to new regulations and political uncertainty involved in such transactions."

López says that the Spanish real estate and telecoms sector is attractive to investors, but that private equity investment with "consumer risk" has been impacted by the political uncertainty and the volatility of the financial markets. Mínguez adds that the political situation is "not helping". He continues: "It's different if a client is already here, but if a New York client, for example, is looking to enter Spain for the first time they will probably wait [for the political situation to be resolved]."

The growth of the 'fintech' sector has been one of the most significant developments in the last 12 months, says Eduardo Nebot, partner at RCD-Rousaud Costas Duran. He adds that the fintech companies have led to more traditional financial institutions taking a "different approach to these new financial business models in order to meet their clients' latest needs".

Guardo says that clients are seeing this year as a transitional year and consequently he does not expect 2016 to be an exceptional

year for banking lawyers. However, he adds: "If the political environment improves, maybe the M&A sector will improve in the last six months of the year."

Providing motivation

It is now a fantastic time to be a young lawyer, says Guardo. "You can work abroad and be an

Portugal: What were the major developments in banking and finance in the last 12 months?

"A significant number of decisive legal instruments came into effect, notably at the level of the single supervisory mechanism, the single resolution mechanism and the full implementation of the resolution directive. The legal framework for Portuguese banking institutions has been profoundly revised in 2015 as a result. At market level, the major developments were related to the continuing resolution of Banco Espírito Santo/Novo Banco, notably the interpretation of the Bank of Portugal concerning the use of re-transfer powers between the resolved institution and the bridge bank, and the resolution of Banif, where the sale of assets combined with the creation of an asset management vehicle." **Mafalda Barreto, partner, Gómez-Acebo & Pombo**

"The banking and finance sector has been severely affected by the current economic crisis. Some Portuguese banks have been facing difficulties. In 2015, Banif was unable to repay its debts, in particular the financing it received from the State in December 2012. Two years later it failed paying the last instalment of €225 million. Finally, Banif was purchased by the Spanish bank Santander." **Joana Gomes dos Santos, partner, Caiado Guerreiro & Associados**

"Uncertainty regarding the financial health of major Portuguese banks, and uncertainty as to the ownership of the major Portuguese players. There is also doubt about the ability of the banks to lend money into the economy, and the regulatory actions that have been taken in relation to some banks. In addition, there is uncertainty due to the attempts to take political dividends out of the decisions related to financial institutions." **Alexandre Jardim, partner, pbb**

"The restructuring and resolution of the large Portuguese banks – BES and Banif – and uncertainties regarding the structure of other large players. This all happens under the remit of the European Banking Union and the new powers of the ECB. The changes to the banking sector are here to stay." **Paulo Câmara, managing partner, Sérvulo & Associados**

"The enactment during 2015 of a number of laws and regulations aimed at the consolidation and strengthening of the market and its players, both from the regulators and from the government. Also the increase in regulations related to alternative funding methods, including the Crowdfunding Law, which amended the legal framework applicable to private equity and venture capital, social entrepreneurship and specialised alternative investment." **Mafalda Oliveira Monteiro, partner, Miranda**

What are currently the biggest opportunities for law firms in this area?

"The need to free the balance sheet of Portuguese banks from non-performing loans and non-core assets to allow for the compliance with the imposed regulatory ratios is an opportunity for law firms; the new rules on banking resolution, as well as the resolution measures already applied by Banco de Portugal. Digital banking – the demand for banks to improve their digital services; the new rules on the supervision of European banks; new providers of financing, such as funds." **Pedro Ferreira Malaquias, partner, Uría Menéndez-Proença de Carvalho**

"Banking regulation, new forms of financing and international finance. The importance of alternative forms of financing in the Portuguese economy is increasing – not only venture capital and to a lesser extent, business angels financing, but also the role of (national and foreign) investment funds as a source of funding." **Rui Souto, associate, PRA – Raposo, Sá Miranda & Associados, Sociedade de Advogados**

"Entrepreneurs and investors in general, must be supported - we should ensure that companies act with a greater knowledge of all their rights and obligations, and identify and prevent the risks inherent in their activity." **Joana Andrade Correia, partner, Raposo Bernardo**

international lawyer, there are new ways for young lawyers to develop themselves as professionals. The challenge is to keep them motivated." Mínguez believes that in terms of headcount, he does not expect law firms to grow dramatically. He adds: "The way to progress is by offering sophisticated and high quality



“ We are increasing our collaboration with our London and New York offices to meet the needs of new clients. ”

Rafael Bazán
Baker & McKenzie

advice rather than operating on an industrial level.”

Ruiz-Camara says that the trend now is for more co-operation between the different practice areas at law firms. “Practices are sharing resources more and there is a lot of crossover,” he says. The market is changing and this creates a lot of work for law firms, according to Guardo. “Law firms need to understand the new needs of clients – firms need to be more global and more efficient,” he adds.

Political uncertainty and market uncertainty are currently concerns, says Ruiz-Camara. He continues: “Uncertainty is not necessarily bad, it keeps us innovative and efficient.” López says that investors are still coming to Spain and there is still room for new business. She adds: “Trusted advisers are now needed on a global basis, clients want a single point of contact so you have to know your firm.”

Aguilera says that there has been a decrease in traditional banking clients and now efficiency and innovation are two of the major challenges facing law firms. Consolidation in the banking and finance sector means there has been a reduction in the number of players and this could lead to a stagnant market in future, according to Mínguez. He adds: “Being a good lawyer now means

you can deliver new things and this is an opportunity.”

There is great uncertainty in the Spanish market at present, says Pérez López. “But there are still opportunities in the real estate and non-performing loan markets,” he adds. “A new Spanish government could mean more public investment in infrastructure, which would benefit project finance – there are also plenty of project finance opportunities in Latin America.”

Lillo argues that there are opportunities for law firms that “think globally”, specifically in Latin America, Africa and the Middle East. He continues: “There is a lack of construction in Spain, so construction companies are going to Latin America and Africa. Meanwhile, renewables is another sector offering opportunities.”

Portugal: Takeovers cause concern

Among the major developments in the Portuguese banking sector in the last year was the sale of the Portuguese bank Banif to Spain's Santander, as well as Caixabank's bid for Portugal's Banco BPI, and these moves have raised concerns among some market observers. Fernando Campos Ferreira, partner at Campos Ferreira, Sá Carneiro & Associados, says there has been “excessive concentration” in the Portuguese banking sector both in terms of “number of surviving credit institutions and of their controlling shareholders”. He adds that there are doubts about whether the domination of Portugal's banks by Spanish banks or Chinese interests, for example, is a “good thing” for the country's economy. “It may become a matter of concern that Portuguese companies may have greater difficulty accessing finance if decisions about lending are mostly taken in Madrid, for example,” Campos Ferreira says.

Consolidation in the Portuguese banking sector is inevitable, according to Nuno Azevedo Neves, partner at ABBC. “Portuguese banks lacked capital and therefore foreign investors will come as no

one in Portugal has the funds to capitalise the banks – there are likely to be investors from different parts of the world,” he adds. Sofia Santos Machado, partner at Abreu Advogados, says: “The Portuguese economy is small and banks' portfolios are under stress.”

Consolidation in the banking sector is a trend across Europe and not only in Portugal, says Vieira de Almeida partner Paula Gomes Freire. She adds that with increased capital requirements being imposed on the banking sector, many Portuguese banks need to deleverage. “Low interest rates are also impacting on the profitability of banks,” Gomes Freire says. “The need to play according to new rules means that the banks' business model will need to adapt and the economy needs to find alternative ways of accessing finance, such as via the capital markets.”

However, other lawyers welcome foreign investment in the Portuguese banking sector. Alexandra Valente, partner at SRS Advogados says she has “no negative feelings” about foreign investors acquiring banks in Portugal. She adds: “The banking business model is changing and private equity funds are now involved in lending as there is not sufficient lending muscle in the Portuguese banking sector.” Santos Machado argues that this new trend creates a number of issues as new entities – such as hedge funds – are not subject to the same requirements as banks. She adds: “The question is, will the regulators continue to be passive?”

PLMJ partner André Figueiredo points out that there has been a shift in the EU's position on “shadow banking”, that is, services provided by non-bank financial intermediaries that are similar to those provided by traditional commercial banks but outside normal financial regulations. “There is a lack of money in the economy, so it's now about how to strike a balance in order to allow new lenders into the market,” he adds.

One of the key issues is the question of how banks were run in previous years, according



to Gonçalo Veiga de Macedo, managing associate at Linklaters. "Requirements for credit approval are now much more demanding than previously," he says. "Should banks have been lending to the entities they were lending to?" Veiga de Macedo says there are a significant number of foreign entities interested in entering the Portuguese market: "We have a number of international clients



“ There is a general crisis of confidence and a lack of trust in institutions. ”
Ana Monjardino
MLGTS

calling us asking how they can lend into Portugal.”

No need for alarm

MLGTS partner Ana Monjardino says that Spanish banks taking over Portuguese banks should not be a cause for alarm. "There is a general crisis of confidence and a lack of trust in institutions – I'd rather have an Iberian bank that works as this will be positive in terms of rebuilding trust," she says.

There are new opportunities for banking lawyers in Portugal, according to Figueiredo. "There is the new direct lending phenomenon, which creates new legal issues and the fees the new lenders are paying – particularly the American funds – are higher," he adds. "It's up to the legal community to create new structures to bring new lenders to our economy." Figueiredo adds that consolidation in the banking sector, as well as banking-related litigation and capital markets regulation will also provide opportunities for lawyers.

Gomes Freire says that it is "not a boom time" for banks at present and there may be fewer banks in

Portugal in a couple of years. "Bank activities will become less diverse and there will be new players in the market," she adds. Veiga de Macedo says that the number of loan portfolio transactions is expected to increase in Portugal this year and cites data that shows €1.6 billion of transactions were completed in 2015, with €2.4 billion worth expected in 2016. However, he adds: "There will be less credit in future due to banking consolidation and the envisaged deleveraging process, so what will be the sources of work in future? Debt will always be there, but the lenders will be different, and traditional bank lending in Portugal will make up a smaller proportion of our work."

Azevedo Neves adds that law firm banking practices will have to reinvent themselves in order to be "more flexible, to focus on clients' needs and to be able to add value to clients". Santos Machado says: "Banking practices can't work alone and they must reach out to other lawyers, such as those working in public law for example."

One concern expressed by some lawyers is that if Portuguese banks are taken over by Spanish banks, for example, Spanish banks will not use Portuguese law firms. However, Figueiredo argues that Portuguese law firms will always be able to add value. He adds: "There are always local specificities and there will always be room for local advice." António Rocha Alves, partner at Campos Ferreira, Sá Carneiro & Associados, argues that the harmonisation of banking regulation across Europe will present a challenge for Portuguese law firms. He adds: "Regulations are applicable without local specificities, so it can be done from London or Madrid, for example." But Rocha Alves highlights other opportunities for law firms such as advising banks on selling portfolios in order to improve their balance sheets, or

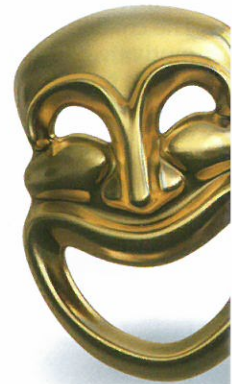
advising funds on acquiring debt from banks.

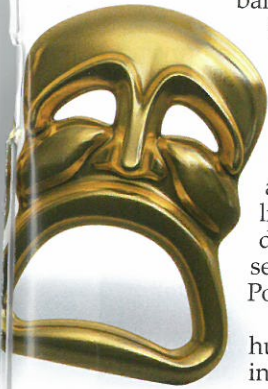
Law firms will always have a role in the banking sector, says Gomes Freire. "Banking is an anchor sector, if there are not banks, something will replace them," she adds. Gomes Freire says that banking lawyers also have opportunities in Lusophone African countries where Portuguese law firms have a competitive advantage.

Veiga de Macedo believes there are many opportunities currently available for banking lawyers in Portugal: "There are a lot of assets on banks' balance sheets that will give work to banking, M&A and insolvency lawyers – so much happened in the boom years, that I think we are only scratching the surface at the moment." Santos Machado adds that changing laws are a big issue for banks, which need lawyers who can "find solutions and provide guidance as compliance departments tend to be conservative". Azevedo Neves says it is important that law firms are able to understand foreign clients and investors' "questions and insecurities with regard to the country, to make them understand the investment environment and feel comfortable, and to overcome any possible cultural gap".

A new crisis?

Campos Ferreira argues that there could be "another Lehmann Brothers-type scenario in the future" as more than 200 trillion of non-performing loans are being repackaged. He adds: "No one knows how the banking sector will evolve, law firms will find new activity – banking is a risk-taking business and in 10 years, we could have another crisis to resolve. In the recent past, several





banks were involved in many activities in addition to banking and that amounted to mismanagement." Campos Ferreira adds that he would like to see a strong domestic banking sector lending to the Portuguese economy.

There is huge interest in Portuguese assets from foreign investors, says Figueiredo.

"In 2016, there will be an increase in deals and lawyers will have an important role to play," he adds. Valente says banking regulation will provide opportunities for lawyers – she adds that the market is now more competitive and banks have to be more imaginative in relation to retail banking.

Veiga de Macedo says stagnation is a concern: "If interest rates remain low and consumer spending does not increase there will be less investment. But there are opportunities – there are new products and new clients, different transactions that keep us busy in Iberia and new markets – Lusophone Africa is an important source of work." Monjardino says the changes in the banking sector "should be viewed as interesting times and will have an important role in restoring confidence in financial institutions." The creation of the EU Banking Union is an "amazing result", according to Gomes Freire. She adds: "Capital requirements, resolution mechanisms and deposit guarantee schemes have placed us in a better position to deal with future crisis."

The best opportunities will exist for law firms that provide banking regulation services

related to new forms of financing and international finance, says Rui Souto, associate at PRA – Raposo, Sá Miranda & Associados. He continues: "The fact is the importance of alternative forms of financing in the Portuguese economy is increasing – not only venture capital and to a lesser extent, business angels financing, but also the role of national and foreign investment funds as a source of funding."

The banking and finance sector in Iberia faces an uncertain future with new finance providers entering the market and further consolidation on the horizon. There will be plenty of opportunities for Spain and Portugal's lawyers to capitalise on new opportunities, but the most successful firms will be those that make the best effort to adapt to what is a rapidly changing environment.

Spain's banks on road to recovery

The banking crisis led to a "historic consolidation" of the Spanish financial services sector, but now the country's banks are well on the road to recovery, according to Antonio Navarro, partner and head of the banking and finance at Broseta.

"The crisis caused several credit institutions to become insolvent or go through a resolution procedure," he continues. "The earthquake, however, seems to be over and Spanish banks have passed all stress tests carried out in the last years."

Navarro says that transactional finance work continues to account for a substantial part of the currently available work. This consists of a mix of refinancing and new finance transactions, though work relating to the latter is growing at a faster rate. Even so, the seismic shift in the sector has meant that lenders, clients, regulations and practices

have "changed dramatically" in Navarro's view. He adds that the new landscape poses different challenges due to the high level of competition, the surge in fintech companies and the growing role of the capital markets as a source of financing.

"The main challenge for banks is how to obtain a reasonable return on equity in view of the huge capital requirements they are subject to and the competition in the market to invest their liquidity," Navarro says. "Financing small and medium-sized enterprises, which is a key factor for the recovery of the Spanish economy, and infrastructure projects – with a better definition of the risks associated with infrastructure – are also key challenges to be faced."

The contemporary banking sector also has to deal with digital issues. Navarro cites the recent trend for major banks to move their business increasingly online as a clear indication that the "digitalisation process" may be gaining momentum.



Antonio Navarro