

Summary

1.- Project of Law to amend Insolvency Law.

2.-The marketing of SWAPS under suspect.

1.-Project of Law to amend the Insolvency Law.

The Council of Ministers has agreed to forward to The General Courts the Project of Law to amend insolvency Law for its final approval.

The purpose of the project is to enable insolvent companies to choose their viability rather than their liquidation, and to ensure more professional receivers, with more expertise and training. Another goal is to speed up and make cheaper the insolvency proceeding, and the rectification of some aspects of the present regulation that have led to practical problems and difficulties of interpretation.

The most important aspects in the proposed reform are:

- Development of alternatives to the liquidation, designed to facilitate the continuity of the company. It includes the formalization of debt refinancing agreements between the debtor and some of its main's creditors, or other of – court refinancing agreements.
- It promotes the use of summary proceedings in order to speed up and simplify the procedure, allowing the court to apply this procedure in case it is considered that the

proceeding has low complexity.

- More regulation of the figure of the receiver, enhancing their expertise and professionalism as well as their faculties. Among them, to rectify the mistakes of the list of creditors without having an incident proceeding, thus avoiding the major cause of delay in bankruptcy proceedings. Another innovation is to allow a company to act as receiver.
- Labor changes, to improve protection of employees affected by incorporating the recent amendments to the labor regulations.

2.- The Marketing of SWAPS under suspect.

Shortly after the Provincial Court of Cáceres has ruled in favor of an affected by the marketing of SWAPS, in this case against BANKINTER, that has accumulated several judgments against for deceptive marketing of complex financial products to individual customers, the judge of First Instance of Cáceres has condemned BARCLAYS for similar practices.

The jurisprudence that considers that financial institutions are infringing the rules



on information to offer these products, is now abundant.

The SWAPS contract, which have expanded significantly in the banking practice, consists in the agreement between the bank and or the customer to exchange on an specific date periodic flows consistent in applying an uncertain interest rate to a nominal. The customer receives a fixed amount and pays a variable amount, assuming the risk of falling interest rates, or the gain if they raise.

This is an speculative contract, to the extent that some judgments have defined it as a "bet on the evolution of interest rates" and the CNMV has classified them as high risk products, difficult to be explained and understood for an average customer.

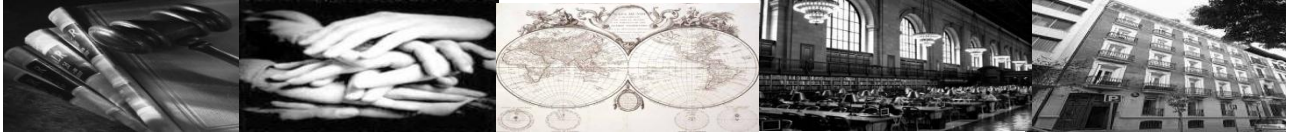
The main problem with these products arises when they are offered by certain banks as an insurance product over rates, guarantees its customers that a rise in interest rates will not affect them, without clarifying the speculate nature of the agreement and the risk involved in case the interest rate decreases instead of increases.

The Banking regulations, especially the Law on Discipline and Intervention of Credit Institutions, or the Stock Market Law, protect investors, given the complexity of the market, from the pre-contractual stage, stressing the operation risks involved, and reporting obligations of the banks.

Thus, the jurisprudence requires clear, complete and understandable information about the characteristics of the contract under the terms stated above.

It is also abundant jurisprudence ruling that these contracts contain clauses that do not meet the requisites of transparency, clarity, precision and simplicity, which can induce customers to incur in an error on their consent, an essential element of the contract that under Article 1266 of the Civil Code, can lead to an invalid and therefore void contract.

Unfortunately, these practices do not only occur in our country, but have also spread to other jurisdictions. Thus, a German Federal Court has recently convicted DEUTSCHE BANK, for breaching its obligations to provide information and advice to clients in the marketing of such products.



LEGAL TEAM

Francisco José García-Saavedra

Abogado

fgarcia@grupoalae.com

José Martínez Peña

Senior Associate

jmartinez@grupoalae.com

Luis Manuel Jara Rolle

Director

ljara@grupoalae.com

www.grupoalae.com

The content of this Newsletter has the character of general information and does not constitute professional advice or recommendation of any investment and therefore should not be used in that sense. None of the statements or expressions contained herein shall be deemed as a supply of goods or services.

The content of this Newsletter is not intended to be exhaustive or updated. ALAE ABOGADOS is not responsible for the accuracy, completeness, merchantability or fitness for a particular purpose of the information contained in this Newsletter. ALAE ABOGADOS recommends to consult with a professional prior to using any information contained in our Newsletter.

ALAE ABOGADOS assumes no liability for any action, judicial or not, carried out in relation with the information contained in this Newsletter, or for any direct or indirect damages arising from the use of the information contained in this newsletter, its content or service.

Likewise, ALAE ABOGADOS assumes no liability for any links to any website referred to in this Newsletter.

If you wish not to receive information from ALAE ABOGADOS please replay this message with "Unsubscribe".