

Lack of insolvency regimes for European SMEs hampers restructurings, investors seek Spanish-style scheme of arrangement – conference coverage

The lack of European insolvency regimes designed specifically for SMEs is hampering restructurings, according to several panellists at the annual TMA Conference held in Rome last week (9-10 June).

Although an increasing number of struggling companies have started to spin-off their good businesses to avoid bankruptcy proceedings, Spain's "scheme of arrangement" – modelled on the UK's pre-insolvency legal framework – is one of the most effective tools in Europe for dealing with ailing SMEs, noted a speaker at a panel focused on trends, techniques and tools for SME Debt Restructuring in the main Continental European jurisdictions.

"Germany's rules for large companies are not handy for SMEs. For instance, a small company in trouble can wait only three weeks before filing for insolvency [due to the country's 21 day liquidity law], which is definitely not enough to organise a turnaround plan," a second panellist commented. "From 2003 to 2009, Germany faced a boom of mezzanine facilities, eventually refinanced with Mittelstand bonds, where the default rate is 20%. Now we're expecting SME debt to be the next big thing in German restructuring."

France has an arbitration process – conciliation - in which an administrator is appointed to represent troubled SMEs, both listed or family-owned businesses, a third panellist noted.

"France has a local approach," the third panellist said. "Banks changed their way to deal with a company in need of restructuring and as a result the process to ask for court protection is more transparent. It's not an expensive tool for SMEs. The 2005 reform introduced specialised commercial courts usually designed for large companies."

"In Italy the so called concordato preventivo, a sort of Chapter 11, is a powerful tool," a fourth speaker said. "However, the silent approval rule of the creditor, whereby a lender's non-vote to a restructuring plan is equivalent to a positive vote was deleted in last summer's reform. This could jeopardise a speedy process, coupled with lenders' generally passive approach to restructuring."

Finding buyers for restructured SMEs remains challenging across Europe, the third panellist added.

"With regards to SMEs, the main problem is the investor base," he commented. "Apart from Apollo, Oaktree and the usual suspects, it's difficult to find buyers focused on middle market."

Greek myths, Italian struggles

Speakers on a panel covering European NPL resolution and banking system clean-up efforts noted that recent Greek reforms are targeting the build-up of a servicing market. The Troika-spurred liberalisation of the Greek NPL sector was designed to beef up the country's servicing capacity to deal with an economic problem and not a banking problem, a fifth panellist noted.

"Greek banks weren't prepared to handle non-performing assets. The NPL ratio in 1H16 is 50% of the total loans, while back in 2009 it was 6%," the fifth panellist said. "Although banks in the country are well capitalised, a lack of data on borrowers' history when due diligence takes place is a key issue to be tackled."

The Bank of Greece has put forward NPL targets for each bank under its supervision to reduce stocks in terms of value and ratio, which means lenders will be required to publish data on restructuring and viability of their corporate loans. Where the measures are not implemented, the banks will face a supervisory impact, a sixth panellist pointed out.

“From a bank’s perspective, if a lender manages to sell an NPL portfolio the problem is solved, but on the other hand there’s a borrower in trouble which still needs to be restructured,” a seventh panellist said. Unsecured and secured NPLs require different approaches and stakeholders to deliver mutually beneficial transactions for buyers and sellers, he noted.

“For example, consumer loans need good collection agencies, commercial real estate is easier to dispose of if the properties are already being rented and mortgages are usually a politically sensible matter,” he added. “SMEs is where the biggest price gaps lie, hence the political courage to set up an industrial policy is required.”

In Italy recently set up funds to deal with problem loans Atlante (Atlas) and Pillarstone are being closely scrutinised by other countries to potentially import the model to deal with their own NPL burdened banking systems, speakers said.

“Atlas [an Italian private-public EUR 4.25bn fund] was a wise solution, but its priority is to guarantee Banca Popolare di Vicenza and Veneto Banca’s cash calls,” an eighth panellist noted. “Predictability of the law is key, nobody wants to sell ahead of the implementation of new instruments like Atlante or Pillarstone Italy.”

However panellists criticised the ECB’s handling of the bail-in of four second tier Italian banks - Carife, Banca Etruria, Banca Marche and Carichieti - under extraordinary administration.

“Despite its comprehensive assessment of Italian banks in 2014 highlighting a EUR 10bn capital shortage, the ECB evaluated the four banks’ NPLs as below the Italian average. In other words we had a different assessment by the regulator on the same asset class,” a ninth panellist pointed out. “The Italian NPL coverage ratio stands at 60% with outstanding NPLs totalling EUR 83bn, whereas the firepower of Pillarstone Italy and other funds such as Idea Capital – HIG is only equal to EUR 1.5bn. There is a reason the Italian NPL pile is still there.”