

Q&A for the Thoughtful Bank Investor

Spanish Mortgage Origination Expenses: Limited Impact on Rated Spanish Banks



In this short Q&A report, we sum up the essentials of Spanish mortgage-related expenses and explain why we don't think they represent a threat to bank solvency.

Why should investors care about mortgage origination expenses?

Mortgage origination expenses, including stamp duty (Impuesto sobre actos jurídicos documentados, or AJD), notary, agency and land registry fees, have historically been charged to customers. But in 2015, Spain's Supreme Court (decision 705/2015) ruled that clauses forcing clients to pay mortgage origination expenses are abusive as they create an imbalance to the detriment of the customer. As a consequence, banks are liable to be sued and might have to reimburse such expenses. Following years of provisioning related to mortgage-floor clauses, this is another unwelcome source of litigation risk for the Spanish banking sector.

Has any bank commented on the issue?

In Q3 2017, ING confirmed that it had made provisions for potential claims against mortgage origination expenses although the bank did not disclose the amount provisioned.

Spanish banks had commented in previous quarters that while the noise in the market was negative for banks' reputations, they did not think the issue would lead to a material need for provisions.

What sums are potentially involved?

The sums involved vary based on the mortgage amount as well as the region where the mortgage was originated. Stamp duty, for example, varies from 0.5% to 1.5% of the size of the mortgage. Estimates of costs in the Spanish press range on average between EUR 3,000 and EUR 4,000.

According to the Financial Users Association (ASUFIN), eight million people affected by these abusive clauses can claim back mortgage-related expenses. We believe a prudent estimate of the maximum liability for the banking system is EUR 32bn.

What does the 2018 Supreme Court pronouncement entail?

On 28th February 2018, the Spanish Supreme Court ruled that banks are not committing abuses by charging customers stamp duty since by law the taxable person is the borrower. This decision does not apply to notary, land registry and agency fees. This decision is very positive for the banks as we estimate that stamp duty is the main mortgage-related expense (over half of the total, on our estimates).

Our back-of-the-envelope calculation is that excluding stamp duty, the average mortgage costs that could be reclaimed are around EUR 1,600. As litigation has an average cost of EUR 3,000 in Spain (according to Spanish Mediators Association) we do not expect an avalanche of lawsuits at this stage.

The Supreme Court is Spain's highest legal authority, and its decisions cannot be appealed. However, the European Union Court of Justice could reverse that decision if it deems it to be against European law.

Scope's view and impact on rated banks

Our base case is that the number of claimants will be limited by relatively high litigation costs hence the impact on banks should be limited. We would expect banks to accumulate provisions, but these should be manageable, especially so following the 2018 ruling. We note that a culture of litigation has emerged in Spain following the crisis, creating litigation risk as well as associated negative financial impact and reputational risk for the banks.

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