

IMTC EMEA 2016

Battling Bank Discontinuance, De-Risking and Access to Banking in the courts

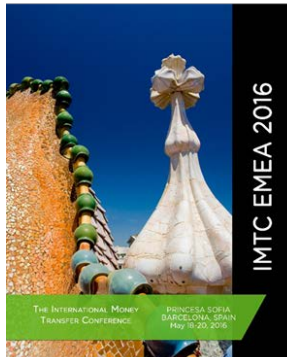
Antonio Selas

Cremades Calvo & Sotelo



Battling Bank Discontinuance, De-risking and access to Banking in Court

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IMTC
EMEA
2016

Bank Account closures are against the Law

Defending the right to bank accounts

9/20

Antonio Selas

CREMADES & CALVO-SOTELO

ABOGADOS



10 years – some numbers

Court actions against 12 banks, most of them several times

An average of 4 actions/bank

Up to (9) **11** Court actions against the same bank (and counting)

1 client had to sue twice that bank (Feb. 2014/July 2015)

1 client had to sue **3** times that bank (December 2008/Nov. 2014/Feb 2016)

Arguments used to justify closure (arguments against)

- Contract rights (against good faith)
- Existence of alternatives (none of them big enough and now not even the small ones).
- Not exclusion of other entities (discrimination).
- **Impossible to know the origin of the money**
- Money laundering activities (mere excuse, not proved)
- Clients/agents not identified (who's responsible, failure to request data)

Preliminary results

Preliminary injunctions always granted

- The vast majority before the closure)
- Most of them in 1/2 weeks
- Only twice rejected by first instance Court (one afterwards granted by Appeal Court the second still Appeal pending)

Final results

All accounts maintained until now

Banks ordered to maintain operational and economic conditions

Banks condemned to pay legal costs and occasionally damages (normally peanuts/prel. inj.)

SAFE INTERENVÍOS

BANCO SABADELL 22.06.2011

BBVA 22.07.2011

LIBERBANK 29.11.2011

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CJUE

Request for a preliminary ruling

Spanish AML L / EU AML D

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CJEU rules:

National legislation must be compatible with EU law, in particular the fundamental freedoms

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Spanish AML Law exceeds what is necessary to combat ML

The (risk) presumption applies to any transfer without providing for the possibility to rebutting the presumption

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Considerations:

Where there is no risk of ML it is no possible to take preventive action on those grounds.

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Due diligence measures must have a concrete link with the risk or ML and be proportionate to that risk

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Accordingly, braking off of business relationship should not be adopted in the absence of sufficient info connected with the risk of ML (end of EU De-risking)

Thank you

aselas@cremadescalvosotelo.com

