The sale of business units in Spain

Xiomara Jimenez Rodriguez writes on the attractive opportunity for investors in times of crisis



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> ***Unstable conditions can create compelling business opportunities for investors seeking sectoral diversification***

During periods of economic uncertainty, many companies face significant difficulties that may lead to restructuring or, in more extreme cases, insolvency. However, such unstable conditions can also create compelling business opportunities for investors seeking sectoral diversification, while simultaneously facilitating the continuity of activities that remain profitable.

One of the most notable opportunities is the acquisition of business units, which allows investors to access ongoing projects through an orderly process, leveraging existing resources and, at the same time, contributing to the preservation of employment and economic activity.

Legal framework for the sale of business units in Spain

In Spain, the sale of business units within the context of insolvency proceedings is primarily governed by Law 16/2022 of 5 September, which reformed the Consolidated Text of the Insolvency Law (*Texto Refundido de la Ley Concursal*/ TRLC). Article 200.2 TRLC defines a business unit as "a set of resources organised for the exercise of an essential or ancillary economic activity". In practical terms, this refers to a network of resources and personnel capable of generating goods or services autonomously, making it an asset with intrinsic value independent of the company as a whole.

In an economic context characterised by uncertainty and restructuring, the transfer of business units has acquired strategic importance: for distressed companies, it provides a route for recovery and continuity; for investors, it represents an opportunity to acquire operational businesses with profit potential.

The acquisition of a business unit may occur at different stages of insolvency proceedings:

- Common stage, which requires judicial authorisation;
- Arrangement stage;
- Liquidation stage, which is the most frequent.

Furthermore, the law sets out minimum content requirements for bids, which must include: the identity of the bidder, a detailed description of the assets and rights to be transferred, the price and payment method, any guarantees offered, and the impact on employees (including potential subrogation of employment contracts). In certain cases, the purchaser must also commit to maintaining the activity of the business unit for a minimum period (generally two or three years), in accordance with Articles 224 bis and 224 septies TRLC. Failure to comply with this obligation may give rise to claims for damages by affected parties, particularly employees.

Advantages for investors

Acquiring business units in the context of corporate distress offers investors a range of strategic, economic, and operational advantages that are difficult to replicate in other investment scenarios. The most significant include:

- Access to assets at competitive prices: In insolvency situations, assets are often undervalued compared to their operating worth. This enables the acquisition of facilities, machinery, inventory, trademarks, and other resources at highly attractive costs.
- Availability of an operational structure: Investors do not start from scratch but step into an organisation with established processes, trained staff, and an existing client and supplier network, significantly reducing the time and cost required to commence operations.
- Limited assumption of liabilities: The transaction allows the acquisition of assets without assuming most of the insolvent company's debts, except for employment and social security obligations linked to the staff. Only if the bidder voluntarily chooses, certain liabilities may be assumed pursuant to Article 224.1.1º TRLC.
- Legal certainty and protection against prior claims: Judicial oversight ensures a framework that shields the purchaser from creditors' claims relating to pre-existing debts or generated liabilities, avoiding legal uncertainty and disputes.
- Diversification and accelerated expansion: For established companies and investment funds alike, acquiring a business unit



provides a rapid entry into new sectors or geographic markets, leveraging existing infrastructure and know-how. The Insolvency Law further reinforces operational continuity through two key provisions:

- Article 222.1 TRLC establishes that the purchaser is subrogated into contracts necessary for the continuity of the activity without the need for consent from the other contracting party.
- Article 221 TRLC mandates automatic subrogation in employment contracts and social security obligations of staff assigned to the business unit.

In short, acquiring a business unit under insolvency proceedings not only allows access to assets on favourable terms but also facilitates the continuation of economic activity and employment, generating added value beyond mere financial gain.

Risks

While the sale of business units offers substantial advantages, it also entails a number of risks that require careful strategic assessment before committing to an investment.

Firstly, employment or contractual contingencies may arise that could jeopardise the future viability of the business unit, particularly regarding subrogation of employment contracts or arrangements with key suppliers. Internal resistance may also occur, from staff and trade union representatives, as well as from clients and suppliers, who may be reluctant to trust a new investor if the company has a history of defaults or disputes.

Another critical factor is the realistic potential for recovery. Not all business units or sectors present the same profitability prospects. A thorough market and competitive analysis is essential, alongside an assessment of the internal capabilities of the business unit acquired, to determine whether the investment is sustainable in the medium and long term.

Acquiring a business unit should therefore be approached not merely as an opportunity, but as a process requiring meticulous analysis, planning, and post-acquisition management capable of overcoming the legacy challenges that led to insolvency.

Conclusion

The sale of business units in insolvency proceedings enables investors to acquire operational businesses with existing structures, low-cost assets, and legal protection against prior debts. It is an effective way to avoid full liquidation, preserve jobs, and ensure business continuity. However, it requires a thorough assessment of labour risks and economic viability before acquisition. ■

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