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## Court claims multiply in Banco Popular case

On the 08.27.19 at 8:31AM by Adrien Paredes-vanheule [🐦](#)

Since the purchase of Banco Popular by Santander for a symbolic euro in June 2017, former Popular shareholders and creditors rush into courts to claim their money back.



Spanish financial group Santander on 15 July announced completion of the integration of Banco Popular's branches, a process during which the subsidiaries were rebranded. The name Banco Popular will not fade away though. Instead, it will be mentioned in a number of Spanish and European court rulings over the next couple of years and eventually in law books.

As a summary of facts, Santander purchased Popular for one symbolic euro in June 2017 to presumably save it from insolvency through a procedure driven by the Single Resolution Board mechanism, an EU institution whose role is to ensure the orderly resolution of failing banks in Europe. The FROB, the entity managing the resolution processes of credit institutions and investment firms in Spain, proceeded to the sale of Banco Popular to Banco Santander on 7 June 2016 following SRB's resolution. Consequently to the resolution, around 305,000 investors, shareholders and debt holders of Popular, lost an estimated €2.03bn as Banco Popular's shares and debt were redeemed. Since then, court proceedings to claim back those €2.03bn flock.

### Doubts on Popular's financial statements

In Spain, local law firm Fieldfisher Jausas, currently representing 319 clients with total losses in Popular valued at €150m, has filed five claims before the Spanish courts so far. It expects to file 50 additional claims in September. The company also filed another pair of claims to challenge SRB's decision on the resolution of Popular before the Court of Justice of the European Union. The firm's clients are retail and institutional investors having acquired financial instruments (bonds and/or shares) before and after the capital increase of Banco Popular having occurred on 27 May 2016.

In October 2017, Spain's national court [Audiencia Nacional, ed] started investigating whether Banco Popular board of directors - including the two former chairmen - and auditor PwC committed a crime by making false financial statements going back several years. The court investigated the year 2016 in particular.

"As part of this investigation, Banco Popular was also formally put under investigation. When Santander folded Popular into the group, the court ruled that Santander also would inherit any criminal liabilities, and the National Court judge put Santander under formal investigation. A higher court later overturned that decision, though it stated that the bank remains liable on the civil side for any misdeeds committed by Popular", explains a source familiar with the case.

Hence investors having acquired shares or bonds on or after Banco Popular's capital raise of 27 May 2016, and defended by Fieldfisher Jausas, seek a declaration of liability of Banco Popular for providing false information in the prospectus, as well as a compensation for the damages.

"For those investors who acquired shares and/or bonds before the capital increase of 27 May 2016, a primary action based on art. 124 of the Spanish law on market values needs to be filed, because of the provision of false information to the market", says Jordi Ruiz de Villa, banking litigation partner at Fieldfisher Jausas, to *Asset News*. He adds that an unfair enrichment action against Santander will also be filed.

### Litigation fund steps in

The Spanish firm, which is campaigning around the case in the media and on Internet, has found an ally in its legal battle. On 17 July, it announced an agreement with Scottish litigation fund Ramco to collect additional claims and further finance new legal proceedings for a minimum of €150m and a maximum of €250m.

According to the terms of the deal, Ramco will eventually obtain between 30% and 35% of the amount recovered by Fieldfisher Jausas' plaintiffs in the event rulings of Spanish courts benefit them.

"We think that there is a high probability that the investors recover the losses suffered as a result of the resolution, both if the investment was made before or after the capital increase of 27 May 2016.

"The agreement with Ramco will indeed ease the decision of the institutional and retail investors to start Court proceedings, as long as Ramco will pay all and any costs related (including lawyers and experts' fees and potential adverse costs)", Ruiz de Villa argues.

According to a case law study conducted by Fieldfisher Jausas since 2018, 24 judgments have been issued by high courts in Spain in relation with the Banco Popular resolution. 20 of these 24 rulings are in favour of the claimant, says Ruiz de Villa, adding that one of the judgments against Banco Santander refers to investments made before the capital increase of 27 May 2016.

Claims have been filed against the FROB too in Spain. Nonetheless, the decision has been put on hold in these cases depending on the outcome from claims before the Court of Justice of the European Union (CJEU).

### A European court ruling next year?

The CJEU will examine the most significant part of the Santander/Popular case : the SRB's resolution on Banco Popular.

Law firm Quinn Emanuel represents the largest group of bondholders in Popular, investment funds that had a combined exposure of roughly €850m out of a total of subordinated bonds of €2bn. That group of bondholders includes Algebris, Anchorage, Cairn Capital and Pimco.

Some 97 claims were recorded by the Court of Justice of the European Union but only six claims – one against the European Commission and five against the SRB - went through. These will be examined next year, according to sources familiar with the matter, before the pair of claims filed by Fieldfisher Jausas mentioned earlier.

The Permanent Court of Arbitration, an intergovernmental organisation focused on the resolution of international disputes through arbitration, will also look into the case. Indeed, the Mexican Investor Group, gathering investors who held around €470m in Popular's capital (4.2%) has sued Spain before the Hague-based court. The group argues neither the bilateral treaty on investment between Mexico and Spain nor the rules of the UN commission on international trade law were respected when Banco Popular was sold to Santander. According to Spanish newspaper *El Confidencial*, the FROB is looking after a law firm with vast experience in international investment arbitration.

Santander has been approached for a comment but did not answer by the time of the publication.