Access to credit improving as regulations are eased

New rules for venture capital and private equity funds will reduce regulatory burdens and help struggling sectors to attract investment, but they are not perfect

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A new regulation enacted on 13 November, 2014 (Act 22/2014), which relates to venture capital and private equity investment, will improve access to credit for sectors of the economy that are currently struggling to get funding, according to Francisco Aldavero and Pedro Rueda, partners at Araoz & Rueda.

The regulation – originating from EU Directive 61/2011, which aims to create an internal market for managers of alternative investment funds – will also facilitate the expansion and internationalisation of new ventures, such as start-up companies. The regulation aims to encourage investment in the form of non-equity loans up to a maximum of 30 per cent of the value of the company receiving the investment.

How will the regulation encourage investment? Aldavero and Rueda explain that the new rule reduces the regulatory burden on venture capital and private equity funds as well as creating a new investment vehicle focused on investing in small and medium-sized enterprises (SMEs).

Rueda says that currently increasingly large amounts of cash from Fond-Ico Global FCR (the Spanish public "Fund of Funds") are entering the market, as a consequence of which the funds available for new investments will be multiplied due to the investment commitments – from private equity, venture capital and debt funds – requested by Fond-Ico Global FCR. "The equation seems quite logical – if there is liquidity the investment will increase," he says.

What exactly are the regulations designed to do? Rueda says one of the main objectives of the new rules is to make venture capital investment easier by reducing the number of restrictions imposed by the Comisión Nacional de Mercardo de Valores (CNMV) and other regulators.

Another significant development is the creation of a new investment vehicle. Rueda says that the regulations introduce a new form of investment entity: the SME venture capital fund, a new concept for Spain. This new form of investment structure could lead to small and medium enterprises, which have been hard hit by the crisis, receiving new funding. In principle, an SME risk society would be authorised to invest in any activities except real estate and finance.

In which sectors could the regulations have the biggest impact? Aldavero says that there is considerable potential in Spain for acquiring good assets, particularly in sectors such as technology or science, where there is considerable appetite for investment. "Both factors combined create a promising future and will surely improve the market", says Aldavero, who says that the new reform has been keenly anticipated.

Aldavero and Rueda say the terms for compliance with the obligations of investment are flexible, for example the CNMV will be able to extend repayment deadlines if necessary. This also alters the limit of the "coefficient of investment" allowing a better use of liquidity, according to Aldavero and Rueda.

Missed opportunity

Lawyers are preparing themselves for instructions relating to the new regulations. Aldavero and Rueda say that companies interested in accessing this type of investment will require legal advice, which presents a number of opportunities for law firms. In addition, firms will also be required to formulate frameworks for this type of investment that are practical and workable, they say.

But Aldavero and Rueda argue that the new rules are not perfect. They say the fact that debt funds are not adequately covered in the new regulations represents a missed opportunity. The regulations could have included a reduction in the tax burden on debt funds – such funds tend to invest in countries other than Spain, but a lower tax burden may have encouraged debt funds to get involved in more Spanish domestic investment.

However, the new regulations are causing optimism. "Spain is in a good position to attract investment and these measures should ease access to credit and generally improve the country's economic situation," Aldavero says.