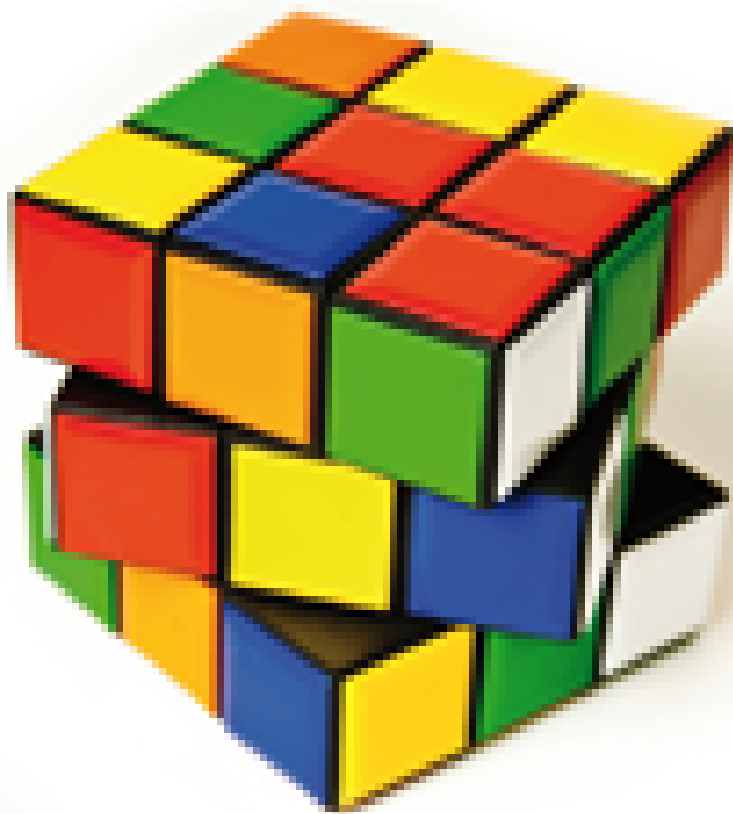
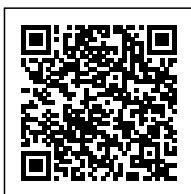


BARCELONA SPECIAL REPORT 2014: ENTREPRENEURS COME TOGETHER

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While Barcelona's M&A market is picking up as smaller companies join forces in order to enter international markets, it has also fuelled the belief that many of the city's businesses lack the depth of resources needed to be competitive in the long term. For Barcelona's lawyers, while M&A deals present more opportunities, clients are negotiating hard on fees and showing an increasing preference for law firm tenders.

On the face of it, things are looking up for the Barcelona economy. Lawyers talk of confidence having been restored and a greater appetite on the part of clients to invest in the city – in fact, some say that investors are diverting their attention away from Madrid and towards Barcelona. There is a feeling in some quarters that M&A activity is picking up, particularly in the real estate, food and health sectors. However, it is worth noting that lawyers say the potential acquirers are generally foreign investors rather than Spanish clients. Real estate is proving to be particularly attractive

especially to funds from the US, China, India and Mexico. Lawyers also speak of Barcelona's reputation as a centre of innovation, and say that there is a thriving community of entrepreneurs driving the city forward.

But it would be a little simplistic to say that Barcelona is a city that has completely recovered from the economic problems which have plagued it – and indeed the whole of Spain – in recent years. There is a commonly held view among lawyers that the pharmaceutical industry, for example, is struggling. In addition, while some talk of recovery in the tourism sector, others argue that it is an industry that is too fragile to have the hopes of the city's economic resurgence resting on it.

Meanwhile, some lawyers claim that while Barcelona's reputation as a place of innovation and entrepreneurial spirit is often held up as a source of great pride, the downside is that it is also the city's downfall. The argument put forward by the doubters is that Barcelona's companies are too small to really flourish and are always vulnerable to fluctuations in the economy.

So what does this all mean for the city's legal sector? On one hand there are considerable opportunities for Barcelona's law firms. New investors are looking to make acquisitions in the sector and are now turning their attention to assets that are performing well, rather than just those in distress, lawyers say. Meanwhile, there are Catalan companies who need advice on strengthening their international presence. Tax lawyers also expect an increase in instructions in relation to contentious matters as the authorities – in their search for extra financial resources – increase the number of tax inspections that are carried out.

Law firm tenders are an increasing trend, according to lawyers. While clients' demands for long term strategic advice means law firms are increasingly being forced to reorganise themselves along industry sector lines. There is also a greater resistance among clients to being charged hourly rates. Miquel Montaña, Partner at Clifford Chance, says confidence is returning to the Barcelona market.

"The confidence factor has been restored, but it's difficult to highlight specific sectors," he says.

"Spain is pretty competitive." That said, Montaña adds that some sectors are continuing to struggle.

"The pharmaceutical and automotive sectors are having a hard time," he says. Joan Roca Sagarra, Managing Partner of Roca Junyent Abogados, says the economy has been flat for the last two years, but now Barcelona is attracting investment because it has become a "good gate through which investors can enter the Spanish market". He adds: "It is an innovative city, there are a lot of technical or biomed start-ups." Antonio Herrera, Partner at Uría Menéndez, says that Barcelona's entrepreneurial culture means it is at the forefront of industrial development and that consequently he expects to see more transactions taking place.

Daniel Marín, Managing Partner of the Barcelona office of Gómez-Acebo & Pombo, says what is new is that some clients are making acquisitions in the city. "Clients had been investing in Madrid, but now they're investing in Barcelona," he says. "We're also seeing clients divesting non-core assets as well as international deals involving foreign investors – there is also complex litigation work."



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Making noise

Baker & McKenzie Partner Rafael Jiménez-Gusi says there is an increase in M&A activity, particularly in the real estate, food and health sectors – the latter being the scene

of acquisitions in the private hospital industry. Acquisitions seem to be more international than local – with investors coming from Asia, the US and Latin America, he adds. However, Jiménez-Gusi says that, while there is a "lot of noise" made about Barcelona being an entrepreneurial city, and though that is true, these new companies are in general too small to attract foreign investors.

Tomàs Fornesa, Partner at Fornesa Abogados, says there was a reactivation of M&A work after last summer with foreign protagonists at the forefront. "Foreign investors are very active and looking for opportunities," he says. Fornesa adds that, on the other hand, their Spanish counterparts are still

struggling to overcome the crisis. "Many clients are disinvesting in their ancillary services and refocusing on their core business, not only because it is their own strategic decision, but because this is a condition imposed by banks for refinancing" he says. Fornesa acknowledges that the tourism industry is performing well, but insists it is a sector that is too fragile. Meanwhile, Gerard Serra, Head of the Barcelona office at Pérez-Llorca, says: "Currently we are not only seeing investors focussing on distressed assets, but also investing in non-distressed assets such as industry and logistics like the port of Barcelona."

Miguel Pelayo, Legal Director at BDO, says there is more interest in M&A and refinancing in Barcelona. "There is a lot of real estate available at a good price and international investors are coming in," he says. "Bankruptcy proceedings are coming to an end and there is an opportunity to buy." In addition, Pelayo says a lot of funds – particularly funds from the US, China, India and Mexico, though not Europe – are making acquisitions in Barcelona and adds there is a "huge possibility" that Barcelona could become a major logistical hub for Europe, and open up the city to overseas markets, particularly the US. Pelayo also thinks the tourist industry will improve because Greece and Turkey are not perceived as being as safe as they once were.

Labour and insolvency

According to Deloitte Abogados Partner Javier Menor, the Catalan market, like the rest of the economy is starting to show signs of revival. He adds that areas such as corporate and M&A, as well as finance will be key areas for law firms as they advise both international investors that want to establish themselves in the Catalan market, and Catalan companies that want to expand into international markets. Menor also says a significant amount of work for firms will be labour and insolvency related. He adds that changes to the Spanish insolvency laws mean law firms' financial, corporate and insolvency departments will have to work together more. "The work is more complex, even for smaller deals," he says.

Other opportunities for law firms exist in the areas of tax as well as compliance. He adds: "The best-performing industries are those related to tourism – in a broad sense, hotels and restaurants, for example – as well as fashion, both production and fashion retail, healthcare and pharmaceuticals." However, Menor concedes that some companies in these sectors are also having to adapt and scale-down their businesses.

Fernando Rey, Managing Partner of Garrigues' Barcelona office says that investors believe that real estate prices have hit rock bottom. "This has revitalised the market – foreign investment funds were very active in the second half of 2013 and we expect them to continue along the same lines in 2014," he adds. In addition, Rey agrees that the M&A market is starting to reactivate. "We feel that the improvements in the economy will translate into more M&A activity in 2014." Tax is another area of opportunity, according to Rey. "The administration's need for more financial resources means that tax inspections are on the rise. We foresee an increase in litigation in this area.

Nuria Martín, Managing Partner of Osborne Clarke's operation in Barcelona, says that opportunities for law firms will be primarily concerned with internationalisation and innovation.

"Internationalisation, because it is an excellent opportunity for Spanish firms with a global reach," he says. "Clients are searching for global firms that can deliver legal advice across several jurisdictions with consistent quality standards." He adds that innovation is the other buzzword because innovative industries – such as technology, digital media, telecoms, and life sciences – have been better positioned to endure hardship during the economic crisis.

ECIJA's Barcelona Managing Partner, Gabriel Nadal, says, as had been anticipated, the relative position of Catalonia in the region has improved during the recession. "The Catalan economy has emerged as more attractive, more international and more competitive when compared to other competing areas in the region," he says. Nadal acknowledges that the economy is still in deep, but adds that "what we see as hot" is real estate (both commercial and residential) turnarounds and acquisition of distressed assets; compliance packages; as well as small start-ups in the telecom and technology sectors.

José María Rojí, Partner at CMS Albiñana & Suárez De Lezo, says in terms of number of transactions, the most active sectors have been tech and biotech companies, mainly start-ups. "There are also a lot of opportunities in real estate, insurances, laboratories and other companies connected with the health industry, including residences for the elderly," he says. María Rojí adds that the food sector automotive components companies offer some good opportunities for investors with in-depth knowledge of these industries.

Pérez-Llorca Partner Sergio Agüera says tourism and industrial exports are currently the driving forces behind the Catalan economy. "The tourism sector continues to grow, principally due to the positive development in the number of international visitors in the last few years – tourism is also helping to boost other sectors such as the real estate market," he says. "For instance, in the last few months there have been several important transactions related to hotel assets – additionally, new international players are searching for investment opportunities in the sector, such as hotels, tourist apartments, and hostels." Agüera adds that he expects the market will be very active in the coming months and that a number of significant transactions will take place.

The Catalan export sector is also performing well, according to Agüera. He says this is evidenced by the fact that container traffic at Barcelona's port has reached 2007 pre-crisis figures. "While in 2007 more than 60 percent were imports, in 2013 over 60 percent were exported containers," he explains. Meanwhile, Agüera says other sectors like IT, biotechnology and life science are continually increasing their presence in the Catalan economy. "One of the most remarkable signs of this is the international success of the Mobile World Congress, which is helping Barcelona to become one of the leading cities for new technology investments and projects," he says. "Indeed, attendance at the congress included not only mobile operators, software companies, equipment providers, and internet companies but also companies from other industry sectors such as the automotive, finance and health care sectors, as well as government delegations from around the world." In addition, heavy industry has been boosted by growth in exports and cheaper labour costs, according to José Ignacio Parellada, managing partner Ramón y Cajal Abogados.

Sagardoy Partner Marc Carrera Domènech says that salaries have been frozen in the public and private sectors and dismissals and salary cuts have made the city's workforce aware "more than ever" that productivity is of paramount importance. He adds: "Thus, the absenteeism rate has dropped dramatically and competitiveness in all areas has been increased."

Client concerns

Menor says one of the main concerns for Catalan companies is access to credit. "More often than not these are companies with high leverage ratios that need credit in order to continue implementing their expansion policies and to meet their short-term and medium-term cash requirements," he says. Lawyers also believe there is also a growing concern about the increased intricacies of regulations and legislation, which leads to companies needing a greater level of compliance and a landscape that is at times changing and extremely complex. "Finally, the political situation in Catalonia and its impact on the economic climate and investment create uncertainty among business owners," Menor concludes.

With regard to client relationships, Roca Sagarra says firms are still digesting the impact of market changes. "One of the challenges is how to make a client the firm's client rather than a particular partner's client," he says. With regard to the concerns of clients, Roca Sagarra says they are having to work without credit so are looking to alternatives such as crowdfunding.

One partner says that many companies are now organising law firm tenders, which means firms are being selected by "the guy who is buying the toilet paper, which is not very nice". Meanwhile, Montañá says that as clients are looking for long term strategic advice, law firms are organising themselves on sector lines – for example, telecoms, pharmaceuticals and real estate. He adds that,

“ There is a lot of real estate available at a good price and international investors are coming in. Bankruptcy proceedings are coming to an end and there is an opportunity to buy. ”
Miguel Pelayo, BDO



as a result of the economic downturn, law firms have "gone the extra mile" to streamline their working procedures to provide a more efficient service to their clients. Marín points out that there has been an evolution in the tender process and that rather than working with particular firms, clients want to work with particular partners at different firms. Roca Sagarra adds that clients are looking for experience and partners who really understand and know their sector. Meanwhile, Miguel Trías, Partner at Cuatrecasas, Gonçalves Pereira, points out that clients are becoming more demanding and have a "resistance to hourly rates".

Herrera remarks that compliance will be at the top of clients' agendas. "Compliance is becoming more important, companies can become criminally liable so they need outside help." However, Herrera adds that restructuring work is still out there, despite some thinking it is drying up. "Some thought we were clear of restructuring work but there is still a lot to do," he says. Herrera adds that the banks are still being cautious and that alternative financing will be a huge change that will affect the market. "There is a trend towards alternative financing that gives a healthy depth to the market." On the positive side, Roca Sagarra believes that the market seems to be better off than one year ago and, in fact, clients have new projects and need for more structure and resources.

Fornesa says that smaller companies are finding it more important to combine efforts with companies who used to be their local competitors in order to find their way into internationalisation. "In order to attack foreign markets, they need to gain dimension, and often they work in partnership because they have less financial resources," he says. "They need to collaborate more and become more associative to succeed abroad – crisis definitely enhances clients' imagination and clients demand more creativity from lawyers."

Pelayo says clients "really press on fees" and demand one point of contact at a firm. "Clients are much happier if you warn them about potential problems," he says.

Rey points out that clients are trying to recover from some very tough years in which many of them were in crisis. He adds that those clients that have higher overseas sales are in a better position to complete a recovery. "Exportations have improved and expectations are more optimistic than in previous years," he says. "Cost control is imperative for clients so they're applying cost restrictions in their relationships with law firms."

Criminal liability

Jiménez-Gusi says that clients are becoming more sophisticated and that they are not willing to pay for extras that do not bring value to their business. "Clients just want quick commercial advice that helps them to resolve their business issues and this trend will continue – they want you to really understand their business and help them to achieve their objectives," he says. Jiménez-Gusi says that one of the most significant developments from a clients' perspective is the possible criminal liability of legal entities due to the reform of the Spanish Criminal Code that is currently being discussed in the Spanish parliament. "There has been no enforcement of the criminal liability of legal entities so far but the proposed criminal code reforms introduce incentives for companies to adopt compliance programmes and we will see in the near future a more active enforcement of the criminal liability on legal entities by the Spanish criminal courts.

KPMG Abogados Partner Pedro Pablo Rodés agrees that one of the topics currently at the top of most company chairmen's agendas is corporate compliance. "Due to the recent corruption scandals, together with the amendment to the Spanish Criminal Law to punish these actions, executive directors have become aware of the relevance of having adequate controls in their organisations in order to guarantee the appropriate compliance and fulfillment of the current legislation: corporate governance rules, consumers legislation, tax legislation, anti-bribery regulation, data protection, and criminal liability legislation concerning the legal representative and directors," he says.

José María Rojí, Partner at CMS Albiñana & Suárez De Lezo, also highlights compliance as a key area of concern for clients. "Compliance is one of the topics which is being carefully analysed," he says. "One of the lessons from the crisis is that corporate responsibility and corporate compliance, and how to manage it, are key factors in sustainable success – the market and the authorities have put

this issue under the spotlight and companies need to act as a consequence."

Agüera says the nature of the client in question dictates what they are most concerned about.

"Clients that are still affected by the crisis are looking for advice on litigation and arbitration proceedings, insolvency situations, debt restructuring and refinancing," he says. "However, in the last few months we are seeing a change in the market – we are actively advising new national and international funds that have raised significant amounts of money and are looking for opportunities with distressed assets, for example real estate, and the acquisition of production units in insolvency proceedings." Agüera adds that optimism about the recovery of the national economy, as well as a more stable economic environment, is encouraging new foreign investors to plough money into Spain. "Consequently, the banking sector is very active – banking activity is currently focused on the sale of all mainly real estate assets, which were acquired as a consequence of the crisis." However, Agüera adds that banks are still actively purchasing some of the real estate assets that they had previously financed.

Ángel Valdés, Director of the Barcelona office of Lupicinio Abogados, says the economic crisis has led to an increase in insolvency and litigation work. However, he adds that clients are also want advice on new investments, mergers and acquisitions and the creation of new companies. "As a consequence of the reduction of labour costs in Spain, some of our clients are analysing acquisitions as they consider that Spain may be more attractive and competitive in the coming years."



“ Due to the recent corruption scandals, together with the amendment to the Spanish Criminal Law to punish these actions, the executive directors have become aware of the relevance of having adequate controls in their organisations in order to guarantee the appropriate compliance.”
Pedro Pablo Rodés, KPMG Abogados

Client reaction

Rey says the economic climate has led to clients restructuring finances and staffing as much as possible, with those that have survived now stronger than at the beginning of the crisis. He adds: "The labour reform

legislation has been a good way to save jobs and allow businesses to be more competitive – we expect further changes so that companies can take advantage of the beginning of the recovery including greater investment, limited job creation and cost control." Rey concludes that while the business community has changed significantly, the business environment and prospects have clearly improved.

According to one partner, clients are reinforcing their internal legal structures, equipping them with more resources and functions – such as compliance, for example. He adds that clients are demanding increasingly proactive, value-added advisory services from external lawyers with industry knowledge. "Clients are gradually starting to introduce the concept of tendering among a panel of law firms – in fact, some companies have already introduced the obligation of competitive bids in the legal services purchase process – which increases the level of competition between firms and forces the introduction of high standards of efficiency."

Agüera says clients least affected by the crisis – or successful businesses that have been set up recently – are seeing remarkable growth. "These companies are taking advantage of the last few years in which the labour market has been affected by salary adjustments," he says. "This has meant that these companies have been able to hire extremely well-prepared professionals for more competitive salaries than would usually be the norm in EU countries." Agüera adds that this is helping international companies to set themselves up in Barcelona. "We expect this is going to be a more frequent occurrence in the near future," he says. That said, Agüera points out that there are still a considerable amount of companies still being affected by the crisis that are reducing their staff while waiting for sector recovery. But he concludes that, given that the economy looks to be improving, he believes this tendency will slow down.

Monereo Meyer Marinel-lo Abogado Partner Enrique Marinel-lo Jordan says his firm's clients are "adapting their foreign investments by establishing strategic partnerships with foreign local

partners". But he adds: "Despite the advantages, the partnership with local partners may generate conflicts between future strategies and priorities and, on the other hand, the partner providing technology, patents or know-how is exposed to the risk of losing the control of it."

Opportunity knocks?

According to one partner law firms should incorporate an economic and financial approach, as well as industry expertise, into their advisory services, as well as into traditional

areas of legal practice, such as corporate and M&A, tax, labour, and litigation. "Law firms should position themselves as partners to the client's business and not just as an external service provider," he says. "Key to the success of firms will be positioning themselves shoulder-to-shoulder with their clients, understanding their difficulties and intricacies of their sector, and aligning their interests." Menor adds that new opportunities will spring up in the area of criminal and regulatory compliance. Meanwhile, he adds that law firms will have to increase efficiency by using new technologies in order to be competitive in the future.

Rodés says the area that will generate a lot of opportunities for law firms providing corporate legal services will be compliance, specifically compliance management systems, anti-bribery management systems, corporate governance, developments regarding the retribution of executive and administrative charges in private organisations, tax management systems or tax matters relating to transfer pricing or international tax planning. Meanwhile, Martín says that the provision of legal services must be "framed by a deep knowledge of the clients' industries and international capabilities". She adds: "Law firms must be able to give their clients the advice they need, where they need it and in a client-focused way."

IURISTAX Partner Fernando Mier says that in order to meet the expectations of clients, a lawyer must be more than someone limited to giving legal opinions. He adds that "involvement, personal commitment, strategy, understanding business and concrete results are necessary conditions to satisfy clients". Mier also says firms must adapt to become partners of their clients. "It is necessary to revise the formulae for invoicing, align with the interests of the client and take a stake in the long-term relationship," he argues. "This means a revision of the whole structure of the firm to orientate it towards the client." Mier says that, in this context, where the lawyer-client relationship is becoming ever closer, it will be essential to hire and retain lawyers who are capable of assuming such a role. Meanwhile, Jausas Partner Agustin Bou says intellectual property and refinancing will present law firms with opportunities in the coming year. Arochi & Lindner Partner Ana Padiá says opportunities for intellectual property firms are being created by the proliferation of websites selling brand products and offering online payment methods.

Finally, Valdés says that, while in previous years lawyers promoted their knowledge and expertise via seminars, newsletters, articles and books, the trend is now moving towards social media with articles and legal opinions being distributed via LinkedIn, Twitter and internet blogs.

So, what does the coming year hold for the city's law firms? With the Barcelona market showing signs of recovery, there are opportunities for law firms, particularly with regard to M&A work – with many small companies in the city, many will be forced to join forces in order to remain competitive. Similarly reforms to the Spanish Criminal Code – which could see companies being held criminally liable – has induced fear among company directors who will be relying on their legal advisers to guide them. However, the increasing tendency of clients to use law firm tenders means that there will continue to be downward pressure on legal fees and a greater reluctance on the part of clients to agree to hourly rates.

“ Clients are gradually starting to introduce the concept of tendering among a panel of law firms – in fact, some companies have already introduced the obligation of competitive bids in the legal services purchase process – which increases the level of competition between firms and forces the introduction of high standards of efficiency. ”

Javier Menor, Deloitte Abogados

