

COMPANY & CORPORATE ANNUAL REPORT 2016: PRICE WAR

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Investors are currently involved in a fierce battle to acquire assets in Spain, but with many clients worried about failing to complete transactions, they are becoming more inclined to negotiate hard on fees – meanwhile, in Portugal, despite deals in energy, finance and real estate, some argue investor interest is waning

The fact that, in the context of Spanish M&A, it is currently a sellers' market means that there are a significant number of bidders competing to buy any major asset that becomes available. The good news for lawyers is that with a plethora of investors showing an interest in most assets on the market, there is high demand for legal advice. However, there is a downside. Given the fierce competition between bidders, investors know that there is a reasonable chance that they may not be successful in completing the prospective deal – consequently, some clients are reluctant to spend significant amounts of money for legal advice on a transaction that may only have a slim chance of being finalised. As a result, there is significant pressure on fees, with some lawyers admitting that they will provide initial advice on a transaction free of charge. However, many other lawyers, understandably, recoil at this notion and argue that firms are too willing to acquiesce to client demands and consequently sell their services far too cheaply. Meanwhile, in Portugal, while some lawyers point to significant activity in the country's energy, finance and real estate sectors, others say that investor interest in Portuguese assets has cooled somewhat in the last year.

Spain: What are the biggest opportunities for law firms in the corporate/M&A sector?

"In the current economic and political context, the M&A market generally and the Spanish market in particular remain very attractive. A number of the opportunities will come from cross-border deals. Renewed access to bank financing will also create opportunities in the sector. In the Iberian market, there will be opportunities for investors in traditional sectors of the economy (such as retail and tourism) but also in distressed assets, infrastructure or renewable energy." **Alberto Frasquet, partner, Herbert Smith Freehills**

"Assisting international investors, private equity firms, corporations and banks with their entire corporate/M&A process. This involves the identification of the main interests and concerns of each client, while considering the specific particularities of target companies. This is only possible by (i) understanding their businesses, sectors, organisations and their actual needs; (ii) being able to offer cross-functional advisory services; (iii) focusing on providing high added-value advice while finding technological solutions applicable to non-core and lower value-added transaction areas." **Sharon Izaguirre, partner, Deloitte Legal**

"I believe the opportunity is to offer more than legal expertise, that is, to offer a combination of legal expertise and commercial/industry experience. Clients look for global solutions to their problems – for instance, legal advice combined with financial advice, or ability to originate a transaction for the client." **Álvaro Sánchez-López Chicheri, partner, Lener**

The outcome of the US presidential elections, and the path chosen by the British Government to untie the existing links between the EU and the UK, will be crucial in understanding how robust global M&A activity will be in 2017 and subsequent years. A rebalancing of political and economic relationships between countries and regions should be expected. In this scenario, M&A deals, both globally and locally, should regain momentum." **Gonzalo Cerón, partner, Ollerós Abogados**

"Digital business, life sciences and healthcare, financial institutions, energy and real estate are some of the sectors where opportunities will arise." **Jordi Casas, partner, Osborne Clarke**

"Apart from traditional sectors (such as industry, real estate and leisure), IT, sports and start-ups represent a unique opportunity. These are growing businesses in areas which are still not mature and in which there is still a long way to go. Clients come up with good ideas and projects but need help on how to develop them with legal certainty and due protection of their interests. Firms with good multidisciplinary teams can contribute to make these projects sound and reliable, which will attract the interest of investors and will facilitate access to bank credit." **Jordi López Batet, managing partner, Pintó Ruiz & Del Valle**

"Brexit could be an opportunity for Spain and for M&A lawyers – investors will focus on opportunities in other countries such as Spain, France, Germany or Italy instead of the UK." **Francisco Lacasa Lobera, partner, AGM Abogados**

"Restructuring in banking, energy and construction." **Fernando de las Cuevas, partner, Gómez-Acebo & Pombo**

Governance concerns

One of the major developments in the last year is that corporate governance has become a more important consideration in M&A deals, says Julio Lujambio, partner at Pérez-Llorca. "There is great attention on [companies'] internal processes," he explains. Lujambio also says that, given that it is currently a "sellers' market", there are a lot of competitive bidding processes. He continues: "This is good in that there is a lot of room for legal advisers, but the problem is that it means lawyers are not always completing deals."

Increasing corporate governance requirements mean that corporations have to "pass more stages and take more time" before they can complete a deal and this means that funds are sometimes winning bids because they are more efficient and quicker, according to Allen & Overy partner Iñigo del Val. However, Jorge Vázquez, partner at Ashurst, says: "Many funds are taking a more distant approach to competitive bidding M&A processes – or even withdrawing from them – because they feel there is too much competition. They are less willing to spend time and money in these situations because they feel they have less chance of winning the deal."

There is money to be spent in the Spanish market, says Garrigues partner Javier Marzo. "Foreign direct investment is

growing, particularly in real estate, and there are still some opportunistic and distressed deals," he adds. "We are optimistic, Spain is on the right path, 2016 will be a good year." Alejandro Ortiz, partner at Linklaters, says there are a lot of new players in the Spanish market, including sovereign wealth funds, Asian and Middle East investors, and Canadian pensions funds. He continues: "For example, LPs [limited partners that traditionally invest in private equity funds] are now investing directly in Spain and competing with private equity funds – we are also seeing traditional private equity funds looking at medium-sized deals and not only large deals as used to be the case." Another partner adds that private equity funds that were formerly looking for billion-Euro deals, now see €300 million to €350 million deals as the "sweet spot".

Lawyers are being approached by international investors regarding potential M&A transactions in Spain, which shows that activity levels may increase in the near future, says Clifford Chance partner Luis Alonso. Meanwhile, he adds that the role of general counsel has been changing during recent years and that they are, consequently, much more involved in the decision-making process: "They [general counsel] are getting closer to the CEO role, as legal aspects of M&A transactions are becoming more relevant year by year."

Free advice

The current market conditions are leading to the creation of new venture capital funds with around €40 million to €50 million in funds that are interested in investing in Spain, according to Carlos Blanco Morillo, partner at Roca Junyent. "There is a lot of liquidity in the market," he adds. One partner remarks that, due to the highly-competitive nature of the M&A market in Spain, the vendors are more commonly conducting full due diligence exercises so the "sellers' legal advisers are doing a lot more of the work. The partner adds that some corporate lawyers do work for clients "for nothing in the first phase" as some private equity clients are reluctant to pay legal fees if the deal is not completed. There is a feeling that private equity funds are more likely to switch legal service providers, whereas, with corporations, a relationship of trust with their lawyers is more important. One partner argues that his firm provides work for clients on a complimentary basis, or at a reduced rate, with the aim of clawing back fees when billing for subsequent work. However, another partner at a rival firm says this is unrealistic: "I can't believe in one deal that you will recover fees from a previous deal. We [Spanish law firms] are softer than Anglo-Saxon firms in terms of fees – clients pay fees for failed deals in France, for example, that they wouldn't do in Spain."

Spanish law firms need to "maintain red lines" when it comes to fees and stop being so willing to do work at lower rates," says one market source. The source adds that the Spanish market is a sophisticated market and it should act as such. Another partner remarks: "When clients ask for an engagement letter, firms should not go down from the quoted figure, but some clients are getting fees that are 50 per cent less than that." However, one Madrid-based partner at an Anglo-Saxon firm remarks: "We can't bring prices down, we would be fired." Meanwhile, Ortiz argues that the level of expertise at law firms in Spain is very high. He adds: "International clients often acknowledge this and remark on the high quality they find in the Spanish legal market."

Uria Menéndez partner Manuel Echenique says prominent investment banks are not currently as involved in the market for M&A advice on deals in Spain as in the pre-crisis period. He adds: "The M&A boutiques are gaining significant market share, even in significant M&A transactions where no balance sheet is required from the investment bank." Echenique adds that with the new macro-economic environment, corporate and M&A work should again be the "engine" of law firms. He continues: "We have seen the best year ever in 2015 and 2016 is looking good, but we need to focus on selective transactions – M&A is lucrative, but it generates a lot of conflicts of interest."

Artificial intelligence

Artificial intelligence is expected to have an impact on corporate and M&A practices, according to Alonso.

"Computers will be completing due diligence work in a few hours that would require several days for trainees and junior lawyers," he adds. Araoz & Rueda partner Pedro Rueda says that artificial intelligence will soon be "broadly available" to all law firms. Rueda also has faith that his firm's strategy of remaining independent is the right one: "Being independent gives us an edge and helps us in getting referrals from law firms without a presence here [in Spain]." PwC partner Javier Gómez says that, if lawyers are able to take the initiative when dealing with clients, they will become the client's "trusted adviser". But he adds maintaining profit levels is a challenge for law firms. "If fees don't get higher, there is a need to reduce costs."

Cybersecurity is a major challenge for law firms, according to Alonso. He adds: "Law firms keep the most sensitive information of major corporations and, for this reason, they are a major target for hackers. National governments and other leading institutions, even the FBI and the CIA, have suffered attacks from hackers in the past and, unfortunately, it is only a matter of time before law firms also suffer serious attacks. Cybersecurity is, no doubt, a major priority for any law firm."

Internationalisation is another major challenge facing law firms, says Cuatrecasas partner Javier Villasante. "Most of our main corporate clients are going international and major Spanish law firms

“Foreign direct investment is growing, particularly in real estate, and there are still some opportunistic and distressed deals.”
Javier Marzo Garrigues



are implementing strategies to follow them" he says. In addition, providing sufficient inspiration to young lawyers is also a challenge for firms, according to Villasante: "Not every associate wants to become partner, and we need to motivate them, especially those willing to pursue the partnership track". Meanwhile, Villasante says diversity is a key issue facing law firms. "We need to promote policies that prove more efficient in retaining female legal talent in the long term", he adds. Lawyers in Spain will be hoping that the end of ten months of political uncertainty – following the reappointment of Mariano Rajoy as Prime Minister after a confidence vote – will give investors more confidence. One partner comments that some international clients were considering closing their offices in Spain prior to confirmation that Rajoy would continue to lead the Spanish government.

Portugal: Energy in demand

Investors are particularly interested in acquiring Portuguese energy sector assets at present, according to MLGTS partner Ricardo Andrade Amaro. He adds: "Portuguese energy companies are selling minority stakes to funds – in general, in 2016, there has been huge interest in the Portuguese market and revenue from M&A/corporate work will increase in 2017."

However, there is an opposing view that investors' interest in the Portuguese market cooled in the last 12 months. FCB Sociedade De Advogados partner Pedro Guimarães says that, while 2015 was a tremendous year for his firm, investors have been wary about the Portuguese market in 2016, and that this has been partly – though not primarily – due to the fact that "some investors feel Portugal is over-bureaucratic".

Linklaters' counsel Diogo Plantier Santos says there have been significant deals with a real estate component, as well as consolidation in the banking and insurance sectors. Meanwhile, according to Vasco Bivar de Azevedo, partner at Cuatrecasas Gonçalves Pereira, Portuguese assets are currently "very cheap". He continues: "There are some big-ticket transactions, but there have been mostly mid-market deals in the energy and real estate sectors, including some tourism development – there has also been an increase in interest from private equity and venture capital investors, particularly in the tech business area in recent times."

The future of Portugal's banks will determine future M&A activity, says Serra Lopes, Cortes Martins Advogados partner Francisco Barona. He adds that there has been a number of deals recently in the real estate, tourism and start-up sectors. However, Barona says "uncertainty means there are no longer large transactions."



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Vasco Bivar de Azevedo,
Cuatrecasas, Gonçalves
Pereira

There are some doubts about future prospects for M&A deals in Portugal, argues João Gonçalo Galvão, partner at Campos Ferreira, Sá Carneiro & Associados. "The restructuring of the banking sector will impact on their [banks] ability to finance companies," he says. "There has been a shift in decision-making in the national banking sector, in particular to Spain." Portugal's left-wing

government is not deterring clients from investing in Portugal, says Vieira de Almeida partner Paulo Trindade Costa. However, he adds that the "capacity of the market to feed itself with transactions is a concern". Trindade Costa continues: "There will be a lot of restructuring and consolidation in the banking sector – new investors are coming, including investment funds from different areas of the world, including Australia and Indonesia." There continues to be interest in Portuguese assets and new players – particularly from China, Brazil and Turkey – have been investing, according to Plantier Santos.

'Carve-outs'

A large amount of transactional activity is related to corporate 'carve-outs' [where a company sells a subsidiary business to outside investors], says Bivar de Azevedo. He adds that, particularly with regard to investors from China, there is a demand for capped or fixed fees from law firms, while venture capital deals tend to generate lower legal fees. SRS Advogados partner Nuno Miguel Prata

argues that clients are “less price sensitive than they were three or four years ago” and that the average billing rate is higher now than it was then and law firms are in a position to increase hourly rates. Another partner at a leading firm in Portugal remarks that clients no longer “give the same value to all legal work”. The partner adds: “This could put stress on partner relations within a firm as clients will pay different prices for different types of work – firms will therefore have to evolve.” Work done by Portuguese firms is underpriced compared to that done by peers in other European jurisdictions, such as Spain, France and Germany, says Eduardo Paulino, partner at MLGTS. “It’s important that international clients come [to Portugal] prepared to pay more adequately,” he adds. Guimarães says that, while part of law firms’ work is becoming commoditised, clients always value skills such as negotiating and closing. He adds: “Clients do not always want ‘one-stop-shops’ and we’re seeing the development of some specialised boutiques as a result – however, ‘one-stop-shops’ remain a clear choice for a lot of clients in a lot of cases.” Though there are several boutique firms in the Portuguese market, Abreu Advogados partner Ana Sofia Batista says that clients still expect full-service law firms to have experts in several areas, in order to cover their global needs. Meanwhile, the legal arms of the ‘Big Four’ auditors are a “huge challenge” for mid-market firms in Portugal, says Paulino. “The ‘Big Four’ are in a position to be very competitive in small and mid-market transactions, though their profile is not so much suited for bigger deals.”

Spain: What are the biggest challenges currently faced by law firms operating in the corporate/M&A sector?

“Brexit and the recent election results in the US have produced a great level of uncertainty. Law firms should anticipate new scenarios arising from both the possible exit of the UK from the EU, and the likely push for more protectionist economic policies in the US. These changes could have a significant impact on M&A and the regulatory and tax sectors.” **Adolf Rousaud, managing partner, RCD – Rousaud Costas Duran**

“Client pressure to lower costs is increasing for large law firms, mainly because clients are frequently approached by other top-tier firms offering aggressive fee arrangements under the assumption that they will start a new relationship, which will later lead to more profitable work. Heads of legal in large companies and investment funds are now more prepared to retain legal services based on price, not brand.” **Pedro Rueda, partner, Araoz & Rueda**

“Clients are being more demanding in terms of price. They want law firms to share the risk in each transaction and this obliges lawyers to design new pricing structures. Additionally, the clients are using the high competition in the Spanish legal arena to put more pressure on law firms.” **Roberto Pomares, partner, King & Wood Mallesons**

“The optimisation of processes concerning commoditised legal work such as research, discovery, data processing and due diligence reviews. Law firms realise that they need to integrate artificial intelligence in their business, and find and perfect new software solutions to automatise such processes. This is a challenge that needs the continued collaboration and involvement of coders and lawyers and the progressive implementation and testing of such solutions in the legal business.” **Teresa Zueco, partner, DLA Piper**

“How to master the high level of regulation and legislation, how to compete with skilled legal firms and also with consultancy firms that offer a full range of services with large teams in a tight and competitive cost environment.” **Curra Munuera, partner, CMS Albiñana & Suárez de Lezo**

“The challenges are still the slow economic recovery, money laundering regulations and the bureaucratic burden for foreigners investing in our country.” **Maite Cerezo Montañez, partner, Montero Aramburu Abogados**

“Fee pressure and how to differentiate ourselves from our peers. We feel that specialisation, client service and an ‘out of the box’ approach to legal issues is the correct recipe to address such challenges.” **Íñigo Erláiz, partner, Gómez-Acebo & Pombo**

Closing borders

There are reasons to be optimistic about prospects for the coming year because the Portuguese business sector is better prepared for attracting investment, according to Paulino. However, he adds that the concern is that there is a global trend to “close borders” and this could have an impact on “open economies”. Another partner adds that the increasing trend for protectionism in various parts of the world “doesn’t help the global economy”. Meanwhile, Barona says he is optimistic about banking restructuring in Portugal, but adds it is a concern that there are huge non-performing loans that need to be restructured, and it is not yet clear how they will be restructured. Francisco Brito e Abreu, partner at Uría Menéndez-Proença de Carvalho, says the continued interest of international investors in Portugal is cause for optimism, but this is tempered by global economic instability. However, he adds that law firms are becoming more efficient and do more in terms of monitoring how much time lawyers spend handling work. Finally, political changes around the world are causing concern among lawyers. As one partner puts it: “I’m pessimistic about stupid political decisions, such as Brexit – free trade was taken for granted, but then stupid political decisions are an opportunity for lawyers, when rules are implemented, we can help the client get around them.” Meanwhile, PLMJ partner Maria João Ribeiro Mata says that,

while 2016 was slower than 2015 with regard to deals (in terms of the number of transactions, rather than the value), she is confident that Portugal will be more stable from a political point of view in the coming year and that will attract investors and boost M&A. Speaking at an Iberian Lawyer Corporate and M&A Roundtable prior to the result of the US election, Ribeiro Mata anticipated a victory for the Republican Party candidate Donald Trump and said that this was her biggest concern as she believes the Trump presidency could have a “negative impact on foreign investment in Europe and, specifically, investment in Portugal”.

Portugal: What are the biggest opportunities for law firms in the corporate/M&A sector?

“There are good opportunities for private equity houses, while Portuguese large and medium-sized corporates are still deleveraging and selling very good assets at good prices. Moreover, there is tendency in the market to unbundle the operational side from the ownership of the assets. We are also expecting that the financial sector will continue to ‘clean’ its balance sheets.” **Jorge M. Bleck, partner, Vieira de Almeida**

“There has been a general feeling that the Portuguese economy is finally in recovery. This confidence may encourage M&A transactions. Apart from the domestic market, one of the biggest opportunities for law firms in the corporate/M&A sector is the African market, with special focus on the Sub-Saharan jurisdictions. The mining and energy sectors, tourism, telecoms, health and construction are becoming increasingly more attractive to foreign investors.” **Alberto Galhardo Simões, partner, Miranda**

“Financial sector M&A will continue to generate excellent opportunities. The greater presence of private equity funds and international investment firms in the Portuguese market will continue to generate opportunities. The real estate and tourism sectors will continue to generate deals, and several projects that were “on hold” may now proceed. Start-ups are growing in Portugal, and the recent Web Summit may be a sign of a sector that will continue to attract investors and entrepreneurs to Portugal.” **Nuno Azevedo Neves, partner, ABBC**

“Restructuring, the acquisition of companies operating in the tourism sector, and small and medium-sized companies with high potential for growth, especially those operating in exporting or in the so-called digital economy.” **Rui Cardona Ferreira, partner, Sérvulo & Associados**

“Due to the increasing complexity of applicable law and the expanding regulations in most areas, M&A transactions are more exposed to legal risks involving many areas (labour, licensing, environmental, litigation, tax, IT and IP, for example), which creates opportunities for lawyers. Meanwhile, managers are becoming more focused on compliance concerns.” **Alexandre Jardim, partner, PBBR**

“Adding value to clients by offering them a high degree of specialisation and a full-service approach - it is critical that they get strong and integrated support from us in times of economic uncertainty and complexity. That’s why flexibility, comprehensiveness and geographical footprint are key.” **Pedro Sá, partner, PRA – Raposo, Sá Miranda & Associados**

“The hospitality industry shall be a key driver for the M&A sector, along with continued activity in infrastructure. Distressed assets coming out of banks along with banking M&A and consolidation will continue to be one of the largest sources of work.” **Mafalda Barreto, partner, Gómez-Acebo & Pombo**

“With corporations looking globally for further growth, there is a greater need for law firms who understand the global requirements of their businesses. The shift in global economic power has brought a new legion of foreign investors from countries such as China, Russia and India, which have significantly changed the global business landscape. We may potentially see more cross-country partnerships.” **Joana Correia, partner, Raposo Bernardo**

“While the change in government brought some uncertainty and slowed down some investment, there are several potential M&A deals under consideration, notably in the banking, industry, energy and technology sectors.” **Gonçalo Pinto Ferreira, partner, Telles de Abreu Advogados**