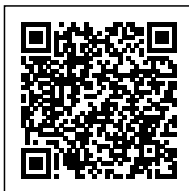


# CORPORATE AND M&A ANNUAL REPORT 2018: BUMPY RIDE

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**In the early part of 2017, it was all going so well for M&A lawyers, with international investors competing to snap up the best assets in Iberia; but then came the crisis in Catalonia, which has left investors feeling nervous**

During the first half of this year, things were looking particularly good for M&A lawyers in Iberia. Energy and infrastructure assets were attracting multiple bids leading to auctions that proved to be a rich source of instructions for law firms. In addition to investors fighting over the biggest assets, smaller funds have also been taking their first plunge into the Iberian M&A market.

However, the latter part of the year saw Spain thrown into a constitutional crisis as the Catalan independence movement gathered momentum. Now the country is shrouded in uncertainty, and this state of affairs is making investors nervous. Forecasts for GDP growth have been revised down and M&A activity has slowed as deals are put on hold while potential acquirers await the outcome of the regional election in Catalonia.

However, despite the political uncertainty, spirits remain high among some M&A lawyers. "The mood is shifting and there is more optimism," says Ramon y Cajal partner Guillermo Muñoz-Alonso. "There is more finance available, and at better terms – there are also smaller funds taking an interest in the Spanish market for the first time, including some from jurisdictions that had not been very active in

this market before, such as South Africa.” Gómez-Acebo & Pombo partner Fernando de las Cuevas says that investors are targeting Spanish infrastructure and renewables projects. He adds that, while banks had considerable amounts of bad debt, there are now much fewer “debt deals”. International investment is growing and “global markets are a clear opportunity”, according to Sharon Izaguirre, partner at Deloitte Legal. She adds: “In Spain, international investors are targeting hotels and the tourism sector in general, as well as industrial and engineering-related assets, and the agri-food industry.” Izaguirre also says emerging economies like India, China or Latin America (particularly Colombia, Chile and Peru) will also generate opportunities for lawyers. Freshfields partner Javier Monzón says that, following a widespread trend of Spanish companies successful internationalising their businesses, there are significant cross-border opportunities for lawyers in that such companies are now “more attractive targets for international investors”. He cites the examples of Spain’s Santander selling Allfunds bank to funds Hellman & Friedman and GIC, and Atlantia and Hochtief’s bids to takeover Spanish infrastructure management company Abertis. “In both cases, the companies have actual, and potential, growth opportunities abroad,” he explains.

#### **What have been the most significant developments in the corporate/M&A sector in the last year?**

“The number of mega deals in the market and therefore deal values are higher. Mostly driven by infrastructure and energy mega deals like the Abertis takeover bid, the OHL Concesiones sale and the sale of the Naturgas and CLH stakes. Mid-market is relatively slow despite liquidity and private equity funds willing to do deals.” **Íñigo del Val, partner, Allen & Overy**

“The corporate/M&A market in Spain has maintained the upward trend begun in 2015. Fortunately, we are reaching pre-crisis levels – €4.4 billion has been invested by private equity houses in Spain from January to September this year. The most active sectors are technology, real estate, leisure and healthcare.” **Jaime Espejo, partner, Andersen Tax & Legal**

“The real estate and energy markets have returned, while there has been increased activity in the industrial, services and technology sectors.” **Luis Miguel de Dios, partner, CMS Albiñana & Suárez de Lezo**

“It has been an incredibly good year for the M&A/corporate practice, both in terms of the number of transactions and volume, probably as a consequence of the improvement in the political stability in Spain and continental Europe. Political issues, such as the situation in Catalonia, has not had a major impact on the level of investment, at least in terms of our own clients.” **Roberto Pomares, partner, King & Wood Mallesons**

“Energy, infrastructures (concessions), retail and commodities. Considering the poor interest rates currently offered by the financial market, investors are looking for business with recurrent cash flows on a mid-term and long-term basis.” **Pablo Enrile, partner, Ontier**

“Direct lending - in which asset managers (hedge funds and private equity funds mainly, but also insurance funds) have been lending directly to businesses - was initiated when tougher regulation of banks in the post-crisis scenario prompted traditional banks to reduce lending to businesses.” **José María Viñals Camallonga, partner, Lupicinio International Law Firm**

“The Portuguese market in 2016 has seen over 300 M&A operations, with just 120 of the transactions having a total aggregate amount of approximately €12 billion. Real estate has been the most dynamic sector, while there was a significant increase in activity in finance and insurance. The majority of acquisitions were made by foreign entities in Portugal, particularly by the US, Spanish, French and UK. Acquisitions made by Portuguese companies abroad have mainly occurred in Spain, Brazil and France.” **Joana Andrade Correia, partner, Raposo Bernardo**

“On the corporate law side, in 2017 Portugal implemented EU money laundering and ultimate beneficiary directives, while bearer shares have finally been prohibited. M&A has been slowly awakening but has not yet reached the rhythm it had before the 2011 crisis.” **João Macedo Vitorino, partner, Macedo Vitorino & Associados**

Another boost to M&A activity in Spain has been the increase in funds involved in direct lending, says Carmen Reyna, partner at Pérez-Llorca. “Some corporates don’t have access to finance from banks, or the rates for borrowing are too high, but there are direct lenders from the US and the UK making finance available.” Muñoz-Alonso says that there was a surge in direct lending around five years ago and, while then it was more opportunistic in nature, there has been a shift and lenders are now thinking more long term.

## **Money on the table**

Baker McKenzie partner Luis Casals says there are many investors putting “a lot of money on the table” and looking for investment in Spain. He adds that investors are open to opportunities in any sector and that the investment takes a range of forms, including hybrid vehicles, minority stakes,

lower yields and "longer investment periods". Casals continues: "It's a sellers' market, there is activity involving real estate and health-related businesses, while funds are buying hospitals, pharmaceutical companies, nursing homes, gym chains, technology and bio-food companies, hotels and energy and infrastructure assets. We're busier than last year and we anticipate 2018 will bring more M&A activity."

There are now more auctions involved when Spanish assets are being sold, says Roca Junyent's Madrid office managing partner Carlos Blanco. "There are a lot of quick deals," he adds. "The number of auctions is an obvious consequence of the high liquidity of the market." However, one partner says that the impact of the political uncertainty in Catalonia on the M&A market should not be underestimated: "GDP growth will be reduced, the impact from Catalonia will affect the whole economy."

### **Catalonian concerns**

The Spanish economy is "healthy and growing" and this has had a positive impact on M&A, says Cuatrecasas partner Javier Villasante. "The first part of the year was good due to the sound macroeconomic conditions and the strength of foreign investment," he adds. However, Villasante says the pipeline of deals is "now showing signs of deceleration". He continues: "The Catalan situation is starting to affect the M&A market and may have a significant impact in the long run." De las Cuevas adds that, due to the uncertainty in Catalonia, there is concern about Spain among international investors.

One M&A partner says companies based in Catalonia have faced "commercial pressure" to relocate their businesses. "The Spanish economy is interlinked, some companies have been told that if they don't move their domicile, some businesses won't continue working with them," he explains. The partner adds that there also concerns among clients that, in the event Catalonia was to become independent, there would be an impact on freedom of movement and potentially double taxation. The political situation in Catalonia is the latest issue to affect the confidence of international investors and they are now wondering what the next problem will be in Spain. One partner says: "There was the change in the regulation of energy [related to the Spanish government's cuts to solar power subsidies] and now Catalonia - investors are thinking 'what else?'"

José Antonio Sánchez-Dafos, partner at DLA Piper, says there are newcomers coming into the market for corporate and M&A-related legal services. He adds: "Firms are under increasing competition, there are more auctions for law firms to advise on, though some clients want to apply abort fees [a fee payable to a legal adviser in the event the client decides not to proceed with a proposed transaction]. However, there is now a flight to quality, new competitors will enter the market, so firms need to offer better quality services and portray themselves as a trusted adviser." M&A-related legal work is becoming more commoditised, so lawyers have to be more sophisticated and think globally and more commercially, says Reyna. She adds: "Lawyers have to think outside the box, technology is now doing part of our jobs – artificial intelligence is now doing due diligence." Izaguirre adds that the legal market is "maturing in a direction that favours the integration of law with a wider range of business solutions". She says that, consequently, law firms have to build "systems that provide services based on innovation and a business-focused approach, and that this will replace traditional advice".

### **Move to US model**

Sánchez-Dafos says law firms need to reinvent themselves. "Firms need to move to a US model and have more partners per total headcount," he adds. "The main challenge is talent retention, and one option is the development of alternative career paths." However, Sánchez-Dafos also says that when

it comes to working on M&A deals, having flexibility. With regard to the outlook for the coming year, Reyna says there are a lot of deals in the pipeline, especially in the real estate, renewable energy and rail sectors. Casals anticipates that there will be consolidation in the legal sector: "There will be more mergers as fees are going down." He continues: "There will be Spanish firms merging with global firms because deals are not local anymore." However, partners also say that there is still a strong business case for Spanish firms remaining independent. One says: "There is the issue of conflicts, the bigger you get, there is an increased risk of conflict."

#### **What are currently the biggest opportunities for law firms in the corporate/M&A sector?**

"Despite some challenging conditions (such as Catalonia and Brexit), we believe there is still ample appetite for deal-making in Spain. Investment funds and private equity houses across Europe have shown great interest in our market and will most probably continue to, not to mention foreign investors from Asia and Latin America. We also feel that important opportunities will arise in the form of sophisticated cross-border transactions which require tailored solutions, global delivery and a seamless service." **Stephen Hess, partner, Uría Menéndez**

"Having a sector-specialised corporate/M&A practice. Companies have an increasing sense of the value added by specialised legal advice, especially on M&A deals in regulated sectors." **Lourdes Ayala, partner, Bird & Bird**

"Transactions arising from the acquisition of the productive units of companies involved in an arrangement with creditors or bankruptcy proceedings." **Leticia Domínguez, partner, Ecija**

"IT, biotech, healthcare, leisure/tourism, retail, consulting, engineering, renewable energy and real estate. Also the firm often advises on transactions in the hospital, health, biotech and pharmaceutical industries, as well as the consumer goods, renewable energy and industrial sectors." **Pedro Rueda, partner, Araoz & Rueda**

"Portuguese law firms should not only look to the Portuguese market, but also the global market. Portugal offers great prospects for foreign investment, which means opportunities for law firms. It is critical not only to look for new markets – such as South America or the Middle East – but also to continue developing the traditional European markets." **Gonçalo Pinto Ferreira, partner, Telles de Abreu Sociedade de Advogados**

"Private equity players are full steam ahead, so clearly the biggest opportunities involve acting for them." **José de Santiago Forn, partner, Gold Abogados**

"Foreign private equity funds that focus on Spain are seeking opportunities in the financial, real estate and retail sectors. Real estate has come back as one of the main areas of activity for M&A." **Begoña Redón, partner, Marimón Abogados**

"Not sure if it's the biggest, but for Portuguese firms, the capacity to deal with the structural changes that political decisions such as Brexit and the Catalanian independence process will impose on multinational companies is definitely a great opportunity." **Manuel Gibert Prates, partner, SPS Sociedade de Advogados**

#### **Portugal: Competitive bids**

The volume and value of Portuguese M&A has increased in the last year, according to Cuatrecasas' Lisbon-based partner José Diogo Horta Osório. He adds that there has been a significant number of transactions in the real estate, energy and infrastructure sectors. "We have seen a lot of investors from the UK, US and China," Horta Osório says.

The Portuguese economy is improving with the result that there is increased interest in the country from both domestic and foreign investors, says PLMJ partner Manuel Santos Vitor. "There are more investors from Spain because the Spanish economy is improving and we're also seeing investors from the US and other mature markets," he adds. Santos Vitor also says that, given the current economic climate in Portugal, the bigger the transaction is, the more interest and potential buyers it attracts.

Banks are more prepared to finance investors than they were in the recent past, says Uría Menéndez-Proença de Carvalho partner Francisco Brito e Abreu. "Private equity funds are particularly interested in investing in infrastructure, while family offices are also interested in Portuguese assets," he adds. MLGTS partner Ricardo Andrade Amaro says that a wide range of investors are now targeting Portugal, with the result that there are now sometimes up to 20 bidders for assets, with competitive bids being most common in the infrastructure and energy sectors. "Portugal is on the radar for all types of investors – we are now seeing them coming from Canada and Thailand, for example," he says. However, he warns that the European Union Market Abuse Regulation – with its requirements for the disclosure of financial information and other information-sharing – is causing "discomfort to all parties". Consequently, some investors feel that deals in Portugal are too small to justify having to meet such regulatory requirements, Andrade Amaro says.



Linklaters partner Marcos de Sousa Monteiro says that, while there has been a noticeable shift in private equity funds' focus towards infrastructure, there are also real estate funds that are "looking for an advantage and who see Portugal as good for their portfolio". He adds that there has been an increase in interest from Australian and Canadian investors, and there have also been opportunities to advise "African-focused" private equity funds on deals. "There is also M&A work related to the financial and industrial sector in the pipeline," says Sousa Monteiro.

## Benefits of global uncertainty

Caiado Guerreiro senior associate Jorge Ribeiro Mendonça says transactions in the real estate sector have been the "engine of the recovery". He adds: "Political stability is helping international investors, while Portugal's tax regime is also proving attractive." Meanwhile, CCA Ontier partner Domingos Cruz says deal flow has increased with technology sector deals with a value of €10m to €15m being a particular trend. He also says Portugal is benefitting from global uncertainty related to Brexit, US president Donald Trump, and the political situation in Catalonia. "Portugal is seen as a safe harbour, there is stability, and Portuguese bonds are no longer seen as garbage," says Cruz.

According to Antas da Cunha Ecija managing partner Fernando Antas da Cunha, hedge funds are targeting Portugal, while sale and leaseback deals are common in the real estate sector. In addition, Antas da Cunha says there are new players in the technology, media and telecommunications (TMT) sector. "Companies want to come to Portugal," he says.

### What are the biggest challenges corporate/M&A lawyers currently face?

"Artificial Intelligence – it may impact on the M&A sector, particularly, on due diligence work where processes can be automated to increase time and cost efficiency. However, Artificial Intelligence cannot provide, so far at least, the added value and personal commitment that clients require." **Alberto Frasquet, partner, Herbert Smith Freehills**

"Clients see that the multidisciplinary approach to legal M&A (that is regulatory compliance, employment, M&A and tax) is not enough – clients demand that law firms understand their business and provide teams that include lawyers, data and tech experts, financial advisors and consultants." **Francisco Aldavero, partner, EY Abogados**

"Being familiar with the sector and, even better, having an in-depth knowledge of the client. As well as technical skills, having soft skills such as negotiation skills and sound judgement to advise the client." **Jordi Casas, partner, Osborne Clarke**

"Obviously, the unfortunate situation in Catalonia is having, and will continue to have, an impact on our work – there are also some potential foreign threats caused by political instability." **Carlos Llorente Gómez de Segura, partner, Lener**

"One is the current political situation in Catalonia. It is reasonable to think that foreign investment will have decreased significantly during October and that part of it won't be diverted to any other parts of Spain." **Álvaro Marco, corporate & M&A director, BDO Abogados**

"Digital disruption is and will be a challenge for every M&A lawyer, who must be ready for the changes that such disruption will bring. Tools to manage big volumes of information in an efficient and quick manner, and to increase lawyer profitability are gradually being implemented in our sector." **Joaquín Giráldez, senior lawyer, Broseta**

"Brexit continues to be a top worry and concern for companies that are waiting to see how it will affect markets and the global economy. In this context, legal advisers must propose strategies that are in the best interests of our clients." **Adolf Rousaud, managing partner, RCD – Rousaud Costas Duran**

The Portuguese market is evolving and there is an increasing number of 'secondary deals' – in which private equity firms buy assets from other private equity firms, says De Sousa Monteiro. "These tend to be quicker deals, where there is less pressure on fees – given the complexity, it can be quite stressful," he explains. Another partner remarks that clients are now prepared to pay higher fees, and that, two years ago, it would not have been possible to charge the fees that are charged today. Given that there are lots of bidders for some of the bigger assets in Portugal, there is a growing trend for clients to ask law firms to agree to 'abort fees', says Vieira de Almeida partner Paulo Trindade Costa. Another partner remarks that the legal fees charged by Portuguese firms are among the lowest in Europe. "Some clients talk to us as if our fees are high, but our fees are at the level of those in Poland, for example," he says. Lawyers also say that the billable

hour is an increasingly outdated concept and that clients now require a range of different fee structures, including capped fees. However, in general, foreign clients are willing to pay more for M&A advice.

Generally speaking, clients demand less day-to-day corporate legal advice compared to before the global crisis, though there are perhaps more clients now than there were two or three years ago, says Santos Vitor. He adds that technology is becoming more important for law firms. "Law firms are trying to use more technology, technology companies are increasingly approaching law firms to offer technology for due diligence and other purposes, though a lot of this technology is developed in English and the problem is that a very important part of our work is in Portuguese," says Santos

Vitor. The issue with a lot of legal technology is that it needs to be adapted to the Portuguese language, says Trindade Costa, who adds that the increased use of technology also raises the question of how to incentivise young lawyers. Firms also need to become more international in their outlook, according to Trindade Costa. He adds: "There are big transactions in Lusophone Africa, which is reaching the point where it needs to have an M&A market."

### **Machine learning**

One M&A partner remarks that his team is "always working with our IT guys on machine learning". Meanwhile, some firms are working with legal technology providers to test out prototypes in a law firm environment. While there is a view that artificial intelligence will do a lot of the work currently carried out by young lawyers, some partners argue that technology will actually help younger lawyers to do their jobs better. One remarks: "Artificial intelligence will be useful for young lawyers as it will help them to be more aware of potential problems [when preparing cases]."

Law firms will have to find different sources of income in future, lawyers say. "Law firms could become multidisciplinary practices where lawyers act as project managers," remarks one partner. Another major issue facing firms is how to attract, retain and train talent. According to one M&A partner at a leading Lisbon firm, "technology will take away the training young people had, so training processes will have to evolve – we have to keep feeding the ranks, the rate at which people leave the firm has doubled in the last 10 years".

The legal arms of the 'Big Four' auditors could potentially become as big in Portugal as they are in Spain, according to one partner. To date, Deloitte has incorporated the Portuguese firm CTSU Sociedade de Advogados to its legal network, and Lisbon firm RRP Advogados has become part of the EY global law network. Referring to the advances made by members of the 'Big Four' into the Portuguese legal market, the partner remarks: "We need to be prepared for this new type of competitor." Another M&A partner notes that the 'Big Four' are already involved in the major deals in Portugal as auditors and they will "try to target the sophisticated legal work – we will see them on the biggest transactions in future".

Regarding the outlook for the coming year, Trindade Costa says he is not pessimistic, but believes there is uncertainty. "The growth forecast is small for the coming year, there may be significant opportunities in the telecoms sector, but if interest rates go higher, we will have a problem."