

M&A ON THE RISE, BUT WITH A NEW TWIST - CLIFFORD CHANCE

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Key trends are sweeping the M&A sector, from divestment and investment to joint ventures, and it is becoming a truly global market

Following years of expanding and diversifying their business and geography, the financial crisis has made many companies in developed markets focus again on their core activities, says Javier Amantegui, M&A and Corporate Partner at Clifford Chance in Madrid. "Due to the current volatility and uncertainty, many are trying to robust their balances to face the high amounts of debt incurred during the 'boom' years."

With the current financial climates, businesses in the developed market are disposing of non-core assets both in traditional and emerging economies, he says. "We are finding that there is a predominant trend in the West of being in more of a divesting than investing mood."

Conversely, in the emerging economies and the BRICS in particular, companies are cash rich and looking for acquisitions in developed economies, he says. "Interestingly, they are also doing transactions in emerging countries, which is a new twist."

Amantegui bases his opinions not only on his personal market perception, but also on a recently released Clifford Chance Study, 'Cross-Border M&A: Perspectives on a changing world'. Made in collaboration with the Economist Intelligence Unit, the Study surveyed over 300 companies on current opportunities, challenges and trends.

Companies coming from less developed economics, like Latin America for example, are starting to look for acquisitions in neighbouring countries such as Chile, Peru and Mexico. "They have started an expansion process incentivised by the opportunities coming from the divestments made by Western companies," says Amantegui.

Joint ventures

A trend highlighted in the Study is that of investors using joint ventures to access unfamiliar markets. The support of local investors can prove to be quite helpful, says Amantegui.

"A local partner allows investors to have a better understanding of the culture and the most efficient manner to handle local authorities and bureaucracy; moreover, it is also a way to invest in regions that don't allow foreign investors to take control of certain assets."

But joint ventures are not free from risk. "We have seen many investors failing in situations where the interests of the two parties are so different that the joint venture won't work," says Amantegui.

"You need to make sure the investor's intentions are clear from the outset," he adds, "as you can put whatever you want into a joint venture agreement, but if the investor's interests are not aligned then no contract will be able to fix those situations".

Due diligence

Lawyers need to present their clients with the opportunities and risks associated with every new venture, ensuring to warn them beforehand of each and every possible risk, says Amantegui.

"Commercial and M&A lawyers need to understand the inventors' underlying intentions, spend time with the decision makers and executives, and ensure that the parties' intentions align."

And as a joint venture is somehow akin to a marriage, it is also extremely important to provide for divorce. "Business associations are about concessions and reasonability, but sometimes you realise that you don't speak the same language," says Amantegui. "Most of these relationships have a time limit, and having good provisions for an exit strategy is essential."

Spanish market

Amantegui adds that the results of the Study are in line with the state of the Spanish economy, given that it shows local companies are now focused on their core activity to reinforce their balances, and are looking for opportunities to divest ancillary business.

Spanish companies continue with their internalisation plans: over 60 percent of the turnover of the Ibex-35 companies is now being generated outside of Spain (five percent more than in 2010). And, unsurprisingly, 43.9 percent of this turnover comes from Asia and Latin America.

"It is clear that, in this adverse economic climate, emerging markets are also on the radar of Spanish investors, perhaps Latin America being the preferred destination, not only because of cultural and historical attachments, but also due to the fact that Spanish companies have been present there for a long time," says Amantegui. "We believe that the ongoing internationalisation process will continue in the short to medium term, at least until the Euro economy starts to show signs of recovery."