Adventuring abroad

M&A activity has increased dramatically with substantial growth in both deal value and volume – however, this poses new challenges for law firms, which must work out how best to serve clients as they look for growth abroad.

The good news for Iberia´s corporate lawyers is that M&A deals are back. Data from Mergermarket published earlier this year, showed that the value of M&A deals in Spain and Portugal was up five-times in the first six months of this year. But this also poses challenges for law firms, Spanish and Portuguese clients are increasingly turning to foreign markets in an effort to foster growth, so the onus is on firms to develop effective strategies for serving clients that want to capitalise on opportunities in other jurisdictions.

Unfortunately, it seems that the increase in M&A work is not being accompanied by increases in fees. Lawyers talk of a price war – and despite the desire of some firms to increase fees, there is an acute awareness that, unless all firms put their fees up, charging higher rates is a strategy that could result in clients switching legal service provider.

However, there is optimism in the market. "There are some pointers that suggest there has been a recovery," according to Pablo Mayor, partner at Allen & Overy. "There is more optimism and more deals and there has been an increase in inbound work." Mayor adds that there are assets available that could potentially achieve a large price. In addition, he says there are more outbound deals as Spanish corporations look to increase the income they generate from abroad. "Spanish companies know that if they want to maintain their activity levels, they have to grow in other countries, this will produce M&A deals and multi-jurisdictional deals that are more profitable for law firms," Mayor says.

Juan Francisco Falcón, partner and co-head of the M&A/private equity practice at Uría Menéndez, says the Spanish market has become too small for major Spanish companies. "The challenge is to show our clients that we can bring added value to them even abroad, it´s now ordinary business for big Spanish companies to go outside of Spain – for major companies, probably not less than 60 per cent of turnover is now generated outside of Spain," he says.

DLA Piper partner José Sánchez-Dafos says Spanish companies looking to invest in Chile, Brazil or Asia, for example, want to have a Spanish counsel as a "single point of contact". Fernando de las Cuevas, partner at Gómez-Acebo & Pombo, says there has been a recovery in the fundamentals of the economy. "Investors think prices are attractive and a number of Spanish companies that are indebted are willing sellers," he says. "There has been an increase of activity for law firms" he says.

Foreign investors march in

Allen & Overy senior associate Iñigo del Val says some big Spanish companies have been deleveraging after the downturn. "Some companies have more cash on their balance sheets, but some are still recovering," he says. Freshfields Bruckhaus Deringer partner Armando Albarrán says Spain is now seeing transactions between private equity houses, and bank financing is now available. He adds that, while it has been a good year for the finance sector, there are now deals taking place in the telecoms, infrastructure, energy and healthcare sectors.

Baker & McKenzie partner Maite Díez says one of the reason Spanish companies have looked at outbound investment in certain industries is that companies "have seen uncertainty as a consequence of regulatory changes". According to Garrigues partner Javier Marzo, there has been an improvement in the economy´s "macroeconomic parameters". He adds: "The country is more stable, foreign investors are coming and there is more general investment now across different sectors – firms need to have international experience because there is more inbound work."

Del Val says there are fewer outbound transactions than domestic deals but outbound transactions are normally bigger and cross-border. One partner says that, when it comes to outbound transactions, it is questionable how much of the legal fee goes to the Spanish part of the law firm. "You may just get a co-ordination fee," he adds. Linklaters partner Alejandro Ortiz argues that the economy is now experiencing optimism and a recovery. He adds: "Former property deals are now carried out through an auction. While there used to be a focus mainly on distressed assets and restructuring in recent years, now the focus is on a much broader range of deals and sectors. There´s a lot of money coming into Spain and we´re now seeing activity again in energy and renewables, retail, real estate and others."

De las Cuevas says Spain has been overwhelmed by hedge funds, with 15 having recently opened offices in Madrid. He adds that the majority of Spanish companies, which are small or mid-sized, need finance. Sanchez-Dafos says there were a number of "mega-deals" in the last year but now buyers are focusing on acquiring smaller companies. He adds: "This is a window of opportunity to sell because valuations are more reasonable."

However, Sánchez-Dafos casts doubts on whether there will be similar levels of activity in the remainder of 2014. "We´re hearing that banks have now done their budget for 2014, so it won´t follow the same pattern for the remainder of the year," he says. Sanchez-Dafos adds that the increase in private equity investment in 2013 was not mirrored in 2014. Albarrán argues the number of initial public offerings (IPOs) in Spain this year "compares well" with France and Germany. Meanwhile, Díez says Chinese and Japanese investors are showing interest in a number of Spanish sectors, including technology, luxury brands, food and wineries.

Spain: The gateway to Europe?

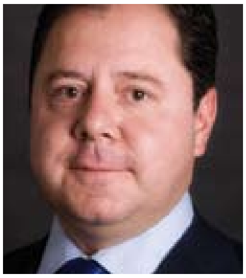
Ortiz believes that, when it comes to Latin American investment in Spain, Spanish law firms should be dominating the market but it is US firms that do so. However, he adds: "The Latin American economies are growing so this is a huge opportunity for Spanish firms." Sanchez-Dafos – whose firm recently merged with the Mexican firm Gallastegui y Lozano – says the question for Spanish law firms is: Which Latin American country should you focus on? "If you start in Mexico from scratch, it may take more time to be successful, but having a domestic office will make us the preferred choice for clients," he says.

Marzo says that a common mistake is to consider Latin America as one entity when it is in fact a group of very different countries. He adds: "The Latin American market is dominated by the US firms for bid deals, finance and capital markets, but there are very good local lawyers in Mexico, Colombia or Chile, for example – we changed our strategy, we were linked to an alliance but now we have presences in Latin America, the competition in the legal market has increased."

Pérez-Llorca partner Iván Delgado says Brazil is a more closed market to Spanish firms because there is

" For major companies, probably not less than 60 per cent of turnover is now generated outside of Spain. "

Juan Francisco Falcón
Uría Menéndez



the difficulty of the language. He adds: "Meanwhile, Mexico looks north but I see opportunities with Mexican companies coming to Spain. There is energy and infrastructure investment in Peru and Colombia while Chile is an interesting but smaller market. According to Albarrán, there are opportunities for law firms because capital is flowing out of Latin America with companies going into Europe. "Can we establish Spain as a gateway into Europe?" he asks.

Díez says her firm (Baker & McKenzie) has had a longstanding presence in Latin America, and that the objective for Spanish law firms is to convince clients to use them when doing business in Latin America, rather than directly engaging domestic Latin American firms. One partner says that when it comes to Spanish companies doing business in Latin America, the problem is that clients "don´t think firms in Spain add anything".

Falcón says the real challenge is "getting Latin American investors into Europe and assisting them in relation to their investments here". Del Val says UK law firms have traditionally balanced their business to the east – for example Asia – but in recent years we have been looking to the west and the south. Sanchez-Dafos says the advantage of "Magic Circle" firms is that they have strong positions in the key financial centres. "But we [DLA Piper] want to be global in other areas, for example we try to be strong in the Middle East, in addition to such financial centres."

Marzo says: "I am not sure if the best strategy is to be global – there are very successful US firms with only four or five overseas offices – we follow clients. Why is the presence of Spanish law firms in Latin America not greater? The region was not as stable as it is now." De las Cuevas says Latin America is made up of different markets with different rates and profitability. "The US ´monopoly´ in Latin America is confined to finance, capital markets and project finance – the rest of the market is open to locals and foreigners, mainly Spanish companies."

Sending the wrong message

Mayor says clients now take for granted that you are a good M&A firm, for example – now they ask for more integrated teams. Falcón adds that when clients request partner time, they want the partner to provide an overall

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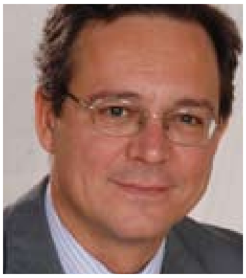

"The Latin American economies are growing so this is a huge opportunity for Spanish firms."
Alejandro Ortiz
Linklaters

view and be prepared to properly assess the different angles involved. He adds: "Clients are becoming extremely cost conscious and often do not want more than two or three partners directly involved. Even the number of attendees to meetings has sometimes become an issue."

According to Ortiz, deals are now becoming more sophisticated and more international in nature. He adds: "It is not infrequent for a lawyer to start working on a deal but to not know until it is at an advanced stage whether the deal will be subject to Spanish, US or UK law. Therefore, you need to be international." Delgado says that clients are more demanding with regard to time. "They want a clear picture before they go ahead, which usually translates into efficiency as regards the outcome of the deal," he says.

Falcón says law firms are fiercely fighting against each other and that, in such a context, many are tempted to offer fees "below what is reasonable in view of the work to be performed". He adds: "We may be somehow sending the wrong message to the market and undervaluing the quality of our work."

One partner says that there are clients in the banking sector that say: "I guess you´re increasing your fees." Ortiz says Anglo Saxon firms are better at getting clients to accept the value of the work they do.

Albarrán believes that the key challenge, and opportunity, is efficiency. "For instance, we are used to M&A deals with massive due diligence – I believe we add value by being a trusted adviser, we should be prepared to say ´no´ to a client [in the sense of advising them not to pursue a particular course of action]. Sanchez-Dafos says that, for some types of work, clients will accept fee increases but that the trend is that clients increasingly resist hourly rates.

Marzo believes that the legal market has evolved a little and that firms are now in a better position to convince clients again that they are adding value. "Not everyone can do the work with the same quality standard," he adds. One partner argues that, for fee increases to work, they must be increased by all firms in a "common way".

Spanish firms disadvantaged?

Ashurst partner Pedro Ester says that the increasing competition among investors looking to finalise deals means that clients are aware of the growing likelihood that potential transactions will not be completed – this makes clients more cost conscious with the result that their choice of law firm is more likely to be "cost-driven". According to Clifford Chance partner Javier Amantegui, leading US and UK lawyers from firms that sometimes do not even have a presence in Spain are getting involved in high-profile Spanish transactions. "Hence, some Spanish firms may be at a disadvantage in terms of addressing these specialised client needs, lacking the added resources and cross-border expertise offered by a global law firm, regardless of jurisdiction."

Nicolás Martín, partner at Herbert Smith Freehills, says clients are more demanding in the sense that the "execution times" for transactions are shorter than in the past. "They also require more and more structural advice as most transactions are bespoke in nature," he says. Hogan Lovells partner José M. Balañá says the last year has seen investors from countries that do not have a tradition of investing in Spain – such as Mexico and China – take a keen interest in the country. "On the other hand, we have witnessed the consolidation of the Spanish telecommunications industry with sizeable transactions," he adds.

Meanwhile, Manuel Vara, partner at Jones Day, points out the Foreign Corrupt Practices Act and other anti-bribery laws are becoming an increasingly important part of the due diligence process. "No client wants to find nasty surprises once they have acquired a company with operations in various countries," he says. Luis Miguel de Dios, partner at CMS Albiñana & Suárez de Lezo, says there is increased competition in the legal market post-crisis with new types of deals and new appetite form investors: "The market is, and will keep on, moving fast and firms will have to do the same."

According to Eugenia Jover, senior associate at Deloitte Abogados, legal fees are unlikely to return to the levels of five years ago. She adds: "This will oblige law firms to be more efficient in lower value added project areas – such as the introduction of technological solutions – and to employ the best professionals, with clear business vision, to contribute innovative, pragmatic and high value added solutions." Ecija partner Emilio Prieto says the major opportunities for law firms relate to the fact that companies are now seeing the benefits of cost-cutting initiatives and have now amassed cash on their balance sheets, with the result that M&A activity is picking up.

Improve cross-selling

Eversheds partner Carlos Pemán argues one of the biggest challenges for firms is to provide a consistent and seamless service on cross-border transactions: "As much of our transactional work has an international element to it, we see the ability to deliver such a service for both domestic and non-domestic clients as a key opportunity."

> Law firms need to rethink their pricing models to be able to be competitive in the current market.
>
> Cláudia Cruz Almeida
> Vieira de Almeida & Associados

EY Abogados partner Félix Plasencia says a high level of expertise in tax matters and the ability to supplement the legal advice with the support of the consultancy are well received by companies. He adds: "On the other hand, law firms must share the risk of M&A - the widespread use of success fees and abort fees is the best example."

Cuatrecasas, Gonçalves Pereira partner Juan Aguayo says it is now important to improve the "culture of cross-selling and long-term relationships with our clients". He adds: "Our opportunity remains delivering high value work at top efficiency levels, profiting from internal synergies – competitive fees will continue, and law firms will have to concentrate on offering services of more added value and on innovation, whether technologically speaking or by efficiently managing teams."

Araoz & Rueda partner Francisco Aldavero says law firms are now involved in an "aggressive" price war. "Heads of legal affairs in large companies and investment funds are now more prepared to retain legal services based on price, not brand," he adds. "Certainly, smaller players with more efficient structures will benefit from this trend by undercutting the fees that large law firms usually charge and keeping administrative and non-added value costs down."

Adolfo Soria, partner at BDO Abogados, says clients are increasingly turning to full-service law firms that can meet all their legal needs, "rather than seeking advice on single issues". King & Wood Mallesons partner Roberto Pomares says law firm now face the challenge of differentiating themselves from their competitors. "Clients are demanding something other than just being a good lawyer, they are demanding sector expertise, transaction management, and a global mindset," he adds. "In addition, we need to be global and have expertise not just in our own jurisdiction but also in other jurisdictions to enable us to join our clients on their international transactions and make them feel comfortable and protected – we need to be able to ´translate´ our clients' concerns so that the local lawyers in the relevant jurisdiction understand them and properly protect their interests."

Lawyers sharing the risk

Guillermo Gastón de Iriarte, partner at AC&G Asesores Legales, says law firms face the challenge of adapting to a changed environment. "There are other agents to be taken into account such as crowdfunders, crowdlenders, and ´business angels´, who operate at different stages of the financing processes – they are now active more than ever, since the phenomenon of start-up companies is spreading across Europe."

Arias SLP partner David Arias says there is increasing demand for specialised legal services: "For instance, clients seeking counselling in the field of arbitration are more and more aware of its particularities and, consequently, such counselling is increasingly sought from lawyers with expertise in this field." Antonio Tapia, partner at Benow Partners, says the trend remains for law firms to reduce their fees, which means other market players have to either follow their lead, or improve their service to add more value. Broseta partner Juliio Veloso says the advice law firms give is seen by clients as a "pure commodity" that is easily interchangeable, with the results that prices keep being reduced regardless of whether the economy is in crisis or not. Meanwhile, Rivero & Gustafson Abogados partner Eliecer Pérez identifies company restructurings with a view to attracting potential investors as a big opportunity for law firms at present.

Marimón Abogados partner José Miguel Martín-Zamorano says clients increasingly want their lawyers to resolve "unexpected situations". He adds: "Negotiations skills that lead to the solution of these problems are much appreciated, while expeditious answers are also a fashion – unfortunately, private investors increasingly request the lawyer assumes risk related to the non closure of a transaction."

Portugal: Deals getting bigger

The Portuguese market is back on the radar of investors following the country´s successful exit from the European Union bailout, according to Helena Vaz Pinto, partner at Vieira de Almeida & Associados. "Confidence began to be reinstated," she adds. "The subsequent tumble of the Espírito Santo empire, despite its impacts on the economy – as Banco Espírito Santo had a major role in the financing of Portuguese businesses, both large companies and SMEs – also gave room to a significant number of deals and investment opportunities." Vaz Pinto says a significant number of companies that were part of the former Espírito Santo Group "universe" – which covered sectors such as banking and finance, tourism, health, insurance, and real estate – have been sold, or will be sold in the next couple of years. She adds that there has also been some M&A restructuring work during 2014, but the amount was "significantly less than in the past years". A number of companies that have undergone restructuring processes will now catch the eye of investors, according to Vaz Pinto, who expects a number

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> There will be no going back to the golden years – capturing new work is an obvious challenge.
> Maria João Mata
> PLMJ

deals to be concluded in 2015. She also says the last year has seen the "intensification of venture capital activity", with a particular focus on the life sciences, energy and technological sectors.

PLMJ partner Maria João Mata says there has been an increase in M&A transactions in the last year, both domestic and cross-border. She adds: "M&A is still very much originating in distressed sales or simply divestitures, although we are finally seeing some transactions that are growth driven. Because of the Portuguese bail-out, public M&A has also taken an important role in the sector." João adds that the collapse of the Espírito Santo Group has triggered M&A transactions, a trend she expects to continue in 2015.

Francisco Brito e Abreu, partner at Uría Menéndez in Lisbon says M&A transactions in Portugal are now of a bigger scale that they were in recent years. "For a number of different reasons the Portuguese corporate scene has been undergoing a thorough reshaping and the market has caught the attention of several types of investors," he adds.

António Soares, partner at Linklaters in Lisbon, believes the Portuguese economy is recovering: "A number of acquisition opportunities are being sought and there are several options that are attracting private equity funds and other alternative investment providers such as share capital increases, loan portfolios sales, non performing loans, disposal of real estate assets, corporate restructurings, bonds issues and generally a number of deals still driven by distressed sellers or in relation to distressed assets."

Seamless services

Garrigues´ Lisbon-based partner Diogo Leónidas Rocha says law firms currently face the challenge of trying to "effectively set foot in international markets". He adds: "This has become increasingly necessary due to the strong foreign investment wave that has been experienced recently in Portugal, especially from Asian and Latin American markets." Leónidas Rocha says most foreign clients favour using legal advisors that are present in their jurisdiction of origin and also in the jurisdiction of their investment targets.

Nuno Azevedo Neves, partner at ABBC argues the ability to offer clients advice in multiple jurisdictions is increasingly important. "Firstly, because Portuguese companies continue to expand into other more dynamic markets – also, many foreign investors in Portugal use the Portuguese market as a stepping stone into Lusophone African markets, such as Angola and Mozambique."

F. Castelo Branco & Associados partner Rodrigo Almeida Dias says Chinese and African investors continue to look for good opportunities in the Portuguese market, especially in the real estate, tourism, financial and industrial sectors. He adds: "Needless to say those great opportunities for investors are also excellent opportunities for law firms."

AVM managing partner António Vicente Marques argues the opportunities in the Portuguese market remain limited, with the result there is now a "race to expand abroad to take advantage of foreign markets", particularly in Mozambique and Angola. He adds: "Although there is much to be gained from investment, being countries with booming economies that are rich in natural resources, it is not without its drawbacks for foreign investors that are not well advised regarding regulatory restrictions."

Rethinking pricing models

Caiado Guerreiro managing partner João Caiado Guerreiro says clients look to law firms to present them with business opportunities. He adds that offices in several jurisdictions helps to generate such opportunities. Caiado Guerreiro says: "Clients also want faster and more to the point answers, with a very pragmatic view of the situations." Meanwhile, João de Freitas e Costa, partner at Pares Advogados, says corporate litigation in general and litigation related with Grupo Espírito Santo/Banco Espírito Santo is currently a "fruitful land" for law firms.

Alexandre Jardim, partner at Pedro Pinto, Bessa Monteiro, Branco, Reis, Alexandre Jardim & Associados (PBBR) says opportunistic work relating to the collapse of Banco Espírito Santo could create the illusion that work stream and fees will return to past levels. But he adds: "This might not be true and only time will tell. No doubt it is time to take strategic decisions but firms must be very careful doing so as uncertainty is the only certainty."

Raposo Bernardo partner Joana Andrade Correia says private equity investors offer potential for law firms, especially in the technology, health care providers, energy (both alternative energy and oil and gas) and banking and securities sectors.

Vieira de Almeida & Associados partner Cláudia Cruz Almeida says clients are increasingly cost conscious and, generally, do not want to pay hourly fees. She adds: "Law firms need to rethink their pricing models to be able to be competitive in the current market without jeopardising their profitability and sustainability."

´Golden´ age is over

According to PLMJ´s Mata, because the crisis is not completely over, there is a "general sense that there will be no going back to the golden years – capturing new work is an obvious challenge". She adds: "One way to make a difference is finding new means to reach the client, such as identifying business opportunities together, rather than waiting for the client to let us know about a potential target – this is one reason why networking has become increasingly important."

Cuatrecasas, Gonçalves Pereira co-managing partner Diogo Perestrelo says the focus of international deals is changing. "Although our law firm is traditionally involved in advising on cross-border transactions, in recent years we have been targeted towards Portuguese-speaking countries, and more recently in the East and Middle East," he says. "Now we feel we should refocus on European-based deals, since we have a new wave of EU-based foreign investment funds (non-distressed) seriously looking to opportunities in Portugal."

CCA Ontier partner Bernardo Reynolds says one of the main tasks currently facing law firms is to assist clients with projects abroad. "Whether through ´best friend´ agreements, networks or a firm´s own offices, the client expects and recognizes added value from a law firm if it can maintain the same interlocutor when dealing abroad".

João Macedo Vitorino, partner at Macedo Vitorino & Associados, says globalisation is the biggest challenge facing law firms. "Investment is no longer exclusively from Europe and the US – we need to be able to spot opportunities from around the world, China and Chinese acquisitions in the real estate, energy, insurance and, more recently, health sectors are indicative of this." Rui Cardona Ferreira, partner at Sérvulo & Associados, describes the challenges facing law firms thus: "Clients are increasingly demanding, more selective about the assistance they request, looking for unequivocal value for money, and hoping to pay less."

Corporate and M&A work is on the increase and firms in Iberia are, by and large, anticipating an increase in deal flow in the coming months. However, clients are demanding more and more from their external lawyers – the firms that flourish will be the ones that are best able to align their practices with their clients´ businesses. In an era of intense fee pressure, this may be easier said than done, but those that fail will find plenty of competitors ready and willing to take clients off their hands.

Financial services M&A deals attracting investors

Antonio Sánchez Montero

Financial services M&A – particularly in relation to the cajas, or savings banks, and there divestitures – has been one of the main sources of work for corporate lawyers recently, according to Antonio Sánchez Montero, corporate partner at Ramón y Cajal Abogados. What are the reasons for this trend? "We are now seeing more banks bundle non-strategic interests into portfolios, which has caught the attention of foreign investors," Sánchez Montero says.

Indeed, Sánchez Montero argues that foreign investments in banking and real estate have been the driving force behind the M&A renaissance. Real estate portfolios and individual "trophy assets" have been high on the agenda, including office buildings, hotels and even vacant properties, which buyers have been snapping up with a view to redeveloping into office, retail or leisure facilities.

"There has not been one specific type of real estate asset that investors are focusing on," Sánchez Montero says. "The key issue for a buyer is what the value of that asset can be. It may be a high occupancy hotel or an empty building, which may be converted into a new office complex to provide much more value, as there may be a perception of undervaluation."

It has been international investors – mostly from places like the UK, Europe, the US, and, to a lesser extent, from Asia, Russia and the Middle East – that have been most active in real estate M&A. He believes that the flow of activity will start to encourage more confidence in all sectors and generate more M&A work.

So what is the outlook for the coming year? "Spanish buyers still face issues over obtaining financing but I think the low interest rates will improve the situation," Sánchez Montero says. "The increase in M&A involving international companies is a clear sign of growing confidence in the Spanish economy and, as activity increases, this confidence will filter down to other businesses and continue to improve the outlook."