The Private Equity Review

Editor
Kirk August Radke

Law Business Research

The Private Equity Review

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This article was first published in The Private Equity Review, 1st edition
(published in April 2012 – editor Kirk August Radke).

For further information please email
Adam.Sargent@lbresearch.com

The Private Equity Review

Editor

Kirk August Radke

Law Business Research Ltd

PUBLISHER
Gideon Roberton

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Published in the United Kingdom
by Law Business Research Ltd, London
87 Lancaster Road, London, W11 1QQ, UK
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Enquiries concerning reproduction should be sent to Law Business Research, at the address above. Enquiries concerning editorial content should be directed to the Publisher – gideon.roberton@lbresearch.com

ISBN 978-1-907606-31-1

Printed in Great Britain by
Encompass Print Solutions, Derbyshire
Tel: 0844 2480 112

ACKNOWLEDGEMENTS

The publisher acknowledges and thanks the following law firms for their learned assistance throughout the preparation of this book:

AFRIDI & ANGELL

A&L GOODBODY

CAREY Y CÍA, LTDA

DARROIS VILLEY MAILLOT BROCHIER

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EDITOR'S PREFACE

This inaugural edition of *The Private Equity Review* contains the views and observations of leading private equity practitioners in 24 jurisdictions, spanning every region of the world. This worldwide survey reflects private equity's emerging status as a global industry. Private equity is not limited to the United States and western Europe; rather, it is a significant part of the financial landscape both in developed countries and emerging markets alike. Today, there are more than a dozen private equity houses that have offices around the world, with investment mandates matching such global capabilities. In addition to these global players, each region has numerous indigenous private equity sponsors.

As these sponsors seek investment opportunities in every region of the world, they are turning to practitioners in each of these regions and asking two key commercial questions: 'how do I get my private equity deals done here?', and the corollary question, 'how do I raise private equity money here?' This review provides many of the answers to these questions.

Another recent global development that this review addresses is the different regulatory schemes facing the private equity industry. Policymakers around the world have recognised the importance of private equity in today's financial marketplace. Such recognition, however, has not led to a universal approach to regulating the industry; rather, policymakers have adopted many different schemes for the industry. The following chapters help provide a description of these various regulatory regimes.

I wish to thank all of the contributors for their support of this inaugural volume of *The Private Equity Review*. I appreciate that they have taken time from their practices to prepare these insightful and informative chapters.

Kirk August Radke
Kirkland & Ellis LLP
New York
April 2012

Chapter 18

SPAIN

Christian Hoedl and Carlos Daroca[1]

I OVERVIEW

i Deal activity

Investments

Any analysis of deal activity in 2011 must be considered in light of the market turbulence of recent years. In 2008, investment activity fell by 32 per cent and in 2009 the sector bottomed out with a further 48 per cent decline in investment (with total investment of €1.6 billion in 2009). With 2010 came some breathing space for the sector, with 904 deals worth a total of about €3.45 billion.

2011 has been a difficult year, but there has been some return to normality reflected in the evolution of the main indicators, particularly during the first half of the year. The total volume of investments was €3.25 billion, made up of 947 transactions; this means there were more deals in 2011 than in 2010 (a 5 per cent increase), but of a smaller total value (a 6 per cent decrease), suggesting that the 'mid-market' has regained importance. For comparative purposes, the value of investments continues to be double that of 2009 but less than that of 2007 (€3.8 billion in 2007).

Some 78 per cent of deals were of a value below €1 million, while there were 39 mid-market deals (between €10 million and €100 million). There have also been some major deals (with a value of over €100 million in equity), mostly by non-Spanish sponsors.

The majority of investments (in terms of number) were venture capital transactions (62 per cent) carried out mostly by domestic funds. Growth equity investments (in particular minority investments) represent an increasing share of the total deal volume (probably due to diverging price expectations and the absence of financing). In value terms, however, 60 per cent of investments continued to be traditional buyouts by international

1 Christian Hoedl is a partner and Carlos Daroca is a senior associate at Uría Menéndez.

funds (as further detailed below). There have also been a number of 'distressed' transactions and private equity-sponsored companies being taken over by the banks.

Divestments

Total divestments in 2011 amounted to €1.5 billion, comprising 556 transactions. This is similar to 2010 figures in terms of value, but far higher in terms of number of divestments (337 in 2010), meaning that the average value of each divestment was lower this year.

In value terms, trade sales were the most frequently used method of divestment (30.5 per cent), followed by secondary buyouts (19.6 per cent). A large number of divestments were made by way of loan repayments. There were also 'distressed' sales and failed initial public offering ('IPO') attempts.

Financing

In terms of financing, there were 31 leveraged finance deals in 2011, compared with 18 such deals in 2010. However, obtaining financing continues to be a complex task and the terms and conditions offered to the sponsors continue to be challenging (in particular in the second half of the year). Consequently, we have seen more deals financed entirely (or largely) with equity, which has obvious repercussions in terms of lower returns and deals volume.

It is also worth mentioning the significant refinancing risk in relation to the wall of debt – the large number of leveraged loans due in 2012 to 2014 – which the private equity funds had hoped to refinance upon their divestment long before the agreed maturity date.

Fundraising and sponsors

New funds raised in 2011 amounted to a total of €2.36 billion, representing a drop of 26 per cent on 2010 figures. Some 83 per cent of this amount was raised by international funds.

A number of new players have entered the market in Spain, including Portobello Capital, a new venture capital manager, which now manages the former Ibersuizas Capital Fund I and Ibersuizas Capital Fund II. Recently, HIG Capital has established a presence in Spain. In addition, press reports have indicated that BC Partners are preparing a local team to operate in Spain. Blackstone completed its first deal in Spain (Mivisa), and certain national players have set up new funds (Diana Capital started its second fund, and Nauta Capital has also set up a new fund).

ii Operation of the market

Sale processes

Proprietary deals have again increased in 2011 (due to a reinforced sensitivity on deal certainty as opposed to price maximisation) but auctions are still common, in particular for the most valuable assets.

Transactions and deal negotiations continue to be protracted, and may extend far beyond six months. Although the pricing expectations of sellers remain high, these may

be seen to have fallen slightly compared with 2010. 'Bridging-the-gap' strategies, in any event, are still crucial in many deals.

Proprietary deals in Spain are structured as in most other European jurisdictions, including an exclusivity agreement (with a term of between one and three months, which is often extended) based on an indicative offer, followed by a due diligence phase and the negotiation of an share purchase agreement ('SPA') or investment agreement. The financing banks tend to participate in the deal negotiation in a much earlier phase than before. In the case of minority investments the negotiation of the shareholders' agreement (and the reflection of minority protections in the articles of association of the target company) in many cases proves more complex and time-consuming than the SPA itself.

Auction processes tend to be divided into two stages, in line with the standards of other jurisdictions. In the first phase, following a review of the information made available (mainly of a financial and business nature), the potential buyers formulate a non-binding, indicative offer based on their preliminary valuation of the target and setting out the likely key terms. In this phase potential buyers may also be provided with a vendor's due diligence report, to facilitate and speed up the due diligence review to be completed in the second phase. Stapled financing may also be provided. On the basis of the non-binding offers received, the seller selects one or more potential buyers to enter the second stage. The central aim of the second stage is for potential buyers to carry out their due diligence and confirm the exact terms on which they would be prepared to conduct the transaction, by providing mark-ups of the sale documentation drafted by the seller. It is not unusual for the second phase to be converted into a bilateral negotiation process with the potential buyer who provided the most attractive non-binding offer (with or without an exclusivity agreement). Third stages have also been introduced in these processes.

Although 2011 saw no public to private transactions ('P2P'), Mercapital recently announced its intention to launch a P2P on Tavex. Other sponsors have also indicated their increased interest in considering 'take-private' transactions in view of the current low market capitalisation of a number of listed companies. The P2P process includes a due diligence of the listed target company (approved by the target board), the negotiation of a transaction agreement with the independent directors of the target company and the negotiation of an 'irrevocable agreement' with the reference shareholders (whereby the shareholders undertake to tender their shares in the takeover bid to be launched by the private equity fund under agreed terms). Break fees for up to 1 per cent of the transaction value are allowed under the Spanish takeover rules. Reverse break fees are still less common in Spain. A tender offer is mandatory if the sponsor acquires a 30 per cent stake in the company (or appoints a majority of the target company directors). Certainty of funds is a key feature of the Spanish tender offer, which must include a bank guarantee for the amount of the consideration offered in the bid. Competing bidders must be afforded the same information made available to the initial offeror (who under Spanish law has only limited 'first-mover' advantages). Spanish law provides for the squeeze-out of minority shareholders if, as a consequence of the tender offer, the offeror owns 90 per cent or more of the target company voting rights and the offer is accepted by 90 per cent or more of its addressees.

Management incentive arrangements

As in other jurisdictions, the great majority of private equity deals carried out in Spain include an incentive scheme in order for the management team to be duly aligned with the private equity investor.

The incentive package for the management often combines 'sweet equity' and a 'ratchet'. One of the most traditionally used structures to implement the sweet equity (which provides the management team with the opportunity to obtain equity under advantageous terms) involves the management team's contribution to the target being made in the form of capital or common stock, while the private equity fund's contribution is divided between equity and a participating loan or preferred shares, such that in proportional terms, the management team acquires a larger amount of capital than the fund. It is not unusual for the management team to be provided with finance to enable them to purchase shares in the target. It may be desirable for the target company itself to provide such financing, profiting from the exception to the financial assistance prohibition that applies to employees of a corporation. The advantage of this type of scheme for the management team is that the tax on equity-derived gains obtained upon divestment is significantly lower than income tax applicable to remuneration for work (currently, capital gains are taxed at a fixed rate of 27 per cent for investment proceeds in excess of €6,000, while the maximum rate of income tax is 52 per cent to 56 per cent). The scheme is usually accompanied by the subscription of a shareholders' agreement including drag-along and tag-along rights and 'good and bad-leaver' provisions.

'Ratchets' provide the management team with a bonus payment upon exit, whose value depends on the achievement of a minimum return for the private equity fund. This minimum return is normally between 15 and 25 per cent of the internal rate of return (IRR) or 1.5 to 3 times the money invested by the fund. In order to improve the tax treatment of ratchets, it is common to implement them by way of a 'multi-annual bonus'. In accordance with Spanish tax law, extraordinary gains generated in a period of longer than two years benefit from a reduction of 40 per cent for the purposes of personal income tax, which provides a significant advantage over taxation on ordinary gains; however, a recent legislative change has limited the application of this reduction to €300,000 of bonus payments, so that any amount exceeding this figure will not benefit from the tax reduction.

In recent years, it has become apparent that some incentive schemes designed before the economic crisis may now be ineffective, where their established aims have become unattainable. It is a continuing challenge for the sector to design new, more flexible schemes that are capable of incentivising executives in periods of recession as well as in periods of expansion.

II LEGAL FRAMEWORK

i Acquisition of control and minority interests

Prior authorisation

As a general rule, the acquisition of control or a minority interest in a Spanish company by a private equity fund (or, indeed, any other investor) is not subject to any prior authorisation (other than as may be provided for in the articles of association, financing

or other agreements, and other arrangements applying to the target company). In particular, investments by private equity funds (or their investment vehicles) domiciled or incorporated abroad are not subject to any foreign investment authorisations (except where the fund or vehicles are domiciled in a tax haven) but must be notified to the Investment Registry in order to allow the authorities to monitor investments for administrative, economic and statistical purposes only. By way of exception, foreign investments relating to air transport, radio and minerals and raw materials of strategic importance, as well as mining rights, television, gaming, telecommunications, private security, manufacturing, commercialisation or distribution of arms and explosives for civil use and activities related to national defence, must be assessed separately.

The acquisition of a significant stake of certain entities (such as credit entities, insurers, or investment service companies) requires prior authorisation by the relevant regulator.

Any transaction involving a concentration exceeding the legal thresholds established by Spanish or European law requires prior notification to the antitrust authorities; antitrust clearance is required before the transaction can be implemented. Spanish antitrust law requires the appropriate filing be made to the National Competition Commission where one of the two following thresholds is met:

a a 30 per cent share of the national market or a defined geographical market is acquired or increased as a result of the concentration (except where the target or assets acquired in the transaction achieved turnover in Spain of no more than €10 million in the previous financial year, and provided that the undertakings concerned do not hold, individually or in aggregate, a market share of 50 per cent or more in any affected market); or

b the combined aggregate turnover in Spain of all the undertakings during the previous financial year exceeds €240 million, provided that each of at least two of the undertakings achieves aggregate turnover in Spain of more than €60 million.

For calculation purposes, turnover includes the overall sales of the economic group to which the undertaking belongs (excluding intra-group turnover). Portfolio companies are deemed to be part of the group of the private equity fund. The National Competition Commission must, within one month of notification, either clear the transaction or open an in-depth second-phase investigation if it appears that the transaction may impede the maintenance of effective competition in the relevant market.

Where the target company holds administrative concessions it may be necessary or advisable (depending on the specific terms of the relevant concession contract or applicable legislation) to seek and obtain authorisation of the relevant authority for a change of control in the target, or at least to inform that authority of such change.

Concept of 'control' and takeover bids for listed companies

A private equity sponsor's effective control of a Spanish company is dependent on the articles of association of the company, any voting agreements, the composition of the board, and minority protections provided for by law.

In the context of listed companies, control of a listed target is deemed to exist where a person or entity or a group of persons or entities acting in concert holds at least 30 per cent of its voting rights, directly or indirectly, or holds a stake of less than 30 per

cent of the voting rights but appoints (within the 24 months following the acquisition) such number of directors as (together with any already appointed by it) represent a majority of the target's board of directors. In these cases control may be acquired either by directly or indirectly acquiring target securities with voting rights or entering into relevant shareholders' or voting agreements. Where a person gains control of a listed target, subject to some exceptions, a mandatory bid must be launched within one month following the acquisition. Mandatory bids must be addressed to all holders of the target company's shares and all holders of the target company's convertible bonds or share subscription rights under a rights issue.

Minority shareholder rights

Minority shareholders have certain legal rights which must be respected. Majority shareholders may not approve resolutions contrary to the company's articles of association or arrangements that may be considered detrimental to a class of shareholders, in which case the approval of a majority of the affected class is required. Holders with at least 5 per cent of the shares in a corporation or a limited company (SL) (whether individually or in aggregate) may require the board of directors to call a general meeting, may require the board to include additional items on the agenda of the meeting and may require the presence of a notary public in general meetings.

Any shareholder is entitled to request any information connected with a general meeting, although information may be denied if the board considers that disclosure would be contrary to the company's interests. Disclosure cannot be denied, however, if such information is required by shareholders representing 25 per cent of the share capital (which may be reduced to 5 per cent in the articles of a corporation), even where disclosure is deemed detrimental to the company's interest.

Any shareholder may challenge resolutions of a general meeting whenever these are contrary to the law, the articles of association or are to the detriment of the company's interest and benefit one or more shareholders or third parties. Shareholders with the minimum 5 per cent stake are entitled to challenge a resolution of the board of directors and bring a derivative claim on behalf of the company against any director.

Spanish law also provides for a 'separation' right (i.e., the right to request that the company acquires their equity stake) for shareholders of non-listed companies only, in the event that, *inter alia*, following the request of the shareholder, the company does not distribute at least one-third of the previous year's profits (which are related to the company's activity and are distributable according to Spanish law) once five years have elapsed since the company's entry in the Companies' Registry.

Non-resident sponsors

Transactions structures are usually driven by tax factors, in particular the tax treatment of dividends and capital gains generated on exit. Spanish companies may benefit from rights deriving from EU directives, such as the Parent-Subsidiary Directive and the Merger Directive, or pursuant to Spain's 83 bilateral tax treaties. Spain's broad tax treaty network with Latin America make it an attractive vehicle for channelling capital investments in Latin America as well as a tax-efficient exit route for EU capital investments.

The structure of leveraged buyouts is often determined by the prohibition on financial assistance, according to which a target company cannot provide nor guarantee

funds to finance the acquisition of its own shares (with certain exceptions). A commonly used structure for the debt pushdown had been the merger of the acquisition vehicle with the target company, so that the bank debt was positioned within the trading company that generated the necessary cash flows to service the debt and a tax-deductible goodwill. Such merger could only be effected under favourable tax conditions if the transaction fell within a special restructuring tax regime set out in the Companies Tax Law. Recently, however, doubts and risks have arisen in relation to tax aspects of this structure, which have required a reassessment of its suitability and a search for alternatives.

ii Fiduciary duties and liabilities

Any private equity fund investing in a Spanish company must be aware of the fiduciary duties applicable under Spanish law, either to them as members or to the directors they may appoint. Company law expressly regulates fiduciary duties only in the context of the duties and responsibilities of company directors. These may be generally summarised as the duty on the part of each director to manage and represent the company as a prudent businessman and a loyal representative, including wide-ranging duties of loyalty, such as:

a not using the corporate name or their position as director in executing transactions on their own account or for related persons;

b notifying the board of, and declining to act in, situations of conflicts of interest;

c communicating interests, positions or activities held or carried out for competitor companies or competing activities; and

d a duty of confidentiality in relation to company information acquired as a result of their office, which duty applies even after ceasing to hold office.

It is also important for investors to bear in mind that the fiduciary duties of directors (and the liability that may result from breach of these) may also extend to persons or entities who act as shadow or *de facto* directors (i.e., those persons who, without formally occupying the position of director, in practice exercise equivalent functions to those of a director).

Members' duties of loyalty are not expressly regulated by Spanish law, but their existence has been upheld by the courts and appears implicit in certain specific provisions of company law. On the basis of concepts such as contractual good faith, it is argued that (in particular majority) shareholders have a duty not to act against the interests of the company, to avoid abusing their powers and not to obtain disproportionate advantages to the detriment of the company or the other members. This duty would therefore apply to the private equity fund in its capacity as a member of the company.

III YEAR IN REVIEW

i Recent deal activity

Major deals

As previously noted, there were fewer major deals in 2011 compared with previous years. By way of example, Blackstone, in alliance with N+1, completed its purchase of the entire share capital of Mivisa, the leading Spanish manufacturer of metal food containers, from Cventure capital, at a value between €850 million and €950 million. French-based

private equity firm PAI Partners completed its purchase of 100 per cent of the share capital of Swissport International from Ferrovial, the Spanish private infrastructure investment company, for a total price of €654.3 million. Cventure capital agreed to acquire Capio Sanidad, the Spanish subsidiary of Swedish hospital management group Capio, from investment funds Apax and Nordic Capital, for a sum of €900 million. US fund Carlyle completed its majority acquisition of Asturias cable television operator, Telecable, from Liberbank (the bank that inherited Cajastur), valuing the company at €400 million overall. Spanish technology company Abengoa announced the completion of First Reserve Corporation's €300 million investment in the former, by way of subscription for class B shares and warrants over the same.

Most major deals were concluded by international sponsors. Approximately half of the deals were secondary buyouts, a significant portion may be considered infrastructure investments and Spanish savings banks continue to be a relevant source for private equity deals. Internationally diversified businesses are particularly sought-after by private equity funds.

Minority investments

Private equity funds are increasingly prepared to acquire minority stakes in Spanish companies controlled by strategic shareholders or other private equity sponsors. By way of example, Saba, the car parking and logistics company, confirmed that venture capital fund Kohlberg Kravis Roberts & Co ('KKR') was to become its third-largest shareholder. Advent International announced its purchase of 49 per cent of Maxam, the European leader and third-largest worldwide producer in the civil explosives sector, from Portobello and Vista Capital. Artá Capital announced its purchase of an approximate 26 per cent stake in leading Spanish bed company, Grupo Flex. T-Solar, the largest European solar energy group, announced the sale of 49 per cent of its solar panel systems to KKR and to Munich Re.

Expansion investments

Private equity funds continue to contribute equity to finance the expansion of Spanish businesses. The T-Solar and Flex deals follow this pattern. AXA Private Equity and Permira acquired Opodo from Spanish-based travel technology provider Amadeus for €500 million, and merged Opodo with eDreams and GoVoyages, creating the biggest European online travel agency. Nazca Capital announced its acquisition of a majority stake in Grupo IMO, a leading Spanish provider of radiotherapy services for cancer treatment, including a significant capital increase designed to support its ambitious growth plans. MCH also contributed equity to Europastry-Fripan, Spain's biggest bread and frozen pastry company, in exchange for an 18 per cent stake.

ii Financing

The number of closed leveraged transactions on the Spanish market continues to decline given the lack of available acquisition finance. When it is available, such financing has been provided by banking entities (rather than high-yield or corporate bonds). Financing now rarely exceeds four times EBITDA (earnings before interest, taxes, depreciation and amortisation), in contrast with the ratios that were often seen five years ago. The

range of financing products available to borrowers continues to be limited: second-lien, PIK and equity-like facilities have almost disappeared and the amount of mezzanine has decreased. Banks are also imposing tougher lending conditions, including more stringent financial covenants and higher interest rates. 'Financing-out' and material adverse change ('MAC') clauses continue to be more common than certainty of funds provisions. As a consequence, more deals have been carried out with equity only, in many cases with the intention of leveraging the deal at a later stage when debt is more readily available.

iii Key terms of recent control transactions

Pricing formulae: bridging the gap

Although the price expectations of sellers have fallen slightly, bridging the gap strategies continue to be one of the challenges in current deals. Vendor loans (subordinated to the bank financing) and earn-outs based on EBITDA or other performance criteria, or dependent on the return obtained by the private equity fund upon its exit from the company, have been used in a number of private equity transactions. Minority investments and reinvestments by selling shareholders occasionally follow the same logic.

Conditionality

Despite the current economic juncture, usual practice continues to be that transactions are not conditional upon the attainment of financing or the non-occurrence of a MAC, although it is true that this type of clause is more commonly a feature of negotiations than was previously the case. Reverse break fees continue to be exceptional.

Other trends

Representations and warranties, indemnities and the extent of liability of the seller continue to be one of the most negotiated aspects of deals. In general, private equity funds continue to invest with robust protection from representations and warranties given by the seller (other than in secondary buyouts) and to provide only limited or non-existent representations and warranties upon divestment.

iv Exits

As previously noted, trade sales represented approximately a third of private equity divestments. In addition to the deals mentioned in the preceding paragraphs, divestments in the mid-market by Spanish sponsors include Corpfin Capital's sale of the Spanish restaurant group Restauravia to AmRest (a Polish restaurant operator); the sale by AXIS and Diana Capital of their stakes in Guascor, the Spanish diesel and gas engines supplier, to Dresser-Rand; the disposal by Dinamia and N+1 Capital of their stake in Serventa, the Spanish distributor of vending machines and products, to Autobar; Mercapital's sale of Industrial Química Lasem (IQL), a business unit of Barcelona-based Grupo Lasem, to Japanese industrial group Nisshin Oillio; and Telefónica's confirmed acquisition of Acens Technologies from Spanish private equity fund Nazca Capital.

Secondary buyouts continue to thrive, including deals such as Dinamia's sale of its stake in Segur Ibérica and Hortus Mundi to venture capital funds MCH Private Equity and Corpfin Capital (and the other deals mentioned above).

Financial restructurings and 'distressed' transactions have been the third source of private equity exits, including the restructuring of the supermarket and food distribution group Dinosol, and Oaktree Capital's acquisition of 80 per cent of Panrico, a bread and pastry company.

Private equity sponsors also attempted a number of IPOs (Talgo, Privalia and Parques Reunidos), which could not be completed due to prevailing market conditions.

IV REGULATORY AND LEGAL DEVELOPMENTS

Spanish private equity firms, and their general partners and directors, are subject to the supervision and control of the Spanish Securities Regulator. The legal framework governing these entities is due to undergo significant changes to comply with the Alternative Investment Fund Management Directive. It is likely that the new rules will have a significant impact not only in relation to general partners, but also on private equity transactions themselves (in particular relating to reporting obligations, restrictions on asset stripping, and the requirement to designate depositaries).

The application of the Spanish regulations for the prevention of money laundering and financing of terrorism (including to private equity firms operating in Spain) also continues to become more stringent. The obligations imposed by these rules include, *inter alia*, the identification of the persons and entities who are to take part in the transaction, the cooperation with a special commission of the Bank of Spain, and the implementation of written procedures and creation of internal compliance bodies for due diligence duties.

As previously noted, recently enacted tax and corporate rules, and certain rulings by the Spanish courts and tax authorities have also had a significant impact on the structuring of private equity transactions and, in particular, on the debt pushdown.

Refinancings, restructurings and distressed deals have become easier to implement following a recent amendment of the Spanish insolvency law. In addition, the ground-breaking reform of the Spanish labour laws (in particular relating to lay-offs and collective bargaining agreements) recently announced by the government will also have a material impact on private equity-backed portfolio companies.

V OUTLOOK

As in most other European jurisdictions, the private equity industry faces a number of challenges in 2012. A study carried out by Deloitte in October 2011 among investment managers of 50 private equity funds regarding their expectations for the Spanish market in 2012 shows that the pessimism in relation to raising new funds is now also shared by larger sponsors due to the uncertainty in Spain and the eurozone; 47 per cent of respondents also anticipate a reduction in the number of private equity funds.

In relation to investment activity, 48 per cent expect to maintain current levels while 10 per cent expect levels to fall. In terms of size, the continued difficulties in financing large transactions explain why 24 per cent of directors believe that the average value of deals will decrease, although 53 per cent of those surveyed think it will remain the same. This uncertainty is also reflected by a change in valuation trends, with 49 per cent of directors

anticipating a reduced entry price for new investments, and 45 per cent believing that current valuation levels will be maintained. In the context of divestments, 44 per cent of directors expect these to increase in the short term, and believe that trade sales will continue to be the most frequent exit route. Only 6 per cent felt that divestments would decrease in the short term.

The worsening of the sovereign debt crisis, more than four years after the start of the financial crisis, led 62 per cent of respondents to estimate that an improvement in the availability of finance would take between one and two years to materialise, with 25 per cent suggesting improvements would not be seen for at least two years. Moreover, as noted above, the wall of debt related to the transactions concluded in the peak years is approaching fast and will require significant refinancing in the next few years.

Regulatory, legal and, in particular, tax constraints relating to the taxation of carried interest, the tax deductions for acquisition financing and debt pushdown are also a matter of concern.

In summary, the main challenges to private equity in 2012 are related to macroeconomic uncertainty, the difficulties in raising capital, targets that continue to be overvalued, debt financing limitations and recent negative trends in the legal, regulatory and tax framework for private equity.

Appendix 1

ABOUT THE AUTHORS

CHRISTIAN HOEDL

Uría Menéndez

Christian Hoedl heads the M&A and private equity practice area at Uría Menéndez. He has participated in a large number of private equity deals for national and international funds, with or without a presence in Spain, both in private and P2Ps deals. Mr Hoedl has extensive experience in M&A and joint ventures and has also advised on financing, management incentives and refinancing of portfolio companies. He is regarded as one of the leading lawyers in private equity by the main international legal directories (including *Chambers & Partners*, PLC and *International Who's Who of Lawyers*).

CARLOS DAROCA

Uría Menéndez

Carlos Daroca is a senior associate in the private equity practice area at Uría Menéndez. He focuses his practice on M&A, private equity and corporate law. He provides advice to a number of private equity firms, both domestic and international, and has been involved in a number of the most relevant private equity deals in Spain. Mr Daroca was nominated by *Iberian Lawyer* in their 'Top Lawyers under 40' awards.

URÍA MENÉNDEZ
c/Príncipe de Vergara, 187
Plaza de Rodrigo Uría
28002 Madrid
Spain
Tel: +34 915 860 096
Fax: +34 915 860 777
christian.hoedl@uria.com
carlos.daroca@uria.com
www.uria.com