
THE MERGERS & ACQUISITIONS REVIEW

NINTH EDITION

EDITOR
MARK ZERDIN

LAW BUSINESS RESEARCH

THE MERGERS & ACQUISITIONS REVIEW

The Mergers & Acquisitions Review
Reproduced with permission from Law Business Research Ltd.

This article was first published in The Mergers & Acquisitions Review - Edition 9
(published in August 2015 – editor Mark Zerdin)

For further information please email
Nick.Barette@lbresearch.com

THE MERGERS & ACQUISITIONS REVIEW

Ninth Edition

Editor
MARK ZERDIN

LAW BUSINESS RESEARCH LTD

PUBLISHER
Gideon Robertson

BUSINESS DEVELOPMENT MANAGER
Nick Barette

SENIOR ACCOUNT MANAGERS
Katherine Jablonowska, Thomas Lee, Felicity Bown

ACCOUNT MANAGER
Joel Woods

PUBLISHING MANAGER
Lucy Brewer

MARKETING ASSISTANT
Rebecca Mogridge

EDITORIAL COORDINATOR
Shani Bans

HEAD OF PRODUCTION
Adam Myers

PRODUCTION EDITOR
Anna Andreoli

SUBEDITOR
Hilary Scott

MANAGING DIRECTOR
Richard Davey

Published in the United Kingdom
by Law Business Research Ltd, London
87 Lancaster Road, London, W11 1QQ, UK
© 2015 Law Business Research Ltd
www.TheLawReviews.co.uk

No photocopying: copyright licences do not apply.

The information provided in this publication is general and may not apply in a specific situation, nor does it necessarily represent the views of authors' firms or their clients.

Legal advice should always be sought before taking any legal action based on the information provided. The publishers accept no responsibility for any acts or omissions contained herein. Although the information provided is accurate as of August 2015, be advised that this is a developing area.

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 978-1-909830-62-2

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

THE LAW REVIEWS

THE MERGERS AND ACQUISITIONS REVIEW

THE RESTRUCTURING REVIEW

THE PRIVATE COMPETITION ENFORCEMENT REVIEW

THE DISPUTE RESOLUTION REVIEW

THE EMPLOYMENT LAW REVIEW

THE PUBLIC COMPETITION ENFORCEMENT REVIEW

THE BANKING REGULATION REVIEW

THE INTERNATIONAL ARBITRATION REVIEW

THE MERGER CONTROL REVIEW

THE TECHNOLOGY, MEDIA AND
TELECOMMUNICATIONS REVIEW

THE INWARD INVESTMENT AND
INTERNATIONAL TAXATION REVIEW

THE CORPORATE GOVERNANCE REVIEW

THE CORPORATE IMMIGRATION REVIEW

THE INTERNATIONAL INVESTIGATIONS REVIEW

THE PROJECTS AND CONSTRUCTION REVIEW

THE INTERNATIONAL CAPITAL MARKETS REVIEW

THE REAL ESTATE LAW REVIEW

THE PRIVATE EQUITY REVIEW

THE ENERGY REGULATION AND MARKETS REVIEW

THE INTELLECTUAL PROPERTY REVIEW

THE ASSET MANAGEMENT REVIEW

THE PRIVATE WEALTH AND PRIVATE CLIENT REVIEW

THE MINING LAW REVIEW

THE EXECUTIVE REMUNERATION REVIEW

THE ANTI-BRIBERY AND ANTI-CORRUPTION REVIEW

THE CARTELS AND LENIENCY REVIEW

THE TAX DISPUTES AND LITIGATION REVIEW

THE LIFE SCIENCES LAW REVIEW

THE INSURANCE AND REINSURANCE LAW REVIEW

THE GOVERNMENT PROCUREMENT REVIEW

THE DOMINANCE AND MONOPOLIES REVIEW

THE AVIATION LAW REVIEW

THE FOREIGN INVESTMENT REGULATION REVIEW

THE ASSET TRACING AND RECOVERY REVIEW

THE INTERNATIONAL INSOLVENCY REVIEW

THE OIL AND GAS LAW REVIEW

THE FRANCHISE LAW REVIEW

THE PRODUCT REGULATION AND LIABILITY REVIEW

THE SHIPPING LAW REVIEW

THE ACQUISITION AND LEVERAGED FINANCE REVIEW

THE PRIVACY, DATA PROTECTION AND CYBERSECURITY LAW REVIEW

THE PUBLIC-PRIVATE PARTNERSHIP LAW REVIEW

THE TRANSPORT FINANCE LAW REVIEW

THE SECURITIES LITIGATION REVIEW

THE LENDING AND SECURED FINANCE REVIEW

www.TheLawReviews.co.uk

ACKNOWLEDGEMENTS

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

AABØ-EVENSEN & CO ADVOKATFIRMA

ÆLEX

AGUILAR CASTILLO LOVE

AKD NV

ALLEN & GLEDHILL LLP

ANDERSON MŌRI & TOMOTSUNE

ARIAS, FÁBREGA & FÁBREGA

ASHURST LLP

AZMI & ASSOCIATES

BHARUCHA & PARTNERS

BOWMAN GILFILLAN

BREDIN PRAT

BRIGARD & URRUTIA

CLEARY GOTTLLIEB STEEN & HAMILTON

CORRS CHAMBERS WESTGARTH

COULSON HARNEY

CRAVATH, SWAINE & MOORE LLP

DELFINO E ASSOCIATI WILLKIE FARR & GALLAGHER LLP
DITTMAR & INDRENIUS
DRYLLERAKIS & ASSOCIATES
ELLEX
FENXUN PARTNERS
HARNEYS
HENGELER MUELLER
HEUKING KÜHN LÜER WOJTEK
ISOLAS
KBH KAAUNUN
KEMPHOOGSTAD, S.R.O.
KIM & CHANG
KINSELLAR, S.R.O., ADVOKÁTNÍ KANCELÁŘ
KLART SZABÓ LEGAL LAW FIRM
LEGAL ATTORNEYS & COUNSELORS
LETT LAW FIRM P/S
MAKES & PARTNERS LAW FIRM
MATTOS FILHO, VEIGA FILHO, MARREY JR E QUIROGA ADVOGADOS
MNKS
MORAVČEVIĆ VOJNOVIĆ I PARTNERI IN COOPERATION WITH
SCHÖNHERR
MOTIEKA & AUDZEVIČIUS
NISHIMURA & ASAHI
OSLER, HOSKIN & HARCOURT LLP

PÉREZ BUSTAMANTE & PONCE
POPOVICI NIȚU & ASOCIAȚII
ROJS, PELJHAN, PRELESNIK & PARTNERS
RUBIO LEGUÍA NORMAND
RUSSIN, VECCHI & HEREDIA BONETTI
S HOROWITZ & CO
SCHELLENBERG WITTMER LTD
SCHINDLER RECHTSANWÄLTE GMBH
SELVAM & PARTNERS
SEYFARTH SHAW LLP
SLAUGHTER AND MAY
STRELIA
SYCIP SALAZAR HERNANDEZ & GATMAITAN
TORRES, PLAZ & ARAUJO
URÍA MENÉNDEZ
UTEEM CHAMBERS
VON WOBESER Y SIERRA, SC
WEERAWONG, CHINNAVAT & PEANGPANOR LTD
WH PARTNERS
WILSON SONSINI GOODRICH & ROSATI

CONTENTS

Editor's Preface	xiii
	<i>Mark Zerdin</i>	
Chapter 1	EU OVERVIEW	1
	<i>Mark Zerdin</i>	
Chapter 2	EU COMPETITION OVERVIEW	11
	<i>Götz Drauz and Michael Rosenthal</i>	
Chapter 3	EUROPEAN PRIVATE EQUITY.....	19
	<i>Thomas Sacher</i>	
Chapter 4	US ANTITRUST	32
	<i>Scott A Sher, Christopher A Williams and Bradley T Tennis</i>	
Chapter 5	CROSS-BORDER EMPLOYMENT ASPECTS OF INTERNATIONAL M&A	53
	<i>Marjorie Culver, Darren Gardner, Ming Henderson, Dominic Hodson and Peter Talibart</i>	
Chapter 6	M&A LITIGATION.....	67
	<i>Mitchell A Lowenthal, Roger A Cooper and Matthew Gurgel</i>	
Chapter 7	AUSTRALIA	74
	<i>Braddon Jolley, Sandy Mak and Jaclyn Riley-Smith</i>	
Chapter 8	AUSTRIA.....	87
	<i>Clemens Philipp Schindler</i>	
Chapter 9	BAHRAIN	97
	<i>Haifa Khunji and Natalia Kumar</i>	

Chapter 10	BELGIUM	110
	<i>Olivier Clevenbergh, Gisèle Rosselle and Carl-Philip de Villegas</i>	
Chapter 11	BRAZIL.....	122
	<i>Moacir Zilbovicius and Rodrigo Ferreira Figueiredo</i>	
Chapter 12	BRITISH VIRGIN ISLANDS	132
	<i>Jacqueline Daley-Aspinall and Sarah Lou Rockhead</i>	
Chapter 13	CANADA.....	143
	<i>Robert Yalden, Emmanuel Pressman and Jeremy Fraiberg</i>	
Chapter 14	CAYMAN ISLANDS	158
	<i>Marco Martins</i>	
Chapter 15	CHINA	173
	<i>Lu Yurui and Ling Qian</i>	
Chapter 16	COLOMBIA.....	187
	<i>Sergio Michelsen Jaramillo</i>	
Chapter 17	COSTA RICA	203
	<i>John Aguilar Jr and Alvaro Quesada</i>	
Chapter 18	CYPRUS	211
	<i>Nancy Ch Erotocritou</i>	
Chapter 19	CZECH REPUBLIC.....	218
	<i>Lukáš Ševčík, Jitka Logesová and Bohdana Pražská</i>	
Chapter 20	DENMARK	225
	<i>Sebastian Ingversen and Nicholas Lerche-Gredal</i>	
Chapter 21	DOMINICAN REPUBLIC	236
	<i>María Esther Fernández A de Pou, Mónica Villafaña Aquino and Laura Fernández-Peix Perez</i>	

Chapter 22	ECUADOR.....	246
	<i>Diego Pérez-Ordóñez</i>	
Chapter 23	ESTONIA.....	257
	<i>Sven Papp and Sven Böttcher</i>	
Chapter 24	FINLAND.....	269
	<i>Jan Ollila, Wilhelm Eklund and Jasper Kuhlefeldt</i>	
Chapter 25	FRANCE.....	281
	<i>Didier Martin and Hubert Zhang</i>	
Chapter 26	GERMANY.....	296
	<i>Heinrich Knepper</i>	
Chapter 27	GIBRALTAR.....	309
	<i>Steven Caetano</i>	
Chapter 28	GREECE.....	321
	<i>Cleomenis G Yannikas, Sophia K Grigoriadou and Vassilis S Constantinidis</i>	
Chapter 29	HONG KONG.....	334
	<i>Jason Webber</i>	
Chapter 30	HUNGARY.....	344
	<i>Levente Szabó and Klaudia Ruppl</i>	
Chapter 31	ICELAND.....	360
	<i>Hans Henning Hoff</i>	
Chapter 32	INDIA.....	368
	<i>Justin Bharucha</i>	
Chapter 33	INDONESIA.....	386
	<i>Yozua Makes</i>	

Chapter 34	ISRAEL	400
	<i>Clifford Davis and Keith Shaw</i>	
Chapter 35	ITALY	410
	<i>Maurizio Delfino</i>	
Chapter 36	JAPAN	422
	<i>Hiroki Kodate and Masami Murano</i>	
Chapter 37	KENYA	431
	<i>Joyce Karanja-Ng'ang'a, Wathingira Muthang'ato and Felicia Solomon Nyale</i>	
Chapter 38	KOREA	442
	<i>Jong Koo Park, Bo Yong Ahn, Sung Uk Park and Young Min Lee</i>	
Chapter 39	LITHUANIA	457
	<i>Giedrius Kolesnikovas and Michail Parchimovič</i>	
Chapter 40	LUXEMBOURG	465
	<i>Marie-Béatrice Noble, Raquel Guevara, Stéphanie Antoine</i>	
Chapter 41	MALAYSIA	479
	<i>Rosinah Mohd Salleh and Norhisham Abd Bahrin</i>	
Chapter 42	MALTA	491
	<i>James Scicluna</i>	
Chapter 43	MAURITIUS	503
	<i>Muhammad Reza Cassam Uteem and Basheema Farreedun</i>	
Chapter 44	MEXICO	513
	<i>Luis Burgueño and Andrés Nieto</i>	
Chapter 45	MONTENEGRO	523
	<i>Slaven Moravčević and Dijana Grujić</i>	

Chapter 46	MYANMAR.....533 <i>Krishna Ramachandra and Benjamin Kheng</i>
Chapter 47	NETHERLANDS544 <i>Carlos Pita Cao and François Koppenol</i>
Chapter 48	NIGERIA.....557 <i>Lawrence Fubara Anga</i>
Chapter 49	NORWAY562 <i>Ole K Aabø-Evensen</i>
Chapter 50	PANAMA.....600 <i>Andrés N Rubinoff</i>
Chapter 51	PERU611 <i>Emil Ruppert</i>
Chapter 52	PHILIPPINES.....621 <i>Rafael A Morales, Philbert E Varona, Hiyasmin H Lapitan and Patricia A Madarang</i>
Chapter 53	PORTUGAL630 <i>Francisco Brito e Abreu and Joana Torres Ereio</i>
Chapter 54	ROMANIA643 <i>Andreea Hulub, Ana-Maria Mihai and Vlad Ambrozic</i>
Chapter 55	RUSSIA.....657 <i>Scott Senecal, Yulia Solomakhina, Polina Tulupova, Yury Babichev and Alexander Mandzhiev</i>
Chapter 56	SERBIA.....675 <i>Matija Vojnović and Luka Lopičić</i>
Chapter 57	SINGAPORE.....685 <i>Lim Mei and Lee Kee Yeng</i>

Chapter 58	SLOVENIA.....	694
	<i>David Premelč, Bojan Šporar and Mateja Ščuka</i>	
Chapter 59	SOUTH AFRICA	705
	<i>Ezra Davids and Ashleigh Hale</i>	
Chapter 60	SPAIN	716
	<i>Christian Hoedl and Javier Ruiz-Cámara</i>	
Chapter 61	SWITZERLAND	732
	<i>Lorenzo Olgiati, Martin Weber, Jean Jacques Ah Choon, Harun Can and David Mamane</i>	
Chapter 62	THAILAND	745
	<i>Pakdee Paknara and Pattraporn Poovasathien</i>	
Chapter 63	TURKEY.....	753
	<i>Emre Akın Sait</i>	
Chapter 64	UNITED ARAB EMIRATES.....	762
	<i>DK Singh and Stincy Mary Joseph</i>	
Chapter 65	UNITED KINGDOM	774
	<i>Mark Zerdin</i>	
Chapter 66	UNITED STATES	793
	<i>Richard Hall and Mark Greene</i>	
Chapter 67	VENEZUELA.....	834
	<i>Guillermo de la Rosa, Juan D Alfonso, Nelson Borjas E, Pedro Durán A and Maritza Quintero M</i>	
Chapter 68	VIETNAM.....	847
	<i>Hikaru Oguchi, Taro Hirosawa, Ha Hoang Loc</i>	

Appendix 1	ABOUT THE AUTHORS	857
Appendix 2	CONTRIBUTING LAW FIRMS' CONTACT DETAILS	905

EDITOR'S PREFACE

By a number of measures, it could be argued that it has been some time since the outlook for the M&A market looked healthier. The past year has seen a boom in deal making, with many markets seeing post-crisis peaks and some recording all-time highs. Looking behind the headline figures, however, a number of factors suggest deal making may not continue to grow as rapidly as it has done recently.

One key driver affecting global figures is the widely expected rise of US interest rates. Cheap debt has played a significant part in the surge of US deal making in the first few months of 2015, and the prospects of a rate rise may have some dampening effects. However, the most recent indications from the Federal Reserve have suggested that any rise will be gradual and some market participants have pushed back predictions for the first rate rise to December 2015. Meanwhile, eurozone and UK interest rates look likely to remain low for some time further.

The eurozone returned to the headlines in June as the prospect of a Greek exit looked increasingly real. Even assuming Greece remains in the euro (as now seems likely), the crisis has severely damaged the relationship between Greece and its creditors. The brinkmanship exhibited by all parties means that meaningful progress cannot occur except at the conclusion of a crisis: the idea that reform will benefit Greece has been lost and each measure extracted by creditors is couched as a concession. However, while the political debate has become ever more fractious, the market's response to the crisis has been relatively sanguine. This is largely a result of the fact that the volume of Greek debt is no longer in the market, but in the hands of institutions. But it is also a sign of the general market recovery and expectations that major economies will continue to grow.

Perhaps one of the more interesting emerging trends in the last year is the interplay between growth and productivity. Some commentators have suggested that the recent rise in deal making is a symptom of a climate in which businesses remain reluctant to invest in capital and productivity. Pessimistic about the opportunities for organic growth, companies instead seek to grow profits through cost savings on mergers. It is difficult to generalise about such matters: inevitably, deal drivers will vary from industry to industry, from market to market. However, if synergies have been the principal motivation in

much of the year's deal making (it certainly has been in a number of large-cap deals) then it may be that the market is a little farther from sustainable growth than some would like to think.

I would like to thank the contributors for their support in producing the ninth edition of *The Mergers & Acquisitions Review*. I hope that the commentary in the following chapters will provide a richer understanding of the shape of the global markets, together with the challenges and opportunities facing market participants.

Mark Zerdin

Slaughter and May

London

August 2015

Chapter 60

SPAIN

Christian Hoedl and Javier Ruiz-Cámara¹

I OVERVIEW OF M&A ACTIVITY

2014 has been an excellent year for the Spanish economy and for Spanish M&A, confirming the positive expectations advanced in last year's edition of *The Mergers and Acquisitions Review*. The profound reforms in the Spanish financial sector, the pension system and the labour market introduced by the Spanish government are leading to a steady recovery. In 2014, the Spanish economy emerged from technical recession with 1.4 per cent growth in GDP. The government forecasts an increase of between 3 and 3.3 per cent in GDP for 2015 and of 2.8 per cent for 2016. The growth is mainly driven by an increase in exports and in private domestic demand, the easing of financial tensions (Spain's credit rating has improved significantly) and the structural reforms that have been implemented since 2011.

The labor market has also improved moderately in the last months, both in terms of the employment rate and Social Security affiliations, with unemployment falling to a still excessive 23.8 per cent rate (forecast at 20.5 per cent for 2016). On the negative side, public debt reached a record 100 per cent of GDP at the end of 2014 and, despite accelerated deleveraging, private debt remains high.

In line with the improvement of the Spanish economy in recent months, M&A activity in Spain has increased both in number of deals and in deal volume since the end of 2013. In 2014, the volume of transactions has increased by 106 per cent in terms of value and by 10 per cent in terms of number of transactions (as compared to the same period in 2013). The main drivers of M&A activity have been:

- a* Spanish targets have become attractive due to the significantly improved macroeconomic environment, the strengthening of their operations and balance

1 Christian Hoedl and Javier Ruiz-Cámara are partners at Uría Menéndez.

sheets during the financial crisis, the depreciation of the euro and the availability of debt financing and lower interest rates.

- b* Spanish corporate and financial institutions continue their deleveraging processes. The financial sector, in particular, has remained very active, both in number and volume of deals. Facing significant regulatory pressures and a clear trend towards back to basics, Spanish banks and other financial institutions have sold non-core assets and branches (such as servicing platforms), divested performing and non-performing loan portfolios and exited industrial shareholdings.
- c* Real estate, energy, health care, IT and telecommunications have also attracted significant investments due to increased consolidation in these industries and to changes in the regulatory framework.
- d* The government has launched a number of privatisations (although currently on hold until the next general elections which are expected to take place before the end of 2015).
- e* Foreign strategic and financial investors remain focused on Spain and interested in strategic or opportunistic investments. Europe is the main source of these investments followed by the United States. The increase in Latin American investments, mainly from Mexico and Brazil, continues to be of note.
- f* Outbound foreign investments have also increased, focusing Spanish investments mainly on Europe, the United States and Canada and, to a lesser extent, on Latin America and Asia.
- g* Private equity activity, in particular, has recovered to nearly pre-crisis levels. Exits have also increased and private equity sponsors remain under pressure to divest holdings acquired before the financial crisis.
- h* IPOs have returned strongly to the Spanish market. Newly introduced Spanish real estate investment trusts, the SOCIMIs, have also been relatively popular.

II GENERAL INTRODUCTION TO THE LEGAL FRAMEWORK FOR M&A

i Corporate law

The basic Spanish legal framework for corporate acquisitions, mergers and other types of corporate restructuring includes elements of both contract and corporate law.

Spanish contract law is mainly contained in the 19th century Civil and Commercial Codes.

In order to modernise and update this legal regime, the General Codifying Commission has been working on a new Commercial Code since 2006 with the aim of gathering the entire body of law on commercial contracts into a single piece of legislation. The first draft was submitted to public consultation back in June 2013 and the draft bill was passed by the government in May 2014; however, the bill has not yet passed through Parliament and will most likely fail to do so in the near future.

Spanish corporate law, on the other hand, is primarily based on the Companies Law and the Law on Corporate Restructuring.

The Companies Law governs, among others, the corporate aspects of the acquisition of joint stock companies (*sociedades anónimas*) and limited liability companies

(*sociedades de responsabilidad limitada*), which is the most common type of company in Spain. It also sets out the basic legal framework for listed companies. The Law on Corporate Restructuring regulates corporate restructurings (such as mergers, spin-offs, conversions, en bloc transfers of assets and liabilities and international transfers of registered address). It also specifically regulates leveraged buyouts (LBOs) (i.e., mergers between companies where one has incurred debt during the preceding three years to acquire control or the essential assets of the target company). The law requires, among others, that an independent expert determines whether the LBO merger constitutes financial assistance (which, in general terms, is prohibited by the Companies Law). It does not, however, establish the effects of an independent expert finding that there has been financial assistance; a circumstance that creates uncertainty in LBO mergers (particularly due to the interpretation of the law by company registries in Spain, which has not been as consistent as would have been desirable).²

As far as the main regulated markets are concerned, rules such as the Stock Market Law³ (public offerings, official listings of securities, transactions related to listed securities and takeovers), the Law on Discipline and Intervention of Credit Institutions⁴ (regime for credit entities) or the Private Insurance Supervisory Law⁵ (regime for insurance companies) must be taken into account.

ii Insolvency law

The general legal framework on insolvency is primarily contained in the Insolvency Law.

The Insolvency Law created a single insolvency procedure that is applicable to all insolvent debtors (i.e., a debtor that is unable to, or will imminently be unable to, regularly comply in a timely manner with its payment obligations). The single procedure has a joint phase and two different outcomes: (1) a creditors' agreement (for the debtor and creditors to reach an agreement on the payment of outstanding claims), or (2) the liquidation of the debtor's assets to satisfy its debts. It has also helped to clarify the risks associated with the clawback (rescission) of acts carried out within the two years preceding the declaration of insolvency that are considered detrimental to the debtor's estate.

The Insolvency Law was generally seen as a positive development. Nevertheless, the law was passed in a completely different economic and financial scenario. Indeed, the Insolvency Law has only really been tested in practice during the turbulent past few years, during which time the number of insolvency proceedings has increased dramatically.

As a consequence, the Insolvency Law was subsequently reformed in 2009, 2011, 2013 and 2014. The latest developments are Royal Decree-Law 1/2015 of 27 February (RDL 1/2015) and Law 9/2015 of 25 May (Law 9/2015). All these reforms generally

2 Translations (into English and French) of these laws are available at www.mjusticia.gob.es (the webpage of the Spanish Ministry of Justice).

3 The securities market is supervised by the National Stock Exchange Commission (CNMV).

4 The credit market is supervised by the Bank of Spain (BdE).

5 The insurance market is supervised by the General Insurances and Pension Funds Directorate (DGSFP).

aim to (1) improve various aspects of the pre-insolvency institutions to ensure the viability of companies in an attempt to avoid insolvency (among others, to introduce the 'protective shields' of refinancing agreements), and (2) align the Insolvency Law with current practice and insolvency regulations of other comparable jurisdictions, as well as to remove certain rigidities and improve some technical aspects that were criticised by judges, scholars and lawyers alike.

iii Other regulations

Other matters relating to, among others, tax, employment and antitrust also form part of the M&A legal framework (see below).

III DEVELOPMENTS IN CORPORATE AND TAKEOVER LAW AND THEIR IMPACT

i Venture capital, private equity funds and fund managers

In November 2014 Law 22/2014 of 12 November (the Venture Capital Business Law) came into force.

The Venture Capital Business Law implements Directive 2011/61/EU of the European Parliament and of the Council on Alternative Investment Funds Managers (AIFMD) and derogates from the legal regime applicable to venture capital, private equity funds and fund managers to date (i.e., Law 25/2005 of 24 November).

Among other novelties, the Venture Capital Business Law introduces a new type of entity, called 'other investment companies', which are closed-ended entities that do not meet the definition of venture capital entities because of their purpose, investment policy or other characteristics. In addition, the Venture Capital Business Law recognises the new European venture capital funds and the European social entrepreneurship funds created by EU Regulations 345/2013 and 346/2013.

ii Corporate financing, financial credit establishments and crowd-funding

In April 2015 Law 5/2015 of 27 April (the Corporate Financing Law) came into force.

The Corporate Financing Law (1) sets out, among others, a number of changes to encourage bank financing to small and medium-sized companies, (2) sets out the new legal framework on financial credit establishments, (3) regulates crowd-funding for the first time under Spanish law, and (4) introduces amendments on other matters such as securitisations and debt issuance.

iii Corporate law

This year there have been two major novelties in corporate law, both related to corporate governance.

Firstly, in December 2014 Law 31/2014 of 3 December (Law 31/2014) entered into force and amended the Companies Law with a view to improving corporate governance.

This piece of legislation is one of the most significant reforms to the Companies Law in recent years and, in general terms, it represents a very positive modernisation of

Spain's corporate law, both for public and privately held companies. The amendment implements the proposal issued by an *ad hoc* expert committee appointed by the government in 2013 to analyse international corporate governance best practices and propose measures to update and improve Spain's framework in this regard.

The changes can be grouped in two broad categories: (1) those affecting the shareholders' general meeting and shareholders' rights, which main purposes are to reinforce the role of shareholders, to open channels to encourage shareholder participation in controlling management and to protect the rights of minority shareholders; and (2) those relating to the board of directors and the role of directors, focusing on three key areas: fiduciary duties, remuneration and specific rules on the organisation of the management of listed companies.

This reform is inspired in the corporate laws of other European countries and in non-binding recommendations contained in the Code of Good Governance in Listed Companies, some of which have been included in the law.

The reform's outcome is, on whole, positive. It is a resolute and, in general, technically sound endeavour towards modernisation. It has enriched our legal regime with sensible, long-tested criteria originating from some of the most recognised jurisdictions (e.g., the business judgement rule); it has upgraded to the category of law a number of recommendations already rooted in domestic and international practice; and it has taken significant steps towards fostering transparency and accountability, especially in connection with directors' remuneration.

IV FOREIGN INVOLVEMENT IN M&A TRANSACTIONS

i Transactions driven by strategic investors

The following are some of the most important inbound and outbound deals driven by strategic investors in the second half of 2014 and first quarter of 2015.

In May 2015, Lone Star (the US-based global private equity firm investing mainly in real estate) acquired Neinor (the property management arm of Kutxabank) for approximately €930 million.

In March 2015, Telefónica agreed to sell its British mobile unit O₂ to Hutchison Whampoa Ltd (an investment holding company based in Hong Kong) for approximately €13.72 billion.

In January 2015, Caixabank acquired the retail banking, asset management and corporate banking business of Barclays Bank in Spain for approximately €800 million.

In December 2014, Macquarie European Infrastructure Fund 4 (the British wholesale investment fund) and Wren House Infrastructure (the Kuwaiti fund) acquired 100 per cent of E.ON España (E.ON's integrated electricity businesses in Spain) for approximately €2.5 billion.

In December 2014, Redexis Gas (the Spanish company engaged in the development and operation of transport infrastructure and distribution of natural gas in Spain) acquired from Naturgas (belonging to EDP Group) Gas Energía Distribución de Murcia, as well as other strategic natural gas distribution assets in other regions, for approximately €236 million.

In October 2014, Enel Energy Europe (an Italian-based leading large power company in Europe) acquired almost a 61 per cent stake in the Chilean company Enersis from Endesa for approximately €8.25 billion.

ii Transactions driven by private equity and other funds

During the first quarter of 2015, the amounts invested through private equity were slightly lower than in the same period in 2014, although there were slightly more transactions.

The following are some of the most important deals in the second half of 2014 and first quarter of 2015:

In February 2015, L Capital Asia (LVMH's Asian arm) and M1 Group (the Lebanese investment firm) acquired a 59 per cent stake in Pepe Jeans Group (global leading player in the denim and sportswear sectors) from Torreal (31 per cent), Artá Capital (16.4 per cent) and L Capital Europe (11.5 per cent) for approximately €730 million.

In October 2014, KKR (the North-American multinational private equity firm) acquired a one-third stake in the renewable energy arm of the Spanish conglomerate Acciona for approximately €417 million. Moreover, in December 2014, both companies created a joint venture to develop the company's energy projects. This joint venture company is expected to be listed on the New York stock exchange in coming years.

In August 2014, Alsea (the Mexican multi-brand restaurant operator) agreed to acquire from CVC Capital Partners a 72 per cent stake in the Spanish leading multi-format restaurant company Grupo Zena for approximately €270 million.

In July 2014, CVC Capital Partners, owner of IDC Salud, bought a 61 per cent stake in Spanish hospital group Quirón (both of leading water companies in Spain) from fellow private equity group Doughty Hanson for approximately €1.5 billion.

V SIGNIFICANT TRANSACTIONS, KEY TRENDS AND HOT INDUSTRIES

After a rather subdued 2013, European M&A activity rebounded strongly in 2014 with an increase of 77 per cent. We are currently seeing a strong surge in early-stage M&A activity in Spain as the economic recovery gathers pace. Spain has a strong pipeline for 2015–2016 and we expect this to translate into a significant increase in deal announcements through Q3 2015, although the second half of the year could be more complicated as attention will turn to general elections.

The state of the Spanish economy has improved since the summer of 2013. The imbalances built up in the past have been substantially reduced, allowing the current Spanish economy to enjoy a more favourable scenario and Spanish companies to access capital markets.

According to the European Commission's macroeconomic forecast published in May 2014, the economic recovery is expected to be firmer over 2014–2015, backed by improved confidence and further easing of financing conditions. Unemployment is expected to decline, although remaining high. The budget deficit is set to narrow in 2015, but government debt is still expected to rise. In this scenario, the M&A sector has

seen the return of the traditional private equity investments and portfolio sales, along with investments in the capital markets.

i Public M&A

The restructuring of the Spanish financial industry has continued influencing the Spanish Public M&A market on two main fronts: sale of non-strategic assets and sale of stock.

Spanish multinational companies are selling non-strategic assets to reduce their debt burden, meet their creditors' demands, preserve their investment-grade rating, and have access to fresh financing to expand into other geographic markets. From 2010 to 2013, the companies included in Spain's blue chip index (IBEX 35) reduced their debt by €41 billion (20 per cent). In 2013 alone their debt reduction amounted to €19.9 billion. This process is proving fruitful and close to 60 per cent of the income obtained by IBEX 35 companies now comes from outside Spain.

This is attracting the interest of international investors: in Q2 2014, foreign investors invested €26.8 billion in Spain (a 35 per cent increase with respect to the previous year). Companies are taking advantage of the stock market surge (up 65 per cent from June 2012) and have sold treasury stock worth €3.8 billion on the market or to institutional investors. Some of the main transactions of this type, showing the increasing interest of foreign investors in Spain, include:

The sale by infrastructure company FCC of a 6 per cent treasury stock stake to Bill Gates' investment vehicle for €113 million and its subsequent €1.3 billion capital increase, through which the company will complete its €4.5 billion refinancing.

The sale of a 6 per cent stake in the oil company Repsol to Temasek for €1 billion.

The sale of a 4.03 per cent stake in the security company Prosegur to Bill Gates' investment vehicle and other international investors.

ii Real estate

Branded as one of the major causes of the Spanish crisis, real estate has come back as one of the prominent fields of M&A activity after years of adjustment. Attractive prices along with the banks' need to take their real estate assets out of their balance sheets (foreclosures following the housing bubble turned the banking sector into the main real estate owner) have catalysed the resurgence of real estate transactions in the Spanish market. To foster this resurgence, the government made the tax regime applicable to the Spanish REITS (real estate investment trusts) more attractive.

From June 2013 to July 2014, investment funds purchased real estate assets worth more than €6.5 billion. Banks are also selling their real estate servicing units to real state funds. Cerberus, Apollo, Texas Pacific Group, Centerbridge, Kennedy Wilson and Vårde Partners have invested an aggregate of €2 billion and now manage real estate and loans reportedly worth €119 billion. Pimco, Goldman Sachs and other international investors such as George Soros and John Paulson have acquired stakes in Spanish REITS.

Lone Star has been very active in Spain in 2014 and 2015. The fund made large acquisitions such as the receivables portfolio of Eurohypo in Spain for more than €3.5 billion (2014) and the acquisition of Kutxabank's property developer subsidiary, Neinor, for €930 million (2015).

iii Initial public offering

IPOs have returned strongly to the Spanish market, both on the traditional Continuous Market and on the MAB (Mercado Alternativo Bursátil – a market for small companies looking to expand, with a special set of regulations).

To name a few, since early 2014 eDreams Odigeo (an online travel agency), Applus Services (a testing and certification company) and Compañía de Distribución Integral Logista Holdings (a logistics operator) have been listed on Spanish stock exchanges. Likewise, Aena Aeropuertos (the state-owned airport operator), Naturhouse (a company working in the nutrition and weight management industry), Cellnex Telecom (an operator for wireless broadcasting telecommunication) and Talgo (the leading company in the Spanish railway sector), among others, went public during the first half of 2015.

In addition, several Spanish real estate companies have also launched successful IPOs this year in the Spanish capital markets, including Lar España Real Estate, Hispania Activos Inmobiliarios, Merlin Properties and Axia Real Estate. Most of these newcomers have been incorporated under the recently reformed SOCIMI regime, which is modelled to a substantial extent on the REIT regime. Moreover, Merlin Properties recently acquired a stake of 99.6 per cent in Tesla, a subsidiary company of Sacyr, for approximately €1.7 billion.

iv Private equity

Deal activity in 2014 has improved significantly in comparison with previous years, evidencing – at last – a change of trend after years of market downturn. In value terms, the data available for 2014 suggest investments for an approximate aggregate amount of €3.47 billion, a 28 per cent increase compared to 2013. This figure exceeds the activity level in 2008 and, although it is still far from the historic high deal value achieved in 2007 (€4.3 billion), it ends a long downward trend in private equity investments.

In terms of volume, 580 deals were closed in 2014 (up 45 per cent from 2013). The last quarter of the year concentrated the highest activity level, comprising 40 per cent of the whole year. Most investments in 2014 (90 per cent) involved less than €5 million and 65 per cent of them involved less than €1 million. The number of large buyouts (exceeding €100 million) nearly doubled in 2014 with respect to the previous year, all of them closed by international sponsors. Foreign players carried out 55 deals representing 78 per cent of the total invested amount.

Consumer products, leisure activities, health care and industrial products were the most sought-after sectors by investors. For example, CVC acquired a stake in Deoleo, KKR acquired a controlling stake in Port Aventura and Cinven acquired the fibre network business unit of the Spanish utility Gas Natural. Likewise, IDC Salud and Grupo Hospitalario Quirón (owned by the private equity firms CVC Capital Partners and Doughty Hanson, respectively) merged in 2014, creating one of the largest private health services groups in Spain. In the mid-market, Magnum Capital acquired Nuevo Ágora Centro de Estudios, and Geriatros and Realza Capital acquired a majority stake in Industrias Dolz. As regards divestments, KKR and Investindustrial sold Grupo Inaer to Babcock International and Spanish sponsors Corpfin.

VI M&A FINANCING: MAIN SOURCES AND DEVELOPMENTS

i General overview

From mid-2014 the acquisition finance market has consolidated the recovery that started in 2013. This recovery is partially explained by the fact that the Spanish banking sector has already undergone rigorous restructuring that has allowed banking entities to increase their liquidity, reach the European Central Bank's requirements and focus on the lending business again. The market estimates that corporate and business loans from Spanish financing entities will increase during the second semester of 2015 and 2016, and the availability of funds from Spanish banks (especially for non-investment grade borrowers) will continue to improve.

During Q1 2015, competition between traditional Spanish bank lenders and direct lending funds has increased since borrowers have looked for alternative and more flexible ways of financing. Private equity funds have been seeking investment opportunities in Spain by taking advantage of the still low prices. Entities performing shadow banking activities have increased their presence in the Spanish market, and traditional private equity players are getting into new investment activities such as direct lending.

Furthermore, debt issuance transactions of Spanish companies in the more flexible and liquid Anglo-Saxon markets have consolidated their modest increase of 2013. Also, certain Spanish companies (including financial entities) have started to use the Spanish market for their debt issuances, some of a considerable volume, and the forthcoming legal reforms will probably boost this market in the near future.

Competition has forced Spanish bank lenders to offer higher leverage, lower pricing and more flexible structures. Borrowers can now use mezzanine, unitranche, second lien, high yield and a variety of combinations of any of these products to finance their deals.

ii Financing conditions

Apart from these general trends, the following are the main features of acquisition financings in 2014 and 2015:

- a* The range of financing products available to the borrowers has been extended: second-lien facilities, ancillary facilities, mezzanine, bridge-to-equity facilities and equity-like facilities are increasingly being offered by Spanish bank lenders due to stronger competition. Vendor loans and non-banking loans (e.g., those coming from hedge funds) continue to be frequently used to finance acquisitions.
- b* Banks are still reluctant to accept debt-to-asset transactions, except when it is the only way to achieve the borrower's survival.
- c* Banks still refrain from agreeing to the 'certainty of funds' provision in commitment letters, whereas the inclusion of material adverse change clauses and 'diligence out' provisions continue to be essential. Limits to changes in pricing that can be arranged without the borrower's consent have been widened under the 'market flex' provisions, and 'reverse flex' provisions have not returned. Facility agreements still include widely drafted 'market disruption' clauses.
- d* In the last quarter of 2014 and start of 2015 the market is beginning to return to longer terms and lower prices. Leverage ratios have been reduced and banks

tend to include amortising term loans rather than bullet loans (which approach, to a certain extent, commits banks to the future refinancing of the bullet loan). Due to the wide ‘unanimous consent clauses’ that were introduced in the financing agreements entered into during 2008, 2009 and 2010, forward-start loans and the judicial recognition of refinancing agreements, whose effects have been improved by the reform of the Insolvency Law, have become common refinancing instruments and will most probably be mainly used in the near future as a consequence of the improvements in terms of extending its effects.

- e Security packages continue to be robust. Banks also continue to focus on anticipating insolvency given that agreements can only be terminated due to breaches that occurred after the declaration of insolvency (and not as a result of the borrower being insolvent).

iii Refinancing

The volume of large refinancing and restructuring has finally started to decrease during the second half of 2014 and first quarter of 2015.

VII EMPLOYMENT LAW

According to article 44 of the Statute of Workers, the main consequences of a transfer of undertakings (TUPE) are as follows.

The transferee company must assume all the transferor’s employees assigned to the transferred business or production unit, maintaining all their previous labour and social security rights (including pension commitments).

The transferor and the transferee companies will be jointly and severally liable for three years after the TUPE takes place in relation to any labour and social security obligations not met before the TUPE.

To date, the Labour Chamber of the Supreme Court has held that the obligation to subrogate derived from a TUPE – the first consequence mentioned above – only applies to employment contracts in force, that is, the transferee company has no obligation to take over contracts ‘validly terminated’ previously (Rulings of the Labour Chamber of the Supreme Court of 26 April 1999, 25 May 2000, 11 April 2001, 25 February 2002 and 16 July 2003).

According to this doctrine of the Labour Chamber of the Supreme Court, employment relationships terminated within the framework of a collective redundancy should be understood as ‘validly terminated’ relationships in which the transferee is not obliged to take over these employment contracts ‘except in cases of proven abuse of law’.

As this doctrine still applies, the Labour Chamber of the Supreme Court has recently become very meticulous in analysing collective redundancies implemented just before a TUPE. If an abuse of law is detected, the dismissals are declared void, which implies (1) reinstating employees in their previous positions, and (2) paying the salaries accrued from the effective date of termination until the reinstatement date. Both the transferor and transferee companies will be held jointly liable for these consequences (reinstating and paying salaries accrued from the termination date until the reinstatement date).

The clearest example of the above is the recent judgment of the Labour Chamber of the Supreme Court of 18 February 2014, which held that a TUPE had taken place, given that the transferee company immediately acquired all the assets from the transferor company (the purchase of an entire petrol station) except for its employees (who had been dismissed just before the TUPE through a collective redundancy, which was not justified and was a clear abuse of law).

The TUPE took place just several days after the collective redundancy had been implemented. In light of the manner and timing of the redundancies, the Labour Chamber of the Supreme Court held that an agreement between the transferor and the transferee had been reached to avoid the application of the TUPE through a collective redundancy. The transaction was in fact aimed at 'facilitating a transfer without the employment obligations (without human resources), which benefited the transferee company'. The companies were ordered to reinstate the employees.

The Labour Chamber of Supreme Court has acted similarly in other cases, where collective redundancies carried out by public entities have been declared void as a result of previous collective redundancies implemented to avoid the application of the TUPE (see Rulings dated 17 February 2014 and 27 June 2014).

In view of the above, clear information on the possibility of continuing the business should be provided to employee representatives during the collective redundancy consultation periods.

VIII TAX LAW

A significant set of amendments to the Spanish tax regulations was approved on 28 November 2014. In particular, Law 27/2014 of 27 November on Corporate Income Tax (the New CIT Law) and Law 26/2014 of 27 November, which modifies the Personal Income Tax Law and the Non-Resident Income Tax (NRIT)⁶ (Law 26/2014) were published in the Spanish Official Gazette. This new legislation generally came into force on 1 January 2015. The most relevant novelties for the M&A practice are the following:

i Definition of business activity for Corporate Income Tax (CIT) purposes

A definition of 'business activity' for CIT purposes has been introduced in the New CIT Law. According to the wording of the New CIT Law, a business activity will be deemed as such for CIT purposes when there are sufficient human and material resources to carry out the corresponding business activity. This change may, however, have an impact on the tax structure of typical acquisition deals.

ii Non-deductibility of impairments

Since 1 January 2015, impairments on shares of companies due to the depreciation of the value of real estate assets are no longer tax deductible.

6 Royal-Decree 5/2004 of 5 March approving the Revised Non-Resident Income Tax Law.

iii Deductibility of financial expenses

Interest accrued on intra-group profit participating loans (PPLs) are treated as dividends for CIT purposes for the lender and, consequently, expenses derived from PPLs – when granted to related entities – will no longer be deductible for the borrower for CIT purposes. This measure affects PPLs granted after 20 July 2014.

The New CIT Law modifies the treatment of hybrid instruments, establishing that the expenses corresponding to related party transactions will not be tax deductible if as a result of a different tax characterisation in the country of residence of the recipient (1) no income is generated or (2) income is tax exempt or subject to a nominal rate lower than 10 per cent.

According to the New CIT Law, the general limitation to the tax deductibility of net financial expenses (30 per cent of operating profit) with the minimum deductibility threshold of €1 million is maintained. However, a new limitation on leveraged acquisitions has been introduced. Financial expenses derived from the acquisition of companies that (1) are included in the CIT tax group after its acquisition or (2) are subject to reorganization transactions in the subsequent four years, would be deductible in the buyer's tax base only up to the limit of 30 per cent on the operating profit of the acquiring company (this restriction aims to avoid that the financial expenses payable by the acquiring company are compensated at a group level through the creation of a tax group or a merged entity). However, the above limitation does not apply (1) if the amount of the purchase price financed with debt does not exceed 70 per cent of the total purchase price and (2) if in the following eight tax years the debt is reduced by one-eighth per year of the principal amount until this principal amount is reduced to 30 per cent of the initial purchase price. This limitation does not apply to acquisitions in which the target entities have joined the CIT group in tax periods starting before 20 January 2014 or when the merger takes place after 20 June 2014 but the entities already belonged to a tax group.

iv Transfer pricing rules

The New CIT Law introduces a change in the definition of related party between parent and subsidiary entities since the shareholder's stake needs to be at least 25 per cent or where decision-making power is or can be exercised (while before the entry in force of the New CIT Law the threshold was 5 per cent).

Although all companies must comply with transfer pricing documentation requirements, the New CIT Law simplifies the the documentation requirements for groups with a net turnover lower than €45 million.

The amounts of some penalties for breach of transfer pricing rule have been reduced.

v Participation exemption regime

The New CIT Law extends the current participation exemption regime to dividends or capital gains from Spanish subsidiaries. This basically means that, subject to further analysis in each case, capital gains derived from the sale of a Spanish company by its Spanish parent company are not taxable under CIT, provided that (1) a minimum ownership of 5 per cent or cost of acquisition of €20 million is held during the year

prior to the date on which the distributed profit is due or, only in the case of dividends, failing that, be maintained for the time required to complete such period; (2) as regards a foreign subsidiary, it is subject to a minimum level of nominal taxation of 10 per cent in the home country.

The amendments proposed regarding the participation exemption regime have been also introduced for the branch participation exemption. A minimum level of (nominal) taxation of 10 per cent under a foreign corporate tax system similar to the Spanish CIT is required. This requirement is deemed to be met if the branch is resident in a tax treaty country.

vi Capitalisation reserve

The New CIT Law replaces most of the tax credits currently in force (such as the reinvestment tax credit or the environmental investment credit) with a tax deductible capitalisation reserve under which Spanish entities may, under certain circumstances, reduce their taxable base by 10 per cent of the increase in its net equity during the year (i.e. comparing the net equity at year-end (excluding the current year's profits) with the net equity at the beginning of the year (excluding the previous year's profits) and excluding any shareholder contributions and other items).

To benefit from this tax relief, the amount of the net equity increase must be maintained for five years following the tax deduction applied (except for accounting losses), and the company must register an accounting reserve in its annual accounts for the amount of the tax deduction (this capitalisation reserve cannot be distributed during the following five years, except in certain situations).

vii Carry forward losses

According to the New CIT Law, from 2015 onwards offsetting the accumulated tax losses is limited to a range of 50–70 per cent of the taxable income.

These limitations do not apply in the tax year in which the company is dissolved (except if derived from a restructuring transaction) or to certain type of income, such as that derived from debt cancellations for no consideration when the creditor is not a related entity.

Despite introducing these limitations to offset carry forward losses, the New CIT Law removes the applicable 18-year limitation, so tax losses can be offset indefinitely.

viii Tax rate reduction

The New CIT Law gradually reduces the CIT rate from 30–25 per cent in 2016 (with an interim 28 per cent rate applicable in 2015). Moreover, a reduced 15 per cent tax rate is foreseen for newly created companies that carry out business activities which applies during the first profitable tax year and the year after that.

ix CIT group regime

Based on the ruling of the European Court of Justice of 12 June 2014 (Cases C-39/13, C-40/13 and C-41/13), the New CIT Law, which is effective for tax years beginning on or after 1 January 2015, broadens the scope of the perimeter of companies that are eligible for the CIT Group Regime. Under the new framework applicable to CIT groups, all

Spanish companies that are resident in Spain and those permanent establishments (PEs) of foreign resident entities in Spain that have a direct or indirect common non-resident shareholder (as long as the common shareholder complies with certain requirements), may form a tax group for Spanish CIT purposes. In this case, the common non-resident shareholder is considered the parent company of the CIT group, although this company must appoint one of its dependent entities as the tax representative of the group in relation to the Spanish tax authorities.

x Tax neutrality regime for mergers and demergers

The main amendments introduced in this regime are the following:

Unlike the former regulation, this tax neutrality regime is set as the general regime applicable to merger and demerger transactions. Not applying this tax neutrality regime must be communicated to the Spanish tax authorities.

The New CIT Law extends the scope of the definition of partial demerger that can benefit from tax neutrality since keeping another business unit in the transferring entity is no longer required (i.e., the New CIT Law allows the application of the tax neutrality when the transferring entity retains just a controlling stake in a subsidiary entity).

In addition, the New CIT Law allows the transfer of carry forward losses to the acquiring entity together with the going concern being transferred to the acquiring entity even if the transferring entity is not wound up.

Merger goodwill and other intangibles arising as a consequence of the merger will not be recognised for tax purposes and, accordingly, they will no longer be deductible. However, merger goodwill and asset step-ups will be permitted if the acquisition of the absorbed entity was executed before 1 January 2015.

According to the current wording of the New CIT Law, the tax authorities will only be able to regularise the tax advantage that has been unduly benefited from but will not be able to request taxes on unrealised gains by the transferring entity (as this was not established under the former regime, the tax authorities requested the corresponding CIT on the transfer of the assets of the dissolved entity).

xi NRIT

Law 26/2014 reduces the tax rates applicable to income obtained by non-residents in Spain. In fact, Law 26/2014 reduces the general tax rate to 24 per cent, except for EU residents for which it will be 19 per cent (20 per cent in 2015). Moreover, dividends, interest and capital gains would be taxable at a rate of 19 per cent (20 per cent for 2015). When the taxpayer is a permanent establishment, the tax rate is reduced to 28 per cent in 2015 and 25 per cent from 2016 onwards.

In relation to the EU Parent-Subsidiary Directive, the most important development is that no Spanish withholding taxes are levied on dividends distributed by a Spanish subsidiary to its EU parent company when the EU parent company maintains a direct holding of at least 5 per cent or €20 million in the Spanish subsidiary. This holding must be maintained continuously for a year before the date on which the distributed profit is due or, failing that, for the time required to complete this period. In addition, the anti-avoidance rule has been amended and will apply when the majority of the voting rights of the parent company are held directly or indirectly by non-EU residents unless

the EU parent company has been incorporated for valid economic reasons and it can be evidenced that the EU entity has been incorporated and operated for sound economic purposes and substantial business reasons.

IX COMPETITION LAW

The creation of the National Markets and Competition Commission (NMCC) resulted in the combination in a single regulatory body of the functions of the former National Competition Commission (CNC) and the regulators of the energy, telecommunications, media, post, railway and air transport, and gambling sectors.

This institutional change has not led to an increase in the waiting times in merger control proceedings. An advantage of the integrated structure on mergers in regulated sectors subject to the NMCC's review is that the information now flows more easily between the sector-specific directorates and the Competition Directorate. Moreover, requesting reports from other directorates no longer entails a suspension of the time limits and thus delays in merger cases.

In 2014, there was a significant increase in the number of cases filed. The most prolific areas are the manufacturing sector, the financial and insurance sector, the health industry (including medical devices, drugs, etc), the chemical industry and the information society services sector.

In terms of antitrust enforcement policy, in 2014 the NMCC continued to closely monitor companies' compliance with its decisions, through a specialised division within the Competition Directorate to conduct such investigations.

As regards merger control, several proceedings to review compliance with the conditions imposed on mergers have been initiated. Within these proceedings, requests for information to third parties as regards compliance by the companies with the conditions imposed are usually sent. Indeed, these proceedings have resulted in the imposition of significant fines on several companies for breach of the conditions imposed. The NMCC has recently announced the start of new infringement proceedings against one of the companies already sanctioned for continuing to breach the commitments imposed.

These enforcement activities in merger control have also recently resulted in gun-jumping decisions in 2014 in which the NMCC sanctioned Essilor (a company in the optical sector) for closing a transaction without obtaining the mandatory merger control authorisation. In addition, the NMCC has recently opened formal gun-jumping proceedings against Masvovil Ibercom (a telecommunications company). In most cases, the obligation to notify derived from meeting the market share threshold established under Spanish law (30 per cent of the relevant market share in Spain or 50 per cent if the target has a turnover below €10 million).

X OUTLOOK

M&A prospects for the coming months are undoubtedly optimistic. The sustained improvement of the Spanish economy, the continued de-leveraging process, the consolidation of key industries (telecommunications, energy, financial services), and increased access to credit and other financing sources for Spanish corporations and private

equity, reinforce the expectation that the volume and number of M&A transactions will progressively increase in the short and medium term. On the negative side, the unemployment rate continues to mute consumer spending (although domestic demand has inched up), the government continues to struggle with a large deficit, and political instability may delay the upward trend.

Spanish banks will remain the main source of M&A transactions, divesting their non-core assets, such as their stakes held in industrial companies, and the Spanish banks currently controlled by the state will be sold to the private sector.

The growing appetite of foreign investors in the Spanish economy, as well the global improvement of the economy and the high activity of M&A transactions worldwide will continue to push for the high number of transactions involving foreign investors in Spain. European and US investors will continue to be the main players, with increased activity by investors from China, the Middle East and Latin America.

Lastly, foreign private equity funds will continue to focus on Spain (although they consider the market to be over-heating), seek opportunities in the financial, real estate and telecommunications sectors. Other foreign and Spanish funds will be forced or tempted to divest from past investment and rotate their portfolios.

Appendix 1

ABOUT THE AUTHORS

CHRISTIAN HOEDL

Uría Menéndez

Christian Hoedl is a lawyer in the Madrid office of Uría Menéndez. He joined the firm in 1987 and became a partner in 1998. He was resident partner in the firm's Bilbao office between 1999 and 2001.

Christian focuses his practice on mergers and acquisitions and private equity.

He heads the M&A and private equity practice area in 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. Christian has extensive experience in M&A and joint ventures and has also advised on financing, directors' bonuses and refinancing in private equity-owned companies. He is also secretary to the board of several companies.

He is recognised as a leading lawyer by the main international legal directories (*Chambers & Partners, PLC, Who's Who Legal, etc.*).

JAVIER RUIZ-CÁMARA

Uría Menéndez

Javier Ruiz-Cámara has extensive experience in various areas of commercial law (mergers and acquisitions, finance and debt restructuring, commercial contracting, securities markets and bankruptcy). He advises Spanish and foreign clients, mainly industrial companies but also in the financial sector.

His international practice has focused mainly on Europe and Latin America. From September 2004 to March 2005 he was seconded to the London headquarters of Slaughter and May. From 2005 to 2007 he headed Uría Menéndez's office in Santiago. From 2008 to 2012 Javier was based in Uría Menéndez's Madrid office and since January 2013 he has headed up the corporate and commercial practice in the Bilbao office.

URÍA MENÉNDEZ

Uría Menéndez
c/Príncipe de Vergara, 187
Plaza de Rodrigo Uría
28002 Madrid
Spain
Tel: +34 915 860 096
Fax: +34 915 860 777

Torre Iberdrola
Planta 21
Plaza Euskadi, 5
48009 Bilbao
Spain
Tel: +34 944 794 990
Fax: +34 944 790 761

christian.hoedl@uria.com
javier.ruiz-camara@uria.com

www.uria.com