Healthcare M&A 2021

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Getting The Deal Through

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Lexology Getting The Deal Through is delighted to publish the third edition of *Healthcare M&A*, which is available in print and online at www.lexology.com/gtdt.

Lexology Getting The Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique Lexology Getting The Deal Through format, the same key questions are answered by leading practitioners in each of the jurisdictions featured.

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Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

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TRANSACTIONAL ISSUES

Structures

1 What is the typical structure of a healthcare-related business combination in your jurisdiction?

There would be no such thing as a 'typical structure' for a healthcare-related M&A deal, but there is indeed a lot of appetite for potential targets in the healthcare sector (and increasingly so), which has given rise to a variety of combinations. Obviously, the type of deal very much depends on the business opportunity, the size, structure and specific business of the target, the nature of the potential (industrial or financial) investor, and the market context at that moment. Generally, the following types of deals have been relatively frequent in the sector in recent years:

- large international healthcare services groups that enter the Spanish marketplace by taking control, or full ownership of, Spanish private healthcare providers to gradually rebrand and integrate them into their networks, and as a platform for future organic growth, frequently also with a strategic view towards markets in Latin America;
- investments by financial partners, mostly private equity funds, taking control of Spanish private health or social care centres or clinics in niche sectors (such as oncology, vision care, fertility services, clinical labs and dialysis centres, nursing homes and distant care, home care or telemedicine services), where former professional owners and key medical teams are retained as managers and, usually, as minority shareholders;
- combination of resources of local highly specialised medical teams and international investors in strategic alliances for the creation and ongoing operation of flagship centres through joint venture agreements;
- collaboration alliances between start-up and consolidated companies in the sector, as well as between tech companies and health-related businesses; and
- investment (both as a controlling shareholder or by acquiring a minority interest) by professional investors in large-scale consortia that participate in the provision of public healthcare services through public concession agreements, generally by setting up or managing hospitals or operating specific healthcare services in a given area.

Timeline

2 How long do healthcare business combinations usually take, and what factors tend to be most significant in determining the timing to completion?

It is very common, and increasingly so, to structure the transaction as a bidding process, where timelines are naturally more aggressive. However, when the structure of the deal involves negotiations with non-professional or inexperienced sellers, particularly medical teams or investigators, negotiations tend to be complex. The deals may even take several months to complete, especially when those professionals continue to be bound to the business, either as managers with a minority stake or as strategic partners.

The timing for completion of a healthcare transaction may also be heavily influenced by the need to obtain third-party consents:

- The obligation to submit the matter to the merger control processes is the factor that more usually entails a delay in the completion of the transaction. Competition clearance could delay the completion of a transaction by approximately two to six months, depending on whether the simplified or the full procedure applies and whether concentrations are referred to Phase II processes.
- Also, recent amendments to direct foreign investment rules, adopted as a result of the covid-19 crisis, require prior authorisation from the Council of Ministers to carry out certain investments in health-related sectors. In this case, the maximum legal term for the authority to resolve is six months, although there is a temporary fast-track procedure for transactions valued at between one million and five million euros, where the timeline is 30 working days and it is the General Directorate for International Trade and Investment that grants the authorisation.
- Lastly, if any additional authorities' consent is required (eg, where the target has been awarded with public contracts), this would also need to be factored in when defining the transaction plans and timeline. The timing to obtain consent heavily depends on the specifics of the case; around three months could be considered a reasonable average.

Representations and warranties

3 What are the typical representations and warranties made by a seller in healthcare business combinations? What areas would be covered in more detail compared with a more general business combination?

Specific risks that purchasers would typically ask to cover through representations and warranties would be:

- compliance with competition laws (eg, interactions with competitors in the context of public tenders and the potential abuse of a dominant position) and anti-bribery or anti-corruption (ABAC) laws (eg, interactions with healthcare professionals and organisations, and government officials and public payers);
- the existence and validity of the public agreements from which the target derives its business (eg, concessions, public services agreements);
- possession of all permits, authorisations, consents, notices and registrations that are required for the operation of the business, and compliance with the conditions of those permits;
- compliance with unfair trade, advertising and consumer protection laws;

- non-violation of third parties' intellectual and industrial property rights;
- compliance with personal data protection laws;
- compliance with environmental laws (eg, biological residue);
- liability claims (malpractice, product liability) or consumer protection;
- relationships with key HCPs, be they employees or contractors; and
- occupational hazards.

Obviously, these areas would also customarily be thoroughly reviewed in the context of the legal due diligence exercise and, depending on the deal context, some of the representations and warranties might be waived or watered down. Sometimes, indemnities are expressly provided to cover specific risks.

Due diligence

4 | Describe the legal due diligence required in healthcare business combinations. What specialists are typically involved? What searches would typically be carried out?

In addition to categories that are applicable to any industrial (as opposed to financial) target, due diligence of healthcare-related businesses should pay specific attention to the following:

- current licensing or authorisation status, which depends on the specific activities that are carried out (eg, surgery, telemedicine) and, sometimes, on the assets and resources that are used (eg, X-ray devices, extraction of human cells or tissue, transplants, medicine deposits and many other specific activities require standalone permits);
- if the target derives a substantial part of its business from public contracts, the existence and validity of the agreements concerned, the circumstances surrounding the award process, and any related administrative proceedings; particular attention should be paid to the prerogatives that the authority may have reserved for itself in the agreement (eg, to unilaterally amend specific provisions, or to terminate the agreement in advance), and the duration of the agreement and possibility of future renewals, which is subject to strict limitations;
- privacy issues and personal data protection (as health-related data are considered as sensitive, specially protected data). In this regard, the European General Data Protection Regulation (GDPR), which was approved in 2016 and entered into force in May 2018, reshaped the way businesses must approach data privacy. Some companies have not yet fully or correctly adapted to the new data privacy rules, so at present this clearly represents a major area of focus, especially in those areas where the data processing is at the core of the business activity (eg, performance of clinical trials and provision of remote health services). This issue proves particularly important (and challenging) when genetic data are involved;
- appropriate protection of industrial property rights, including patents, trademarks, trade secrets, processes or any other know-how, especially when the pipeline or capacity for development and innovation is the main added value of the target company, and where public entities (eg, universities or public research institutions) and subcontractors have been involved in the process;
- the use of subcontractors, and potential liabilities of the target for the activity of subcontractors (eg, how are subcontractors vetted and monitored; what processes are in place and what documentation is kept). It is also an essential requirement, both under specific healthcare laws and under privacy laws, that the engagement of subcontractors be properly documented;
- insurance coverage; litigation; track record of consumer or patient complaints (even if no litigation is started);
- ABAC compliance, for example, interactions with competitors or interactions with healthcare professionals. For example, has the company approved internal policies or a code of conduct? Is there a pre-approval process for specific interactions? Are employees periodically trained in these matters? Are regular audits conducted? Although it is extremely complex to uncover potential issues in the context of a documentary review, it is convenient to try to assess the internal level of awareness in this regard (and, consequently, of associated risks). We observe that there are sometimes enormous cultural differences between large international groups with consolidated compliance structures and processes, and smaller national companies that have not previously paid much attention to these aspects; and
- employment aspects, particularly, whether healthcare professionals are engaged as self-employed workers (which is quite usual in the sector) and any associated labour and social security risks.

Risk exposure

5 | If due diligence is not correctly undertaken, what specific healthcare risks might buyers inherit?

In the context of a share deal, logically, buyers would inherit all the risks associated with the business that would remain encapsulated at the target's level. The specific risks of healthcare undertakings are typically covered and mitigated by conducting a specific due diligence and including the appropriate representations and warranties. It must be taken into account, however, that a pure documentary review might not provide adequate comfort about specific practices concerning, for instance, the award process of public contracts, interactions with competitors and healthcare professionals, privacy issues, unfair competition issues or other areas where material compliance may not be easily assessed. Also, the transaction itself sometimes triggers latent risks (for instance, complaints by employees who are made redundant or by former shareholders in possession of confidential information). Thus, notwithstanding the outcome of the due diligence, the purchaser should seek contractual protection regarding the target's compliance with its main legal obligations in key areas.

In the context of an asset deal, there are no specific healthcare risks that the buyer would typically assume. However, due diligence is still critical to ascertain how the business is operated and, potentially, to discontinue certain practices following completion (eg, protocols regarding clinic history).

Specific diligence issues

6 | How do buyers typically approach specific material diligence issues in healthcare business combinations?

The approach to specific issues arising in due diligence is very case specific. Malpractice and other liability claims might be dealt with by agreeing on specific indemnities, although those risks would also typically be covered by insurance. Consequently, confirming coverage would be key. Other due diligence findings could be treated as valuation issues. For instance, the costs of bringing the target into compliance with its legal obligations (eg, licensing or GDPR matters) or of implementing risk management plans (eg, ABAC compliance) could be factored in to reduce the purchase price. The potential risks of legal actions arising from a lack of compliance would normally be handled by way of representations and warranties or specific indemnities.

Conditions before completion

7 What types of pre-closing conditions are most common in healthcare business combinations?

The obligation to obtain competition clearance, where applicable, would be the most standard condition precedent to close the transaction.

Also, a pre-closing condition consisting of the positive outcome of the new screening mechanism set up in Spain for foreign investments is becoming increasingly common.

In the context of an asset deal, obviously, obtaining the necessary third party consents (transfer of the relevant agreements, permits, etc) is also typical.

It is very frequent for Spanish privately owned healthcare business to participate, to a certain extent, in the provision of public healthcare services through different contractual mechanisms. When this is the case, and the relevant contractual instruments are subject to change of control provisions, obtaining the consent or waiver from the relevant public body naturally constitutes a mandatory condition to close the transaction. This applies to both share deals and asset deals.

It is also relatively frequent to see pre-closing conditions that refer to the target's obligation to regularise or come up to date with compliance with legal obligations that are considered critical; to name some examples from the recent past, to fully implement GDPR compliance measures or regularise agreements with healthcare professionals implementing remuneration or incentive schemes that are not in line with the purchaser's internal compliance rules.

Pre-closing covenants

8 What sector-specific covenants are usually included to cover the period between agreement and completion in healthcare business combinations?

Unless there is a specific reason to introduce ad hoc restrictions, the parties usually expect that the company should be managed in the ordinary course of business until the closing date, except to the extent necessary to fulfil the pre-closing conditions that may have been agreed.

W&I insurance

9 What specific provisions are commonly seen in warranty and indemnity insurance policies for healthcare business combinations compared with general business combinations?

As a matter of fact, the use of W&I insurance in M&A transactions has been expanding, but is not fully consolidated yet in the Spanish marketplace. In the mid-market, and specifically in the healthcare sector, it is still relatively infrequent. In larger transactions, where its use is more generalised, it is unusual to see sector-specific exclusions or other particular terms that differ from business combinations in other industrial sectors.

Specific documentation

10 Is there any sector-specific documentation typically used in healthcare business combinations? Does this differ depending on the structure of the transaction?

Yes, depending on how the deal is structured, specific deliverables and documentation might be necessary to implement the transfer. Particularly for asset deals, the transfer of administrative permits is subject to authorisation from the authorities. This requires the parties to fill out specific forms, depending on the nature of the permit at hand and the region where the asset is located or operated.

Also, the transfer of public agreements must (in addition to other requirements) be formalised through a public deed granted before a Spanish notary public.

Except as described, there would be no other specific transaction documentation needed.

Post-completion undertakings

11 Which post-completion undertakings are common in healthcare business combinations? Which undertakings are common?

To guarantee the transfer to the buyer of the full value of the business, non-compete undertakings (where the sellers undertake not to carry out any activity, directly or through related persons, which competes with the transferred business) and non-solicitation undertakings (where the sellers undertake not to induce any employee of the target to leave his or her employment) are typical in healthcare business combinations, and generally considered as non-negotiable. By Spanish and EU law standards, the maximum duration of those commitments would be two years as from the closing of the transaction, or three years in specific cases. To facilitate enforcement, the buyer would also normally try to include a penalty clause for a specific monetary amount in the event of breach of these covenants, and simultaneously reserve the right to demand specific performance or compensation for damages.

Depending on the structure of the transaction, arrangements for the provision of interim or transitional services for a specific period post-closing are put in place. Sometimes this is deemed convenient to facilitate the transition itself. Occasionally, if the granting of a specific authorisation or consent is delayed, the parties may agree to close the transaction under a back-to-back structure by which the seller continues to formally operate the relevant asset or perform the relevant agreement for the account of, and on behalf of, the buyer.

REGULATION

Laws and regulations

12 What are some of the primary laws and regulations governing or implicated in healthcare-related business combinations? Are healthcare assets subject to specific regulation that would be material in a typical transaction? Is law and regulation of healthcare national or subnational?

Spain is a highly decentralised country, divided into 17 autonomous regions that hold ample powers both concerning the provision of publicly funded healthcare and the regulation, oversight and inspection of private healthcare. This system has led to the coexistence of nationwide rules, which set the core principles that must be observed and guaranteed throughout the country, together with the different rules approved by the autonomous regions within the scope of their health competences. For instance, as concerns the regulation of healthcare, the regional health authorities are competent to grant the applicable authorisations and permits, to carry out inspections and audits and to impose the relevant sanctions, where appropriate.

At a national level, the primary laws and regulations affecting the provision of healthcare in Spain are as follows:

- the General Health Law 14/1986 of 25 April;
- Law 41/2002 of 14 November, which regulates patient autonomy and rights and obligations regarding clinical information and documentation;
- Law 44/2003 of 21 November, on healthcare professions;
- Royal Decree 1277/2003 of 10 October, establishing the general bases for the authorisation of health centres, services and establishments; and
- Royal Decree 1907/1996 of 2 August, on advertising and commercial promotion of products, activities or services intended for health purposes.

At a regional level, there are a number of regulations developing the minimum requirements to establish and operate healthcare centres (eg, Decree 151/2017 of Cataluña or Decree 51/2006 of Madrid).

Also relevant, in the case of companies that participate in the provision of public healthcare services though outsourcing, services or concession agreements, is Law 9/2017 of 8 November on Public Sector Contracts. This law regulates, among other relevant aspects, the requirements, process, formalities and timeline for the transfer of public procurement agreements on the authorisation of a change in control of the awardees of public contracts.

Finally, Basic Law 3/2018 of 5 December on the protection of personal data and digital rights guarantee, adapts the provisions laid down by the GDPR to domestic law.

Consents, notification and filings

13 What regulatory and third-party consents, notifications and filings are typically required for a healthcare business combination?

It very much depends on the deal structure. Healthcare services are a heavily regulated sector, and each different activity must be authorised and in possession of the relevant permit. For instance, a typical healthcare facility would require a general authorisation as a healthcare institution to be granted by the regional health authorities, a specific authorisation for a pharmacy service or medicines deposit to be granted by the regional pharmacy department, a separate authorisation from the Nuclear Safety Council if X-ray machinery is to be used; authorisations for the disposal of biological waste or, if applicable, radioactive waste, etc. Some healthcare services, such as fertility services, require a specific approval (homologación) on a technique-by-technique basis. This would all be in addition to all other city council, urban planning, environmental permits, etc. In the context of an asset deal, those permits would need to be individually transferred and the specific authorisation of the competent authority is required on a case-by-case basis.

Also, the transfer of public contracts is also subject to the authorisation of the contracting authority, and to the corresponding specific requirements. In particular, at least 20 per cent of the contract's value or duration, as the case may be, must have been already executed, the transferee would be required to evidence its technical capacity and financial solvency to fulfil the terms of the contract, and the transfer must be formalised through a public deed granted before a Spanish notary public.

Finally, share deals are exempt from the need to obtain the consent of the authorities if the target is a company that participates in the provision of public healthcare services through public contracts. Although this is not required by Spanish public procurement law, it is common for public contracts to include change of control provisions. In addition, for large-scale contracts (eg, a public concession to a private entity for the management of a reference hospital) or other strategic or politically sensitive contracts, even if there is no actual change in control, the public concession agreement would typically require the authorities' previous consent to any change in the shareholding structure of the contractor. Thus, even the acquisition of a minority interest would need the authorities' consent.

In 2020, as part of the extraordinary measures to address the social and economic impact of covid-19, the Spanish government amended Law 19/2003 of 4 July, on capital movements and foreign economic transactions and on certain measures to prevent money laundering, to introduce a new screening mechanism for certain investments by non-European Union and non-European Free Trade Association residents, based on public order, public health and public security reasons.

According to this mechanism, under the ordinary procedure, prior authorisation from the Council of Ministers is required to close foreign direct investments subject to it. These are:

- investments that result in a foreign investor reaching a stake of at least 10 per cent of the share capital of a Spanish company; and
- any corporate transaction, business action or legal transaction that gives effective control of a Spanish company (according to the criteria in antitrust regulations).

Not all foreign direct investments are subject to this screening mechanism, as this will depend on:

- the personal circumstances of the foreign investor; and
- the sector in which the target carries out its business, including critical industries (such as those relating to health, to the extent that they have been so classified), the biotechnology sector, the supply of raw materials or critical inputs (eg, active ingredients), sectors with access to sensitive information (eg, health data), or other sectors designated by the Spanish government as having the potential to affect public security, order or health.

Breaches of these provisions include rendering the transaction invalid and without any legal effect (until the required authorisation is obtained) and the imposition of substantial fines (up to the transaction value).

For the time being, until the appropriate legislative developments are implemented, investments of less than one million euros are not subject to this screening-mechanism, and those of between one and five million euros will be handled through a simplified fast-track procedure in which the General Directorate for International Trade and Investment must decide whether to authorise within 30 working days.

Ownership restrictions

14 Are there any restrictions on the types of entities or individuals that can wholly or partly own healthcare businesses in your jurisdiction?

The large-scale entrance of professional investors into the market for Spanish private healthcare services has, on occasion, encountered the resistance of professional corporations, which have claimed that healthcare businesses must be controlled by shareholders who are personally licensed to practise in the medical profession.

This claim is based on the Spanish regulations on professional limited liability companies (SLPs), which establish that companies whose purpose is the joint exercise of a regulated profession (eg, medicine, veterinary) must adopt the form of an SLP. The obligation to adopt this legal form would have significant implications, among others, that the majority of the shares of an SLP must be controlled by shareholders who are personally licensed to practise the company's activity.

The prevailing interpretation and the most recent precedents do not support the conclusion that healthcare businesses must only be conducted through SLPs. Rather, the activity of organising the provision of healthcare is different from the individual or joint exercise of the medical profession. However, case law has not always been consistent and a certain degree of potential disruption or litigation risk cannot be entirely ruled out.

Directors

15 Are there any restrictions on who can be director of healthcare businesses in your jurisdiction?

There are no formal restrictions as to who can be director of a privately owned healthcare business. There are, however, certain boundaries and core principles that must be observed by the managers in any case, to guarantee the legally required quality and performance standards for privately owned healthcare businesses. These principles are set out by Law 44/2003, on the healthcare professions. They require, among other matters, that the management must respect the technical and scientific

autonomy of healthcare professionals and their freedom to prescribe, subject to scientific knowledge and applicable laws, and that healthcare professionals shall have the right to participate in the organisation and management of the institution or the relevant department to which they are ascribed.

Operating outside the home jurisdiction

16 What domestic regulatory issues might arise for a company based in your jurisdiction operating healthcare businesses in other jurisdictions?

In our view, it would be essential for a company that is seeking to do business abroad to engage local counsel as early as possible in the process. The regulatory panorama, but also the business environment and the expectations of the regulators and payers may differ widely from the company's own jurisdiction, even in neighbouring countries with similar cultures and healthcare systems.

Cross-border acquirers

17 What domestic regulatory issues arise when the acquirers of healthcare businesses are based outside the jurisdiction?

The Spanish private healthcare services sector is attracting a lot of attention from foreign operators. The integration of Spanish healthcare providers into larger healthcare groups sometimes faces challenges. Smaller-sized operators need time to adapt, organisationally and culturally, to the requirements of belonging to larger multinational groups. Foreign investors must also learn how business is done and the rules of the Spanish marketplace. Integration issues arise in both directions: on the one hand, targets may be required by the new owners to abandon or reshape specific business practices that are not in line with the purchaser's internal code of conduct; on the other hand, some tactics that are legal in the healthcare sector in other countries (such as the use of patient testimonials for advertising purposes or certain interactions with patients) are not permitted in Spain.

Foreign investors must also take into consideration the direct foreign investment restrictions adopted by the Spanish government, according to which prior authorisation from the Council of Ministers (under the ordinary procedure) or from the General Directorate for International Trade and Investment (under the temporary simplified procedure for transactions of between one million and five million euros) is required to close certain foreign direct investments.

Competition and merger control

18 What specific competition or merger control issues may arise in healthcare business combinations?

In contrast to other jurisdictions, in Spain, merger control thresholds are based on both turnover and market share. Also, merger control thresholds can only be triggered by the target only (ie, even in the absence of a substantive overlap or with no overlap at all when the investor is not present in the Spanish market).

Specifically in the healthcare sector, the markets tend to be regional or even narrower (provincial). To provide an example, according to the Spanish competition authority, the market represented by patients from mutual societies of civil servants makes up a distinct market as compared to the market of free-choice patients (private insurance companies and cash-paying patients). Obviously, the narrower the market definition is, the more likely the market share threshold is to be met.

Although there is no obligation to do so, in the initial stages of a potential transaction it is common practice to initiate contacts with the competition authority or send a pre-notification draft before the formal filing. This is advisable for complex concentrations, but may also be useful in other cases. For instance, in the healthcare sector, the fact that there is not always reliable, accurate, published data available for the calculation of market shares may make it advisable to discuss with the authority regarding the methods and assumptions to be applied, before submitting a formal notification.

State and private healthcare combinations

19 Are there any differences for healthcare business combinations if the transaction relates solely to businesses servicing private clients rather than state-funded clients?

Transactions relating to businesses that serve state-funded clients are indeed different, and more complex, due to the need to obtain administrative authorisation for the transfer of the agreements or of the shares of the target. The acquisition of an interest, even a minority one, in private consortia that manage the provision of healthcare on a large scale can also sometimes be sensitive from a political perspective. This is especially the case if the investor is a new player in the Spanish marketplace.

FINANCING AND VALUATION

Financing

20 How do buyers typically finance healthcare-related business combinations?

Trends in financing have varied over time. It is worth noting that, in the recent past, M&A transactions in the healthcare sector have basically been fully paid in cash and funded through the investor's own funds. This applies equally when the purchaser is a professional investor and when it is an industrial operator. But this is not exclusive to the healthcare sector; in other industrial sectors we are seeing the same trend.

Security

21 Describe the typical security structures in healthcare business combinations, including confirmation of any registration or notary fees in respect of the security documents.

There is no general rule or set precedent. The decision would be case specific. Registration or notary fees, if applicable, would not generally be a decisive factor.

Financial assistance

22 Are there any financial assistance rules that arise in healthcare business combinations?

There are no rules on financial assistance that specifically apply to healthcare-related businesses.

Price and consideration

23 What pricing and consideration structures are typical in healthcare business combinations?

As in other industrial sectors, it is not infrequent, in healthcare business combinations, to include price adjustment mechanisms in the event that specific business and valuation assumptions do not actually materialise, or to cover specific contingencies. These mechanisms may be alternative to, or complemented by, specific indemnities. The matter is extremely case-specific. To provide some examples from our experience, we have seen earn outs or price adjustments associated with:

- the renewal (or lack of renewal) of public services or concession agreements;
- the outcome of unilateral contractual review proceeding launched by the authorities;
- competitors not entering a given area; and
- the amount of revenue generated from patient referrals from a given source.

Enterprise value

24 | How are healthcare-related businesses typically valued?

This very much depends on the deal, the purchaser's objectives, and the type of target (eg, the stage of development of the company). Generally speaking, in the healthcare sector we are seeing that valuation is usually based on a combination of the following methods: discounted cash flows, multiples and, where available, market quotation, with multiples being the predominant factor.

TAX

Typical issues in combinations

25 | What are some of the typical tax issues in healthcare business combinations and to what extent do these typically drive structuring considerations? Are there certain considerations that stem from the tax status of a target?

The main tax issues in healthcare business combinations stem from the importance that intangible assets have in the sector. This may lead to transfer pricing considerations, especially in the context of asset deals.

Tax risks for healthcare businesses

26 | What are the typical tax risks that are associated with healthcare businesses? What measures are normally taken to mitigate those typical tax risks in healthcare business combinations?

The typical tax risks are those concerned with the past application of R&D tax incentives and the valuation of intangibles assets. Measures to mitigate those risks in healthcare business combinations do not differ, in general terms, from those generally adopted in M&A transactions.

PUBLIC RELATIONS AND GOVERNMENT POLICY

Public relations

27 | How do the parties address the wider public relations issues in healthcare business combinations?

Those issues do indeed exist in the Spanish marketplace. Investors must ensure they provide comfort regarding the fact that private parties would intervene, for profit, in the healthcare market, with the message that this will not affect the quality of service provided in any way. Specifically, they should signal and evidence that they are ready to make the large-scale investment required to maintain a high level of performance, comparable to the public healthcare sector. Large investors in the Spanish healthcare market usually consider public statements very carefully, for instance, when it comes to announcing a new acquisition.

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Policy

28 | How do parties address the wider political issues in healthcare business combinations?

It is difficult to give precise advice or suggestions on how to handle these matters. What is clear is that it is essential to maintain an open, fluent, and transparent relationship with the authorities, who usually simultaneously act as regulators, payers and supervisors.

UPDATE AND TRENDS

Recent developments

29 | What are the current trends, and what developments are expected in healthcare business combinations in your jurisdiction in the coming year?

The rate of healthcare transactions has increased non-stop in recent years, and the recent covid-19 crisis fostered this even more.

There is consensus that there is still a lot of potential for growth and consolidation in the Spanish healthcare landscape. In particular, we see a special interest both from financial and industrial domestic players and foreign investors, in some sectors that became particularly relevant precisely as a consequence of the covid-19 situation, such as the provision of digital health services, including telemedicine and remote healthcare services, or the development of software medical devices.

Also, as the market matures, transactions are becoming more sophisticated. For instance, the specific legal risks of this particular business sector will carry more weight in due diligence and the compliance status of the target will be a factor that may strongly influence the risk assessment and valuation in the transaction.

Coronavirus

30 What emergency legislation, relief programmes and other initiatives specific to your practice area has your state implemented to address the pandemic? Have any existing government programmes, laws or regulations been amended to address these concerns? What best practices are advisable for clients?

Spain reacted to the public health crisis caused by SARS-COV-2 by passing several regulations adopting extraordinary measures to address the health, social and economic impact of covid-19, including declaring a state of emergency.

Most of the urgent measures implemented in the pharmaceutical and healthcare sector were only valid during the state of emergency; others will be in force until the Spanish government declares the end of the health crisis and, with the appropriate legislative measures, might be extended from that moment on (such as home dispensing).

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