SPANISH M&A

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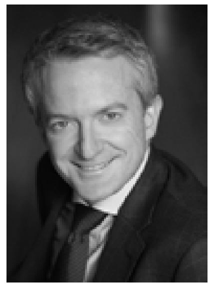

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There is no doubt that the current crisis is affecting all European economies, including the Spanish. Nevertheless, Spain has a solid industrial base that has significant investment opportunities in both the venture capital segment with innovative companies and Private Equity with the more established business and growth potential.

The European Commission is calling for tighter regulation of private equity funds and more transparency

Dominique Barthel, General Director of the Spanish Private Equity & Venture Capital Association, said since the Private Equity settled down in Spain in the 80s, several businesses have benefited from this sector in so many aspects such as financial support, advice for the management team and help to internationalize the product or service.

He added: “In this economic scene with lack of bank credit, the companies must look for other financial sources and private equity is a good option. Proof of this is the number of deals closed in 2009: 865 deals. It barely changed respect to 2008, with a record of 92 transactions. There were many transactions, but less amount of capital invested.”

The Spanish Private Equity & Venture Capital Association was founded in 1986 as a non-profit association. Its purpose is to represent, manage and defend the professional interests of its members, as well as promote and encourage the creation of entities whose objective is the taking of temporary stakes in the capital of non-financial enterprises that are not quoted on a stock market.

Dominique Barthel said 2008 and 2009 were years with an important decrease in investments and fundraising because of the lack of bank credit: “Nevertheless, 2010 is estimated to be the year of the recovery, as it is happening in the rest of Europe.”

Accuracy is a financial advisory firm for corporations and private equity funds. Its portfolio of services encompass due diligence, valuation, forensic, litigation support, recovery services and economic analyses. 150 professionals are spread around most of continental Europe and we serve our clients worldwide. The firm’s work generally complements that of the M&A advisor.

Managing Partner Eduard Saura said PE funds in Spain, still eager to invest, are confronted with three obstacles: high price expectations from sellers, lack of financing and lack of financially sound Targets. All in all, regardless of the debt issue, the real downturn is that potential Sellers (including PE for secondary buyouts) are trying to hold their positions and wait for better times to enter into a sale process.

He said: “The result is a much longer and complex process in a market reduced to small and mid-cap operations. Indeed, most of the few recent large transactions n Spain relate to relatively low risk and low return sectors such as infrastructure, concessions or renewable energy.”

DLA Piper is a global legal services organisation which is focused on serving the needs of businesses worldwide. Its corporate group is comprised of over 950 lawyers worldwide and has a significant presence in every DLA Piper office. Mergers and acquisitions (M&A) form the mainstay of the work it does.

In the second half of 2009, DLA Piper advised in 5 out of 6 middle market PE transactions. José Antonio Sánchez Dafos and María Segimón, partners at DLA Piper commented: “Lenders take much longer to approve transactions and debt multiples are very low. Also, some PE houses are pursuing pure equity deals in the hope that when lending activity picks up they will be able to do a recap.”

José Antonio Escalona, Partner at Alemany, Escalona & Escalante echoed the foregoing comments and said following the economic downturn the level of PE/VC investment activity in Spain has been dramatically reduced: “Only investors that were lucky to have concluded their funds raising before the economic crisis started are in a position to invest.”

He added: “However, even such investors are facing serious difficulties to make acquisitions due to the lack of bank financing and the general environment of pessimism and reduction of economic activity.”

“Due to the same reasons, sale transactions are also affected. Therefore, investors are looking for a timely and profitable exit with the relevant negative consequences. These days, PE/VC investors are rather focused on managing and restructuring their existing investments than in making new ones.”

Managing Partner at Accuracy, Eduard Saura, said the debt markets have relaxed but controls and requirements from banks are stricter than in the past. PE firms are negotiating financing

PE firms are negotiating financing much earlier in the process as obtaining debt can be a serious obstacle to complete the transaction.

much earlier in the process as obtaining debt can be a serious obstacle to complete the transaction. A quick desktop review performed by senior Accuracy professionals allows banks to better understand the Target's risks and has proved to facilitate leveraging the Transaction.

Partners at DLA Piper, José Antonio Sánchez Dafos and María Segimón, said the fact that obtaining banking debt is still difficult and very onerous for companies has increased the activity in the Spanish public debt market and many issuers have issued all type of debt instruments via private placements or through public offerings that have been successful. We have advised our clients in these type of transactions as well as in offerings of equity, specially in the recently created alternative Spanish Market ("Mercado Alternativo Bursátil" or "MAB")

They added: "Additionally, an alternative financing opportunity which is strongly being considered by our clients since the implementation of this market in Spain in December 2008, is the listing in the MAB through an IPO process. DLA Piper in the UK is one of the reference law firms for the AIM which has been taken by the Spanish Authorities as a reference when setting up the MAB so DLA Piper Spain in a unique position to advise our clients in such new opportunities of financing."

Post deal services can include restructuring businesses after an acquisition or merger (ie selling off assets) in order to maintain an efficient operation. Accuracy's most demanded post deal integration services are the Purchase Price Allocation (which has a direct cash impact in taxes) and the carve-out of non core assets or activities to prepare and simulate the impact of their spin off. It recommends contemplating these effects ahead of the deal completion as it can give a competitive edge to the Buyer.

DLA Piper have advised in all types of restructuring processes both post M&A completions as well as part of preparatory processes of subsequent M&A deals. In particular it has advised in selling-off of assets, tax re-organizations, and employment force re-organizations.

Alemany, Escalona & Escalante work with clients trying to identify opportunities and structures requiring less (or at least different) debt needs. It has advised a client in a securitization project (acting for the borrower). Additionally, it has participated in sale of assets and/or subsidiaries, spin-off transactions and contribution in kind of shares and assets to joint ventures.

The Alternative Investment Fund Management directive is still being debated by the EU Commission. Spain holds presidency of the EU Parliament and they are expected to carry on along a similar to Sweden, mitigating the most controversial parts. There is an argument that investments from such funds create jobs and add to economic prosperity. The European Commission is calling for tighter regulation of private equity funds and more transparency.

According to Eduard Saura at Accuracy, studies made in Spain (e.g. The 2008 Economic and Social impact report published by Ascri and sponsored by Accuracy) show that companies belonging to PE firms create more jobs, generate higher growth and pay more taxes than other companies. Tighter regulation of this sector does not seem justified as the activity of PE funds in general is generating added value to society.

José Antonio Escalona, from Alemany, Escalona & Escalante believes that a reasonable increase of informative obligations may benefit the sector. However, Alemany, Escalona & Escalante is against a tighter regulation of private equity funds on investments or imposing additional regulatory restrictions. They think they might negatively affect their activity and, thus, the economic prosperity derived from their investments-which is specially needed these days.

Alemany, Escalona & Escalante is an independent firm formed by twenty attorneys, based in Madrid but focused both on national and international business. Since its foundation in 1993, the Firm has grown and has extended its areas of practice to offer advice in Business Law, having created four specialised departments to such effect.

Likewise, DLA Piper partners José Antonio Sánchez Dafos and María Segimón said the only issue where there might be a need for more transparency is in relation to carried-interest investments.

They added: "However, at least in Spain, most of the economic terms involving fund managers are usually disclosed to the regulator, and as a result they become publicly accessible. Also, Spanish PE law provides for a two-tier PE funds systems, where funds where investors are professional or institutional are subject to less restrictive and burdensome requirements than funds which may be addressed to retail."