International Comparative Legal Guides

Mergers & Acquisitions 2021

A practical cross-border insight into mergers and acquisitions

15th Edition

Featuring contributions from:

Aabø-Evensen & Co Advokatfirma
Advokatsko druzhestvo Stoyanov & Tsekova in cooperation with Schoenherr
APM & Co.
ASP Advogados
Atanaskovic Hartnell
Bär & Karrer Ltd
BBA//Fjeldco
Bech-Bruun
Blake, Cassels & Graydon LLP
Bowman Gilfillan Inc.
Cektir Law Firm
de Bedin & Lee LLP
DealHQ Partners
DF Advocates
Dittmar & Indrenius
E&G Economides LLC
GDA Advogados
GSK Stockmann
Hogan Lovells
Houthoff
Lee and Li, Attorneys-At-Law
LEGIS and Partners Ltd
Lexel Juridique & Fiscal
Maples Group
MJM Limited
Moravčević Vojnović and Partners in cooperation with Schoenherr
Nishimura & Asahi
NUNZIANTE MAGRONE
Oppenheim Law Firm
Philip Lee
Roca Junyent SLP
Rokas
Schoenherr
Shardul Amarchand Mangaldas & Co
Skadden, Arps, Slate, Meagher & Flom LLP
URBAN STEINECKER GAŠPEREC BOŠANSKÝ
Vieira de Almeida
Wachtell, Lipton, Rosen & Katz
Walalangi & Partners (in association with Nishimura & Asahi)
Walkers
WBW Weremczuk Bobeł & Partners Attorneys at Law
Wolf Theiss

ICLG.com

Expert Chapters

Q&A Chapters

Spain

Natalia Martí Picó

Xavier Costa

Roca Junyent SLP

1 Relevant Authorities and Legislation

1.1 What regulates M&A?

M&A transactions affecting listed companies are mainly regulated, among others, by the Royal Legislative Decree 4/2015, of 23 October, which enacts the consolidated text of Securities Market Act ("**LMV**") and the Royal Decree 1066/2007, of 27 July ("**RD 1066/2007**") on takeover bids.

Private M&A affecting non-listed companies are mainly regulated, among others, by the Royal Legislative Decree 1/2010, of 2 July 2010, which enacts the consolidated text of the Capital Companies Act ("**LSC**") and the Law 3/2009, of 3 April 2009, on structural modifications of capital companies ("**LME**").

Furthermore, there is an array of laws and regulations that may have an indirect impact on a public or private M&A transaction, such as Law 15/2007, of 3 July 2007, on competition law.

In Spain, as in other EU Member States, all the applicable public and private M&A legislation is a result of the implementation of several EU Directives and Regulations, since the EU goal is to create a single market and harmonise all the regulatory packages applicable to different EU States markets.

1.2 Are there different rules for different types of company?

The rules for M&A generally differ for public listed companies and for private limited liability companies or non-listed companies.

As regards private M&A, the legislation is more flexible than for public M&A. If a company is interested in acquiring shares and obtaining the control of a listed company, it will likely have to launch a takeover bid and comply with all the requirements set forth in the Spanish law, especially obtaining the Spanish National Securities Market Commission's ("**CNMV**") authorisation, while in private M&A, prior authorisation from CNMV is not requested and the conditions are less strict.

Moreover, in private M&A there are several differences between limited liability companies ("**SL**") and public limited companies ("**SA**"). In this regard, the Spanish law provides more demanding requirements for SA than for SL, which it makes it necessary to conduct a detailed review of the specific circumstances of each case.

Finally, with regard to public M&A, the jurisdiction where the registered office of the target company is located and the markets where the shares are listed will determine the applicable law. It is also necessary to clearly clarify this legal aspect before launching any acquisition process.

1.3 Are there special rules for foreign buyers?

Yes. There is a special regime that affects investments where the investor or the ultimate beneficial owner is from outside the EU or the European Free Trade Association. This regime, although within the frame of the Regulation (EU 2019/452) for the control of foreign direct investment in the European Union, has been imposed in advance due to the extraordinary measures adopted because of COVID-19 and these, together with others, may be applied in the event that the investor or ultimate beneficial owner is from outside the EU or the European Free Trade Association.

1.4 Are there any special sector-related rules?

In addition to the general requirements, there are a number of sector-related rules, which may have an impact on public M&A, as they may compel the bidder to obtain a prior authorisation (or clearance) from the sector-related competent authorities.

In particular, sector-specific rules that are likely to have an impact on the acquisition are typically related to the traditional regulated markets such as banking, energy, telecommunications and insurance. In such cases, an authorisation (or a "no opposition", depending on the case) will be obtained from the competent authority.

Even if private M&A are not commonly subject to special sector-related rules, a prior legal review of the circumstances of each case is also highly recommended.

1.5 What are the principal sources of liability?

In private M&A, the most common sources of liability are the breach of the agreements entered into by the parties (for instance, the infringement of a share sale and purchase agreement) and the breach of the applicable law. In particular, and among others, the directors of the parties involved can be responsible for their actions and/or omissions that cause damage to shareholders, third parties or the company itself, with an obligation to pay compensation for the damage caused and, in more serious cases, criminal liability, being the main consequence.

In public M&A, any breach of the applicable provisions on takeover bids by the bidder may lead to the imposition of a sanction that will depend on the magnitude of the infringement. In this regard, infringements are classified under three different categories, namely: (i) "**very serious infringements**", which include, for instance, non-compliance with the obligations to obtain required authorisations; (ii) "**serious infringements**", such as the failure to respond to demands made by the CNMV, or the unjustified refusal or repeated unjustified delays in the transmission and execution of subscription orders; and (iii) "**minor infringements**", which include violations that do not constitute serious or very serious infringements.

2 Mechanics of Acquisition

2.1 What alternative means of acquisition are there?

Acquisitions in the case of private companies or non-listed companies broadly occur by way of a purchase of shares via a share purchase agreement or by an asset acquisition. There are also two main manners in which a merger may take place; these are merger by acquisition and merger by the formation of a new company.

With regard to listed companies, any acquisition requires the acquirer to launch a takeover bid if the acquirer has (mandatory bid) or intends to (voluntary bid) acquire control over the target company in accordance with Spanish law. Control may be acquired through a purchase of the shares of the target company, but also by means of a shareholder agreement or even through a merger, which causes the affected individual or company to hold control over the company.

Nonetheless, it is important to note that the RD 1066/2007 provides certain exceptions to the obligation to launch a takeover bid (which, in some circumstances, will require the bidder to request the CNMV for a waiver with respect to its obligation to launch the bid).

2.2 What advisers do the parties need?

In private M&A, the advisers usually required are corporate legal advisers, who will prepare all related legal documentation and, if applicable, submissions, as well as (when applicable) draft and deal with all the other regulatory authorisations, and tax and labour legal advisers, who will provide, together with the corporate experts, the necessary legal assistance in the process.

In public M&A, it is also necessary to get a bank that will provide for the security that will guarantee the price offered by the bidder, i.e: a financial institution that will act as an agent for the bidder and carry on the settlement of the offer; and an independent financial expert (in cases where a valuation report of the price offered is compulsory).

2.3 How long does it take?

As a general rule, private M&A transactions by way of a transfer of shares by private agreement take less time to conclude than public M&A takeovers, since they are completely based on private negotiation between the parties involved. However, it is important to note that, in some private transactions (e.g. mergers), there are certain timeframes that must be respected in relation to obtaining certain reports, the publication of the shareholders' resolutions in the Spanish Gazette, the period in which any creditor of each of the companies may come forward and oppose the merger, and the registration period with the Spanish Registrar.

On the other hand, public M&A transactions can be affected by many different circumstances including, among others: the request and approval of a bid by the CNMV; and the duration of the period of acceptance of the offer made by the bidder.

Moreover, other circumstances can have a negative impact on the duration of the process such as hostile takeovers, the obligation of obtaining a clearance from an anti-trust or any sector-related authority, etc.

In any event, taking into account all of the above considerations, the duration of the takeover process could elapse from as little as three-and-a-half months, to as much as one year in some exceptional cases (from the preparatory works until the final settlement of the bid).

2.4 What are the main hurdles?

In private M&A transactions, it is important to meet with all the requirements and deadlines set in the Spanish Law, which are, among others, the issuance of a report by the body management of the companies affected by the transaction, the issuance of a report by an independent expert, the audit of a balance sheet of the company, the non-opposition by creditors to the transaction, the granting of the relevant public deeds, etc. It is also important to point out that many of these requirements can be waived in some cases, which makes it highly recommended to review each case with a legal expert on this matter.

With regard to public M&A, the principal milestones during a takeover bid are the approval of the bid by the CNMV and the obtaining of the rest of applicable acceptances, such as the shareholders affected by the bid acceptance and those sector-related authorities or the anti-trust authority's green light.

2.5 How much flexibility is there over deal terms and price?

In private M&A, even if there is much flexibility in terms of the price and conditions of the transaction, there are some tax implications that will always be taken into account at the time of preparing and executing the transaction.

In public M&A, voluntary bids provide the bidder with greater flexibility in terms of the price and conditions of the offer in comparison to mandatory bids.

In this regard, voluntary bids make it possible for the bidder to select the consideration that he/she wishes to offer (in cash, securities or a combination of both), while mandatory bids require an equitable price to be offered (as defined by Article 9 of the RD 1066/2007 and the Takeover Bids EU Directive).

2.6 What differences are there between offering cash and other consideration?

When dealing with non-listed companies, the decision of offering cash or other consideration can have tax implications that must be reviewed together with the special circumstances of each case.

Moreover, especially in public takeovers, the main difference between offering cash and other consideration are the guarantees that must be provided and the information that must be submitted within the prospectus to the CNMV.

2.7 Do the same terms have to be offered to all shareholders?

Yes. For non-listed companies acquisitions, the Takeover Bids EU Directive, as well as the LMV and the RD 1066/2007, forbids the bidder to offer different terms to the different shareholders of the target company in accordance with the principle of equal treatment.

2.8 Are there obligations to purchase other classes of target securities?

In the case of a mandatory bid (or in a voluntary bid when the bidder is likely to acquire control of the target company), the bid will target all shares of the target company. Furthermore, if any, the bidder will also target: (i) non-voting shares; (ii) any rights to the subscription of shares in the target company; and (iii) bonds convertible into shares of the target company.

The bidder may (but is not obliged to) incorporate into the target any other existing type of security of the target company.

2.9 Are there any limits on agreeing terms with employees?

In respect of both non-listed and listed companies, Spanish law does not establish any limit or restriction preventing the bidder from agreeing a deal-related package of benefits or future employment to the employees of the target company.

In any event, in public M&A, the bidder will be required to disclose its intentions with regard to the working conditions and terms of the employees in Chapter IV of the prospectus.

2.10 What role do employees, pension trustees and other stakeholders play?

In both public and private M&A, there is an obligation to inform the employees about the transaction and its impact on the companies affected. In particular, the employees of the company are entitled to be duly informed of the offer by the bidder and by the target company at the time the announcement is made and, once the bid has been approved, they will receive a copy of the prospectus as soon as it is issued.

2.11 What documentation is needed?

Public takeovers request more documentation than private M&A, which, among others, and if applicable, request the production of the approval of the relevant companies' resolutions, reports, balance sheets, private contracts and public deeds.

With regard to public M&A, apart from the request for the authorisation of the bid and the compulsory announcements provided by the RD 1066/2007, the bidder will issue a prospectus, where it will disclose information to the target shareholders with regard to, among others: the bidder and the target company, including the group structure of the bidder; a list of the securities of the target company held by the bidder or its group; accounting and financial information of the bidder and its group; and the guarantees granted by the bidder.

Moreover, the bidder will typically also be requested to produce, among others, certificates of the decisions taken by the directors of the bidder to launch the offer, guarantees of the offer made (normally, if the consideration is cash, a bank guarantee should be obtained), valuation reports, etc.

2.12 Are there any special disclosure requirements?

There are no other special disclosure requirements other than those indicated in question 2.11 above. Chapter IV of the prospectus, nonetheless, requests the bidder to disclose its future plans with regard to the target company. The information disclosed in this chapter is likely to affect and/or compromise the future actions of the bidder with regard to the targeted company.

2.13 What are the key costs?

Typically, public M&A generate more costs than private transaction, the main costs of which are the legal fees, notarial and registrar costs. As regards public takeovers, the key cost of the deal is the consideration offered. Furthermore, and to a minor extent, the bidder will face the costs of the bank guarantee issued, the adviser costs (including independent financial experts, investment banks and legal advisers), the administrative fees to be paid to the CNMV, the costs of publication of the compulsory announcements (as well as of any other voluntary advertisement of the bid), and the costs caused by the issuance of the copies of the prospectus.

2.14 What consents are needed?

In public M&A, the following consents are necessary in order to execute the acquisition:

(i) a resolution from the directors of the bidder deciding to launch the bid;
(ii) the approval to request a bid granted by the CNMV;
(iii) the clearance of the acquisition by the anti-trust or any other sector-related competent regulatory authority; and
(iv) the approval of the bid by the CNMV.

2.15 What levels of approval or acceptance are needed?

In private M&A, the transaction is mainly subject to the valid approval of the relevant resolutions issued by the shareholder meeting of the companies accepted and the non-opposition to the transaction.

In public takeovers, the effectiveness of a mandatory bid is not subject to a minimum level of acceptance, while voluntary bids can be subject to obtaining a minimum level of acceptance. In this case, if the established threshold is not reached, the bidder can give up on the condition established and acquire the shares that accepted the offer, or renounce the bid.

2.16 When does cash consideration need to be committed and available?

The cash consideration of the bid needs to be committed when the request for the authorisation bid is filed before the CNMV.

Moreover, bidders are requested to obtain a bank guarantee covering the consideration offered, which can be handed into the CNMV within seven working days of the submission of the request for the authorisation of the bid.

The consideration should be available at the time of the settlement of the bid, which, in Spain, usually takes place three working days after the completion of the offer.

3 Friendly or Hostile

3.1 Is there a choice?

There is no legal provision distinguishing between friendly and hostile takeovers. Accordingly, from a legal point of view, it is possible to launch an offer with the opposition of the directors of the target company and/or one or many of its relevant shareholders.

3.2 Are there rules about an approach to the target?

There are no specific rules regulating the approach to the target company. Any agreement between the bidder and the directors of the target company and/or its shareholders with regard to the bid will immediately be disclosed. Its main terms and conditions will be summarised in the prospectus and, in many cases, the CNMV will require a copy of the agreement to be incorporated into the prospectus as an annex to it.

3.3 How relevant is the target board?

In practice, and in spite of the passivity duty imposed on the directors of the target board by the RD 1066/2007, the role of the directors of the target company with regard to the bid will have a key impact on the success or failure of a bid. The directors of the target company will issue a report on the offer, which is likely to have a significant impact on the perception of the offer by the shareholders.

In cases where the directors of the target company oppose the offer launched by the bidder, they may seek a competitive offer and/or seek the approval of the general shareholder meeting of the company in order to engage in business decisions that are likely to frustrate the interest of the bidder.

3.4 Does the choice affect process?

From a legal point of view, the process is identical. In practice, however, and as stated in question 2.3 above, hostile bids will most likely take longer than friendly bids, as the target company may adopt defensive measures, and it is likely that the directors and/or the shareholders of the target company opposing the bid will hamper the process as much as possible by, e.g., requesting clarifications from the CNMV on the information provided by the bidder, requesting the competent authorities to check whether additional regulatory clearances of the acquisition are needed, seeking injunctive relief against the bid from a competent court and/or seeking for a competitive bidder to launch an offer.

4 Information

4.1 What information is available to a buyer?

If the target company does not provide further information to the bidder or buyer (and it is not bound to), the bidder or buyer will only have access to the public information that the target company is compelled to disclose by law. In this regard, listed companies are required to disclose more information than non-listed companies. The bidder of a takeover may obtain a remarkable amount of information about the target company from its website, as well as from the CNMV site; namely, among others, the financial statements of the company, the company's by-laws, general shareholders' and board of directors' internal regulations, significant shareholdings, etc.

Furthermore, other pieces of legislation oblige listed and non-listed companies to lodge their corporate information in the Commercial Registry, whereas information about other assets owned by the target company can be found in the Land Registry, the Spanish Patents and the Trade Marks Office.

4.2 Is negotiation confidential and is access restricted?

In private M&A, the access is more restricted than in public takeovers since the information can be kept from the public until its registration with the Commercial Registrar. However, although it is possible to conduct confidential negotiations with the target company in a takeover, in order to prevent disruptions to the market and the use of privileged information, the target company and the bidder are both required to disclose their negotiations as soon as they sense any risk of leakage of the negotiations, or any other related circumstances that may potentially lead to an alteration of the market. In such cases, a notice known as "*Hecho Relevante*" will be published by the target company (as well as by the bidder, particularly when the bidder is a listed company), indicating that both parties are engaged in negotiations that may lead to the launching of a takeover bid by the bidder.

As soon as the parties reach an agreement to launch the bid, the bidder will be compelled to make public its intention with the publication of the announcement as regulated in Article 16 of the RD 1066/2007.

4.3 When is an announcement required and what will become public?

As a general rule, in private acquisitions by the transfer of shares (shares sale and purchase), the information will remain confidential since the shares' sale and purchase public deed does not have to be registered with the Commercial Registrar. However, any merger will be public once registered in the Commercial Registrar, as it must be registered, unlike in a sale and purchase of shares transaction.

In public M&A, as soon as the bidder makes a decision to launch the bid or reaches an agreement with the target company, its directors or its shareholders, the bidder is obliged to make public its decision.

4.4 What if the information is wrong or changes?

As a general rule, any information disclosed by a public company (in relation to a bid or not) will be amended by the listed or non-listed company as soon as it notices that it contains erroneous or misleading information. If it is considered that the erroneous or misleading information made public by the company caused (or was likely to cause) an alteration on the normal operations of the market, the CNMV may impose a fine on the company (as is also the case for listed companies mentioned above). Furthermore, any third party, including a bidder, may wish to seek compensation for the damages suffered as a consequence of misleading or erroneous information.

5 Stakebuilding

5.1 Can shares be bought outside the offer process?

In public M&A, although it is possible for the bidder to acquire shares of the target company outside the bidding process, some considerations will be drawn:

(i) If the price paid for the shares acquired outside the bidding process is higher than the consideration offered, the price of the offer will automatically be increased to equal the price paid outside the offer process, in accordance with the principle of equal treatment.

(ii) If the consideration is offered exclusively in securities, an alternative cash consideration for an amount at least equal to the highest price paid by the bidder outside the bidding process will be offered to all shareholders.

Conversely, in order to prevent any alteration to the normal functioning of the bid, the bidder cannot sell shares of the target company in the course of the bid.

5.2 Can derivatives be bought outside the offer process?

Similarly, this occurs with the purchase of shares carried outside the offer process, which has been addressed in the previous question; the bidder is entitled to buy (but not to sell) derivatives convertible into (or that give right to acquire) shares of the target company outside the bidding process.

5.3 What are the disclosure triggers for shares and derivatives stakebuilding before the offer and during the offer period?

During the offer period, any acquisition of shares or derivatives representing (or that may represent, in the case of the derivatives) one per cent (or more) of share capital of the target company will be disclosed to the CNMV and to the public. Equally, any change in a shareholding position higher or lower than three per cent will be disclosed to the CNMV and to the public.

Before the offer, the purchase or sale of shares and/or derivatives convertible into (or that give right to acquire) shares of a public company will be publicly disclosed when the stake of a shareholder reaches (or is being reduced to) three per cent, five per cent and the successive multiples of five per cent up to 50, 60, 70, 80 and 90 per cent of the company's share capital.

5.4 What are the limitations and consequences?

The bidder can buy (but not sell) shares and derivatives of the target company during the acquisition process, outside of the offer with the considerations indicated in the previous three questions, particularly with regard to the impact that the purchase carried outside the bidding process may trigger (potentially leading to the increase of the price being offered by the bidder as a consideration).

6 Deal Protection

6.1 Are break fees available?

The bidder can obtain break fees or inducement fees commitments from the shareholder(s) of the target shareholders, as well as a break fee from the target company, exclusively as compensation for the costs incurred by the first bidder during the preparation of the bid, if a competitive bid is finally accepted (subject to certain conditions).

6.2 Can the target agree not to shop the company or its assets?

A target company, its directors and/or its shareholders are free to agree with the bidder not to seek alternative offer proposals in competition with the bidder's proposal. Similarly, a target company is entitled to agree with a bidder not to sell the assets of the company in order to frustrate the bid. These types of agreements, nonetheless, are to be disclosed in the form indicated in question 4.2 above.

In any event, should a competing bid be launched by a third party, the directors of the target company will be banned from taking any decision that could disrupt the competition between both bids.

6.3 Can the target agree to issue shares or sell assets?

The directors of a target company are banned from making any decision that is likely to interfere with the normal development of a bid and/or with the normal and fair competitiveness of two or more competing offers. Accordingly, the directors of the target company will not be able to issue shares, dispose of crown jewel assets, or engage in any other transaction to support a preferred bidder and to frustrate intervention by a competitor, unless they have been previously and expressly authorised by the majority of shareholders in a general shareholder meeting.

6.4 What commitments are available to tie up a deal?

Although the passivity duty imposed on the directors of the target company prevents them from adopting any decision that could disrupt the competition between two or more bids, nothing prevents them from supporting the preferred bid by recommending its acceptance to the shareholders in the report that they are compelled to issue once the bid has been authorised by the CNMV. As seen in the previous question, any other support measures intending to favour the preferred bidder and/or frustrate the other bids require the previous authorisation of the general shareholder meeting of the target company and, in some cases (such as for the publication of advertisements, etc.) of the CNMV.

7 Bidder Protection

7.1 What deal conditions are permitted and is their invocation restricted?

As stated in question 2.1, whereas mandatory bids can only be subject to clearance from the competent anti-trust authorities, voluntary bids can be subject to an array of conditions. Among the most common ones are: obtaining a minimum acceptance level; and the company's boards getting rid of vetoes and/or restrictions and limitations on voting rights, etc.

Although the bidder on a voluntary bid is free to subject its offer to any type of condition, the condition must be approved by the CNMV. In this regard, it is unlikely that the CNMV will authorise a bidder to subject a bid to a condition whose satisfaction cannot be easily determined. On the other hand, if a condition freely established by a bidder is not met, the bidder may opt for giving up on such a condition and proceed with the settlement of the offer or the withdrawal of the bid. Usually, the bidders are requested to express, in Chapter IV of the prospectus, their intentions with regard to an eventual withdrawal of a condition in case such a situation arises.

7.2 What control does the bidder have over the target during the process?

The bidder is vulnerable to any changes of circumstances in the target during the process of the bid, as it has almost no control over the target during the process.

In this regard, in the case of a voluntary bid, the possibility of subjecting the bid to a condition (e.g. the company not adopting a particular measure or not being affected by a particular circumstance, etc.) is the only remedy or protection available to the bidder.

7.3 When does control pass to the bidder?

The bidder will acquire the day-to-day control of the target once the bid has been finally settled and the directors nominated by the bidder have been appointed.

7.4 How can the bidder get 100% control?

A bidder that has acquired control over a target company can force the other shareholders to sell their shares at the price offered during the bid by means of the squeeze-out procedure already described in question 2.15 above, provided that the bid launched over the totality of shares of the target company (i) has been accepted by 90 per cent of the voting rights that were targeted, and (ii) that as a consequence of the bid, the bidder owns 90 per cent of the voting rights of the target company.

8 Target Defences

8.1 What can the target do to resist change of control?

As explained in question 6.4 above, the RD 1066/2007 imposes on the directors a passivity duty that prevents them from adopting any decision that is likely to interfere with the normal development of the bid. Nonetheless, this does not foreclose them from recommending the shareholders not to accept the offer in the report that they are requested to issue once the bid has been approved by the CNMV, nor to look for a competing bidder. Any other measure aimed to frustrate the bid will require the prior authorisation by the general shareholder meeting of the target company. In any event, and as indicated in question 3.3 above, the role of the board of the target company in the crucial and strong opposition by its members is likely to have a significant adverse effect on the success of the bid.

8.2 Is it a fair fight?

In order to ensure a level playing field between the preferred bidder and the rest of the bidders, several measures were introduced to the RD 1066/2007. In this regard:

(i) the acceptance period of all competing bids will be extended to the date of the last bid;
(ii) any information voluntarily disclosed to a bidder by the target company will also be reported to the other bidders; and
(iii) in order to provide equal opportunities to all bidders, a sealed envelope system is foreseen during the auction of the bids.

Nonetheless, the first bidder (usually the preferred one) still retains certain prerogatives, such as: (i) a final chance to improve the bid after the sealed envelope auction, when the consideration offered in its bid is not two per cent lower than the highest consideration offered by the rest of the bids; and (ii) the possibility to agree break fees with the target company (as explained in question 6.1 above).

9 Other Useful Facts

9.1 What are the major influences on the success of an acquisition?

Typically, there are two key factors that determine the success of an offer: the price offered as consideration by the bidder; and whether or not the bid is friendly. The higher the price and the lower the opposition from the target company and its directors, the smoother and more successful the outcome of the bid will be.

The existence of restrictions, conditions or limitations imposed by the anti-trust or other sector-related competent authorities for the clearance of the acquisition, the subjection of the bid to a greater number of conditions (in cases of voluntary bids), and/or the launching of competing offers by other bidders will also have a negative impact on the success and duration of the bid.

9.2 What happens if it fails?

The only restriction affecting a bidder (and the companies belonging to the bidder's group) in cases of an unsuccessful bid is the impossibility to launch a new bid over the target company within the six-month period following the date on which the results of the unsuccessful bid were disclosed to the public.

The above-mentioned timeframe restriction will not apply when the bid is withdrawn, when the bidder launches a new bid to compete with a bid launched by a third party, or when the new bid is compulsory as the bidder has acquired sudden control of the target company.

10 Updates

10.1 Please provide a summary of any relevant new law or practices in M&A in your jurisdiction.

Due to the COVID-19 outbreak, the Spanish government passed several regulations to mitigate its impact on capital companies, which can directly affect private equity and public M&A. As a result of it, new regulations will be taken into account before starting any acquisition process. Among others, the restrictions on launching takeover bids to Spanish listed companies that are part of the specific strategic sector, the possibility of holding shareholder and board meetings by electronic means (even if the by-laws of the companies do not foresee this possibility), the new term provided to apply for an insolvency proceeding, and/or the new package of labour and tax legislation, should be noted.

Given the implementation of all these new measures, which affect almost all legal fields (corporate, tax, labour, real estate, etc.), and due to the changing scenario we are facing each day and the uncertainty caused by the pandemic, it has become even more important to receive up-to-date and cross-sectional legal assistance from each jurisdiction in order to close all private or public M&A transactions.

Natalia Martí Picó has wide experience in the stock market and the insurance sector, as well as in the field of family business. She has advised financial institutions and listed companies in matters of good corporate governance and on aspects of financial regulatory scope, having intervened in the formalisation processes of several takeover bids and IPOs.
In the insurance sector, she has intervened in the sale and purchase of companies and in insurance brokerages in mergers and portfolio transfer processes, and has provided advice on the implementation of insurance companies in Spain. She also has extensive experience in advising family businesses, in developing family protocols and in intermediation in corporate conflicts. She has great experience in the general practice of commercial law, including contractual and corporate elements, M&A processes and the formalisation of business agreements.

Roca Junyent SLP
C/ Aribau, 198, 1ª planta
08036 Barcelona
Spain

Tel: +34 932 41 86 64
Email: n.marti@rocajunyent.com
URL: www.rocajunyent.com

Xavier Costa is a partner in the Barcelona office of Roca Junyent. He has over 14 years of experience in the areas of M&A and commercial law, particularly in joint ventures, business restructurings and private equity, advising and representing both private and listed companies. He has been consistently selected by his peers for inclusion in the *Best Lawyers* in Spain in the Corporate M&A area (2016–2020) and recommended by *The Legal 500* in the area of Corporate/M&A (2019, EMEA). He speaks English, Italian, French, Spanish and Catalan.

Roca Junyent SLP
C/ Aribau, 198, 1ª planta
08036 Barcelona
Spain

Tel: +34 932 41 92 05
Email: x.costa@rocajunyent.com
URL: www.rocajunyent.com

Established in 1996, Roca Junyent is one of the first Spanish law firms and has offices in **Madrid**, **Barcelona** and **Gerona**, as well as associated offices in **Palma de Mallorca**, **Lleida**, **Tarragona**, **Malaga**, **Seville**, **Bilbao**, **Burgos** and **Valladolid**.
The firm offers advices in all areas of law, especially in M&A and commercial law, banking, and financial, procedural and tax law. Roca Junyent is an **exclusive member in Spain of the international Terralex network**.
Roca Junyent has an outstanding international reputation and has been recognised by the most prestigious legal publications, such as ***Chambers and Partners***, ***The Legal 500***, ***Leader's League***, and ***Best Lawyers International***.
In addition, Roca Junyent is among **the top-10 national law firms in Spain** according to the newspaper ***Expansion***, and has been chosen as a **reference start-up advisor by *Start-Up Real***.

www.rocajunyent.com

ROCA JUNYENT R&J A&A

ICLG.com

Other titles in the ICLG series

Alternative Investment Funds
Anti-Money Laundering
Aviation Finance & Leasing
Aviation Law
Business Crime
Cartels & Leniency
Class & Group Actions
Competition Litigation
Construction & Engineering Law
Consumer Protection
Copyright
Corporate Governance
Corporate Immigration
Corporate Investigations
Corporate Tax
Cybersecurity
Data Protection
Derivatives
Designs
Digital Business
Digital Health
Drug & Medical Device Litigation
Employment & Labour Law
Enforcement of Foreign Judgments
Environment & Climate Change Law
Environmental, Social & Governance Law
Family Law
Fintech
Foreign Direct Investment Regimes
Franchise
Gambling
Insurance & Reinsurance
International Arbitration
Investor-State Arbitration
Lending & Secured Finance
Litigation & Dispute Resolution
Merger Control
Mining Law
Oil & Gas Regulation
Outsourcing
Patents
Pharmaceutical Advertising
Private Client
Private Equity
Product Liability
Project Finance
Public Investment Funds
Public Procurement
Real Estate
Renewable Energy
Restructuring & Insolvency
Sanctions
Securitisation
Shipping Law
Telecoms, Media & Internet
Trade Marks
Vertical Agreements and Dominant Firms

@ICLG_GLG

The International Comparative Legal Guides are published by: glg global legal group