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Spain

MERGERS & ACQUISITIONS

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This country-specific Q&A provides an overview of mergers & acquisitions laws and regulations applicable in Spain.

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SPAIN
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1. What are the key rules/laws relevant to M&A and who are the key regulatory authorities?

M&A activity is governed by a number of laws and regulations, which are amended from time to time. To sum up, M&A is essentially governed by:

- The Civil Code (Royal Decree of 24 July 1889, approving the Civil Code) (the "**Civil Code**");
- The Code of Commerce (Royal Decree of 22 August 1885, approving the Code of Commerce);
- The Capital Companies Act (Royal Legislative Decree 1/2010, of 1 July, approving the restated text of the Capital Companies Act) (the "**LSC**");
- The Securities Market Law (Royal Legislative Decree 4/2015, of 23 October, approving the restated text of the Securities Market Law) (the "**LMV**");
- The Takeover Bid Act (Royal Decree 1066/2007, of 27 July, on takeover bids) (the "**Takeover Bid Act**"); and
- The Corporate Restructuring Act (Act 3/2009, of 3 April, on corporate restructurings of capital companies) (the "**LME**").

It should be noted that certain regional rules/laws that are relevant to M&A activity have been enacted, even though they are not applicable to the whole Spanish territory. The most significant law in this regard is the Sixth Book of the Catalan Civil Code (Law 3/2017, of 15 February).

As regards the key regulatory authorities in Spain, the following should be highlighted:

- The National Securities Market Commission (the "**CNMV**"): it is responsible for the supervision and inspection of Spanish securities markets and the activity of all those involved in them.
- The National Markets and Competition Commission (CNMC): it promotes and ensures the proper operation of all markets in the interest of consumers and corporations, especially issues raising competition concerns and merger control.
- The Council of Ministers: certain transactions are subject to the authorisation by the Spanish government, under current foreign direct investment (FDI) restrictions.

Notwithstanding the foregoing, depending on the sector concerning the M&A deal, there may be further regulatory requirements and, therefore, additional relevant rules/laws and authorities.

2. What is the current state of the market?

Following a substantial deceleration in 2020 as a consequence of the economic crisis derived from Covid-19, M&A activity is currently taking speed. According to the 2021 Iberian Market Annual Report by Transactional Track Record (TTR), M&A deal volume in Spain has increased 25% in 2021, amounting to a total of 2,944 transactions, 90% of which were closed by year end. However, based on 1,333 transactions of disclosed consideration aggregate value decreased 0.5% to USD 120.99bn.

Spain has seen a particular expansion in private equity activity, having increased 82% in terms of total aggregate value, while the increase in terms of number of transactions amounts to 41%, implying a significant surge in average deal value.

All-in-all, the market is currently focused on economic and financial recovery, aided greatly by the increased liquidity of institutional investors.

In relation to 2022, a number of deals have been announced so far, involving a number of industry sectors. However, it is soon to predict the outcome of 2022. Global geopolitics, the increase in the price of raw materials, the increase of energy prices and the growing inflation would possibly have some impact on the M&A

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market or, at least, on the pace of M&A transactions. At the same time, it should be noted that there is still a lot of liquidity in the market and interest rates are not expected to rise in the Eurozone in the short term (or, at least, they are not expected to rise significantly), which is positive for M&A activity.

3. Which market sectors have been particularly active recently?

According to the 2021 Iberian Market Annual Report by Transactional Track Record (TTR), in terms of deal volume, investment in real estate has seen the highest number of transactions with 578 transactions, closely followed by the technology sector with 555 transactions. In the past 5 years, both sectors have led the list; however, the gap among them is becoming increasingly narrow year-to-year.

In addition, as regards a market trend to be highlighted, Spain has seen a surge in investment in renewable energy, especially solar energy, with 210 transactions in 2021, an 88% increase in comparison to 2020.

As of February 2022, according to TTR, the real estate sector continues leading as the top subsector with 107 transactions, followed by internet, software and IT services with 35 transactions.

4. What do you believe will be the three most significant factors influencing M&A activity over the next 2 years?

- Investments in real estate, renewable energy and infrastructure we believe that will continue being a trend. There is still room in the market for this kind of investments and the general focus on sustainability should certainly favour an increasing interest in some of these sectors, especially in renewable energy (including self-consumption schemes).
- In addition, it is envisaged that 2022 sees the end of the insolvency proceedings suspension that was enacted because of the economic crisis derived from Covid-19, which may, in turn, entail an increase of distressed M&A deals. In other words, there is a significant number of companies which are currently not insolvent (legally speaking) due to the said suspension, so it is expected that a number of companies become insolvent after the end of the suspension (i.e., 30 June 2022).
- We believe that Covid-19 has also been a booster for innovation, which should entail an increased interest in technology. This interest in innovation and technology we understand that will affect a number of sectors (including healthcare and beauty, which are growing markets).

5. What are the key means of effecting the acquisition of a publicly traded company?

Acquisition of publicly traded companies is most frequently implemented through a takeover bid, which shall be mandatory or voluntary depending on whether the transaction at hand entails the acquisition of control of said company. A legal or natural person has control of a listed company under Spanish law when holding title to: (i) a percentage above 30% of voting rights; or (ii) the right to appoint more than half the members of the board of directors; be it through ownership or private agreements held among shareholders.

On the one hand, if the acquisition entails control of a listed entity, the acquirer shall launch a mandatory bid for 100% of the shares of the target company at an equitable price, and conditionality is expressly prohibited (aside from mandatory approvals, such as antitrust clearance or applicable regulatory approvals).

In the event of a going-private transaction, the mandatory takeover bid has further requirements to the aforementioned. A delisting takeover bid shall be for a cash consideration.

On the other hand, as regards the acquisition of a minority stake or a shareholding not implying control, the acquirer may launch a voluntary bid. It should be noted that a voluntary bid may be for a specified percentage, is not compulsorily launched at an equitable price and may be subject to certain conditions precedent set out under Spanish law or approved by the CNMV, such as the acceptance of the tender offer by a certain number of shareholders.

Other means of acquiring publicly traded company are less common.

6. What information relating to a target company will be publicly available and to what extent is a target company obliged to disclose diligence related information to a potential acquirer?

M&A activity in Spain mainly relates to non-listed companies, which do not have publicly available information other than:

- corporate information recorded in the

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Commercial Registry (most notably the articles of association, appointments and removals of directors and representatives of the relevant company, as well as the appointment of auditors and the deposit of statutory accounts);
- ongoing insolvency proceedings;
- information registered with the Land Registry;
- registered IP rights; and
- certain sanctions.

Technically speaking, the scope of the information to be disclosed in the context of a private M&A transaction is not regulated in the law. However, standard market practice is to carry out a comprehensive due diligence report on the target entity (typically structured as a red flag report).

It should be noted that knowingly withholding information may constitute a breach of the obligation to negotiate in good faith set out under Spanish law, consequently implying various potential legal consequences (depending on the relevance of the information that is being withheld).

Public companies have heightened disclosure obligations, therefore, in addition to the aforementioned, the following information is publicly available:

- internal regulations;
- minutes of the corporate resolutions passed by the general shareholders meeting;
- annual accounts and interim financial reports;
- dividend policy and calendar thereof;
- information relating to corporate governance, composition of the board of directors and their remuneration;
- information on past corporate restructurings, public offerings and issuance of securities; and
- shareholders agreements.

In addition, in the event of a transaction involving a listed company, information on the transaction shall be disclosed to the CNMV and, subsequently, the entire market.

7. To what level of detail is due diligence customarily undertaken?

Due diligence reviews are standard market practice in Spain. The scope of the review depends on the value of the transaction, the industry sector of the target company and its relevance from the perspective of the acquirer.

Comprehensive due diligence reports cover financial, accounting, operational, business and legal matters. The legal side of due diligence reports can cover corporate matters (such as incorporation, registration and corporate governance of the target company); business agreements (agreements with suppliers, clients, O&M, etc.); tax matters; labour and social security matters (employment agreements, collective bargaining agreements, pending litigation, social security concerns and compliance thereof); administrative and public law matters (market authorisations depending on the activity sector); real estate matters (Land Registry information and lease agreements); intellectual property and data protection (validity of registrations, agreements and pending litigation); and ongoing arbitration and litigation.

In controlled auctions it is common to issue vendor due diligence reports, followed by a confirmatory due diligence when the shortlist of potential buyers is selected.

8. What are the key decision-making organs of a target company and what approval rights do shareholders have?

Spanish companies have the following decision-making organs:

- General shareholders meeting: shareholders are competent for, among others, (i) approval of the annual accounts; (ii) appointment and dismissal of directors; (iii) amendments to the articles of association; (iv) share capital increases and decreases; (iv) removal or limitation of pre-emptive subscription rights; (v) acquisition, disposal or contribution of essential assets; (vi) corporate restructurings; and (vii) dissolution and liquidation.
- Management body: directors are competent for the matters which do not fall within the scope of the general shareholders meeting and, in particular, they are in charge of the day-to-day management of the company and they represent the company vis-à-vis third parties. Its structure shall be determined by the articles of association and/or the general shareholders' meeting. The management body can be:
  - a sole director;
  - two or more joint directors;
  - two or more joint-and-several directors; or
  - board of directors: three or more members that act jointly. The board

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of directors may agree to delegate its authorities to a certain extent to a designated managing director or an executive committee.

In share deals, the approval of a given transaction is up to the shareholder/s of the target company, and not the target company itself. However, it should be noted that when the transaction does not entail a sale of 100% of the shares, it is necessary to comply with potential limitations set forth under the articles of association and the shareholders' agreement (which may require a resolution of the general shareholders' meeting of the target and/or the issuance of waivers/consents under the shareholders' agreement). When it comes to Spanish private limited liability companies (*sociedades de responsabilidad limitada*) -the most common company type-, non-transferring shareholders typically have a right of first refusal over the shares that are being transferred (the waiver of such a right is typically documented in a resolution passed by the general shareholders' meeting).

In asset deals, it is up to the target company to approve the transaction, as the deal concerns assets owned by the company itself. Depending on the value of the assets in question, the corporate approval will be of the management body or the general shareholders' meeting. In any case, even if the management body were, in the case in question, competent for approving the transaction, it is standard market practice to submit the approval of the transaction to the general shareholders' meeting as well, due to a number of corporate law considerations.

9. What are the duties of the directors and controlling shareholders of a target company?

Directors, in their capacity as such, are subject to certain fiduciary duties, as they are obliged to act in pursuit of the company's interest, and they are personally liable for any breach thereof. Specifically, the duties undertaken are, among others, the following:

- Diligence: directors must carry out their role and fulfil their tasks in accordance with the laws and the articles of association, with the diligence of an orderly businessperson, taking into account the nature of the role and the duties inherent in each one. When fulfilling their duties, directors have the right to demand and seek from the company the appropriate information necessary for them to fulfil their obligations. Directors must possess the appropriate dedication and adopt the necessary measures for good management and control of the company.
- Loyalty: the corporate interest shall guide all actions carried out by directors, avoiding and disclosing any conflicts of interest.
- Confidentiality: directors have a duty not to disclose confidential information to third parties.

Controlling shareholders have an implicit obligation not to abuse of their controlling stake, as Spanish law foresees the possibility for minority shareholders to challenge corporate resolutions adopted by the majority and deemed abusive. This matter is highly technical, it has been addressed by a number of court rulings and has to be analysed on a case-by-case basis.

10. Do employees/other stakeholders have any specific approval, consultation or other rights?

As regards share deals, Spanish law does not recognize specific approval or consultation rights for employees, creditors and other stakeholders. On the contrary, in case of asset deals including transfer of employees, the parties must notify the transaction to the employees and their representatives with sufficient notice, although they will not be able to oppose to the transfer. Spanish law provides a mechanism pursuant to which transfer of an independent productive unit entails the universal succession by the acquirer in all labour obligations assumed by the employer (known as "TUPE" –transfer of undertakings (protection of employment) regulations–).

Creditors and other stakeholders do not have any specific right of information or approval in case of share deals, but their contracts with the target company should be reviewed in order to analyse any adverse consequence deriving from change of control provisions. Asset deals require the specific approval of the assignment of each counterparty, unless the relevant agreement expressly includes the right of the seller to freely assign its contractual position to the acquirer (which is quite uncommon, especially with significant agreements).

However, in the context of corporate restructurings (such as mergers and spin-offs), Spanish law sets forth certain specific protections of third parties:

- Creditors and bondholders are entitled to oppose the corporate restructuring within one month as of the publication of the corporate resolution adopted for the restructuring. The

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feasibility of validly opposing shall be analysed on a case-by-case basis.
- Information forwarded to shareholders shall likewise be forwarded to employees' representatives, including information on the effects that the transaction may have on employment.

11. To what degree is conditionality an accepted market feature on acquisitions?

The tendency is to limit conditions precedent to the bare minimum, as certainty of closing is of utmost importance, especially for sellers.

Generally, closing is only conditional on antitrust clearance and other mandatory regulatory approvals (if and when applicable, such as FDI approvals). As far as antitrust clearance is concerned, clauses governing antitrust clearance in SPAs are often drafted in a very seller-friendly way (especially in controlled auctions), 'hell or high water' provisions being quite common.

It is technically possible to subject the closing of a transaction to further conditions precedent. In practice, it is not very common to subject the closing to additional conditions, such as the lack of a material adverse change or any others, as the addition of conditions that are not due to imperative statutory provisions add uncertainty to closing and there must be a strong reason for their inclusion.

Without prejudice to the above, it should be noted that there are special rules when dealing with listed companies and, specifically, takeover bids. Mandatory takeover bids cannot be subject to conditions precedent, except for clearance by antitrust authorities or FDI approval.

On the other hand, the effectiveness of a voluntary takeover bid may be subject to any kind of conditions, usually: (i) a minimum acceptance threshold, or (ii) approval of the takeover bid by the bidder's governing corporate bodies.

12. What steps can an acquirer of a target company take to secure deal exclusivity?

In order to ensure deal exclusivity during an initial negotiation phase, an acquirer may draft an agreement setting out an exclusivity covenant during a given period of time. Typically, this obligation is documented by virtue of a letter of intent (LoI) / memorandum of understanding (MoU) and is quite standard in bilateral private M&A deals.

13. What other deal protection and costs coverage mechanisms are most frequently used by acquirers?

Spanish law regulates a general obligation to negotiate in good faith, which prevents parties from breaking off negotiation abruptly and without cause, given the risk of incurring in liability for *culpa in contrahendo* vis-à-vis the other party. However, even if negotiations are abruptly stopped, litigation for damages is very uncommon in Spanish practice.

The parties may agree on other deal protection mechanisms, such as cross-indemnities and break fee arrangements, which are uncommon.

As regards costs coverage mechanisms, they are also quite rare in Spanish M&A practice. The parties typically assume the risk of the transactions they negotiate / enter into.

14. Which forms of consideration are most commonly used?

Transactions in Spain are generally for a cash consideration. However, as Spanish law has a broad concept of what is to be considered valid consideration, parties have a wide array of possibilities.

When the buyer is a listed company, it is quite common (especially in large M&A deals) that at least part of the consideration is paid in shares of the listed company. This payment can certainly complicate closing and closing logistics, and it makes the transaction more complex from a legal standpoint, especially in cross-border acquisitions. However, this mechanism is increasingly popular, especially in industry sectors with a growing market (due to the expectations for the stock price to increase).

Furthermore, when dealing with mandatory takeover bids of listed companies, cash consideration -at least as an alternative-, is legally required.

Furthermore, in the event that the transaction at hand implies a share capital increase, it may be implemented by means of an in-kind contribution (e.g., credit rights, real estate, etc.).

15. At what ownership levels by an acquirer is public disclosure required (whether acquiring a target company as a whole or a minority stake)?

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When dealing with private transactions (i.e. not involving listed companies) to be formalised before a Spanish Notary Public, disclosure of an acquiror's ultimate beneficial owner is required under Spanish Law 10/2010, of 28 April, regulating the prevention of money laundering and terrorism financing. Such disclosure shall only be made vis-à-vis the Spanish Notary Public -and not before third parties-. For the purposes of said Law, ultimate beneficial owner shall mean those individuals or legal entities that own, at least, 25% of the share capital or voting rights of the target company, or when by any means, direct or indirect control over such target company is exercised.

In addition to the above, companies with a sole shareholder (i.e. individual or legal entity who owns 100% of the share capital) must disclose the identity of such sole shareholder with the Spanish Commercial Registry, which shall be made public, together with the company's general corporate details.

On the other hand, regarding transactions of shares of a listed company, the company itself must publicly disclose before the CNMV when the given transaction results in a shareholder reaching, or falling below, the following thresholds: 3%, 5% and successive multiples of 5% of the company's total voting rights.

Moreover, in the context of a takeover bid, the following transactions must also have to be publicly disclosed: (i) acquisitions reaching or exceeding 1% of the target company's voting rights, and (ii) increases or decreases in the share capital held by shareholders of 3% or more of the voting rights. The bidder under the takeover bid (or the person acting jointly or "in concert" with him) is also obliged to disclose any purchase of target shares made outside the takeover bid.

In addition to the above, transactions carried out by directors of a listed company, acquisitions of treasury stock by the company itself and transactions carried out from a tax haven shall be subject to further requirements.

16. At what stage of negotiation is public disclosure required or customary?

Assuming we are dealing with private transactions, disclosure of the full ownership or stake of a given shareholder or acquirer of a company will only need to be made before the Spanish Notary Public, prior to signing or closing of the transaction, as the case may be.

As stated in question 15, the Spanish Notary Public shall record such information in a notarial deed, to be simultaneously granted with the remaining documents related to the transaction.

On the other hand, when dealing with a transaction concerning a listed company, the target company would generally be required to disclose the deal only once the definitive agreements have been executed. Without prejudice to the above, in cases where the trading of the shares suffers unusual alterations, the target company would be obliged to publicly disclose the status of the negotiations in order to avoid any market disruption.

17. Is there any maximum time period for negotiations or due diligence?

Assuming we are dealing with private transactions (as opposed to transactions involving listed companies, where other time limitations may apply in order to avoid any market disruption), there is no legal limitation of maximum time period for negotiations or due diligence.

18. Are there any circumstances where a minimum price may be set for the shares in a target company?

The general rule in private M&A is that the parties are free to agree on the purchase price that they deem appropriate.

Given that the Civil Code requires for a sale and purchase agreement to set forth a consideration, the parties shall include a consideration provision even if the purchase price is extremely low (such as in distressed M&A transactions, in which the purchase price is typically low due to the existence of debts and/or losses).

Without prejudice to the above, it should be noted that there are special rules when dealing with listed companies and, specifically, takeover bids. The price of a voluntary takeover bid must be the higher of either (i) the equitable price or (ii) the price resulting from an independent valuation report, and must at least consist of cash as an alternative, when any of the following circumstances have occurred within the two years prior to the announcement of the bid:

- the trading prices of the target shares have suffered manipulation practices,
- the target shares have been affected by exceptional events such as natural disasters, war or force majeure, or
- the target company has been subject to expropriations or similar situations that have significantly affected the company's value.

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19. Is it possible for target companies to provide financial assistance?

No, as Spanish law foresees a broad prohibition to provide financial assistance in share deals. In particular, the LSC sets out the prohibition for target companies to provide financial assistance, both for private limited liability companies (*sociedad de responsabilidad limitada* or "**S.L.**") and public limited liability companies (*sociedad anónima* or "**S.A.**").

The scope of the prohibition to the financial assistance in Spanish law comprises any advance payments, granting of financing (via loan or credit) or the pledge of the shares, to the acquisition of its own shares or the shares of a company on its group (and more precisely, the parent company).

However, there are two exceptions:

i. regarding the S.A.s, the financial assistance prohibition does not apply to the acquisition of the shares of the company by its employees; and
ii. when the financial assistance prohibition is excluded as part of a structural modification foreseen under the LME regarding mergers involving the acquisition of an indebted company.

20. Which governing law is customarily used on acquisitions?

Assuming the parties have not exercised any specific choice of law under the applicable agreement, the vast majority of acquisitions in Spain are governed by Spanish common law (*derecho español común*).

Without prejudice to the above, it should be noted that in certain regions of Spain, such as Catalonia -see question 1 above- or Communities under a Chartered Regime (*Régimen Foral*) a transaction could be governed by regional law, unless otherwise agreed by the parties.

21. What public-facing documentation must a buyer produce in connection with the acquisition of a listed company?

In addition to public disclosure obligations already addressed under question 15 above, transaction documents relating to a takeover bid (including agreements between the bidder and the target company's shareholders or directors), must be disclosed with the CNMV.

Mandatory takeover bids must be made public immediately upon occurrence of the triggering event (i.e. acquisition of a 30% shareholding stake in the target company).

On the other hand, voluntary takeover bids must be made public as soon as a formal agreement has been passed by the relevant management body of the bidder, provided that financing of the takeover bid has already been committed or that the bidder can otherwise undertake the payment obligations.

Once the takeover bid has been announced, the bidder must file the takeover bid prospectus with the CNMV within a term of one (1) month. The prospectus must include all the information about the bidder and the bidder's securities required by the by EU Directive 2003/71/EC and Spanish national implementing regulations, unless this information is already available to the public because the bidder already has a registration document in force.

If the consideration for the takeover bid is cash, the takeover bid prospectus must include certain financial information on the bidder, but there is no requirement to produce complete financial statements. On the other hand, the bidder's financial statements are required if the consideration for the takeover bid consists of shares -or other securities issued by the bidder-, as the takeover bid will be treated for such purposes as a public offer of securities.

22. What formalities are required in order to document a transfer of shares, including any local transfer taxes or duties?

The formalities required in order to document a transfer of shares of a Spanish company shall vary depending on the company's being a S.L. or a S.A.

For S.L.s, the share transfer must be formalised before at a Spanish notary public and recorded into the company's shareholders' registry book. When the Spanish company is an unlisted S.A., the formalities involved shall depend on whether the certificates representing the shares have been issued and whether the shares are issued as registered -which is the most common case- or bearer shares.

Transfers of shares of Spanish companies are generally exempt from any indirect taxation. However, they can trigger taxation under VAT/transfer tax if real estate companies are transferred.

When dealing with takeover bids where cash consideration is offered to the target company's

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shareholders, no stamp duty, transfer duty or other indirect taxes will generally be payable on acquisition of the target shares by the bidder.

23. Are hostile acquisitions a common feature?

No, although we have seen various cases in the past few years.

The Takeover Bid Act does not foresee the term "hostile" although a number of scholars and market players commonly use it when referring to takeover bids that are not supported by the board of directors of the target company.

Although the board of directors is subject to a "passivity duty" in relation to the takeover bid (as further detailed in question 24), the Takeover Bid Act requires them to issue a report on the takeover bid -once it has been authorised by the CNMV-, stating whether they are in favour or against it.

The board of directors' report usually has a relevant impact on the decision-making process of the target company's shareholders.

24. What protections do directors of a target company have against a hostile approach?

Under the LSC, there is a general duty for directors of a Spanish company to act in the best interests of the company, which is applicable to all kind of entities (i.e. private and publicly traded). Even though these concepts are heavily debated, the corporate interest is generally understood as the interests common to all shareholders.

Directors shall exercise their office under the duties of diligence, loyalty and confidentiality. Duty of loyalty towards the corporate interest includes specific provisions regarding the misuse of an influential position, conflicts of interest and holding shares in competing entities.

In addition to the above, in the event of a takeover bid, the directors of the target company are prohibited from taking any action that could frustrate or disrupt the success of a takeover bid launched against the company. This is generally known as the directors' "passivity duty".

The board of directors and the management of the target company cannot adopt any "defensive" measures, from the date of the announcement of the takeover bid, until the results are made public:

i. issuing or initiating the issuance of any securities;
ii. carrying out or promoting any transaction affecting the shares in the target company that could impair the takeover bid;
iii. selling, renting or setting liens or encumbrances over the target company's real property or material assets; and
iv. distributing any extraordinary dividends to shareholders (except if such have been approved and announced prior to the takeover bid).

As an exception to the above, the board of directors may always search for a competing bidder (i.e. usually called a "white knight") or undertake any defensive measure against the takeover bid, with the prior authorisation -by a qualified majority- of the general shareholders' meeting of the target company.

25. Are there circumstances where a buyer may have to make a mandatory or compulsory offer for a target company?

Yes. The threshold triggering the obligation to file a mandatory takeover bid for 100% of the share capital of the target company under the Spanish Takeover Bid Act is 30% of the voting rights. This threshold can be reached or exceeded by any of the following means:

i. as a consequence of the acquisition (individually or acting jointly with other shareholders -or through the execution of a shareholders' agreement-) of, at least, 30% of the shares -or other securities that confer, directly or indirectly, voting rights in the target company- of the share capital or voting rights;
ii. an indirect or subsequent acquisition of control (e.g. a merger with a listed company); or
iii. when a person acquires less than 30% of the target company's voting rights but appoints a within 24 months, at least, half of the members of the board of directors of said company.

26. If an acquirer does not obtain full control of a target company, what rights do minority shareholders enjoy?

Upon acquiring control of a non-listed company, the remaining shareholders who may decide to keep their

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shareholding stake in the company will be protected by the LSC provisions, with the rights -among others- that are summarized below:

i. right of attendance to general shareholders' meetings; however, in S.A.s the articles of association may provide a minimum shareholding stake of up to 0.1% required for attendance;
ii. right to vote;
iii. right to take part in the allocation of profits and in the liquidation quota; in the absence of dividend distributions, under certain conditions, minority shareholders may be entitled to withdraw from the company;
iv. preemptive rights upon the issuance of new shares;
v. right to request the presence of a notary public at the general meeting to issue notarized minutes, when requested by one or more shareholders, holders of, at least, 1% of the share capital;
vi. right of information, which includes (a) the right to request corporate information regarding the items in the agenda of a general shareholders' meeting, and (b) the right to examine the financial statements and the auditor's report before their approval by the general shareholders' meeting;
vii. right to request the management body to call a general shareholders meeting, when requested by one or more shareholders, holders of, at least, 5% of the share capital;
viii. right to challenge any corporate resolutions, in the event such are contrary to law, the articles of association, the rulings of the general shareholders' meeting or detrimental to the corporate interest, when requested by one or more shareholders, holders of, at least, 1% of the share capital;
ix. right to claim liability vis-à-vis directors;
x. right to request a voluntary audit of the company, when requested by one or more shareholders, holders of, at least, 5% of the share capital; and
xi. right to appoint "minority" directors in S.A.s under certain circumstances.

27. Is a mechanism available to compulsorily acquire minority stakes?

Yes, the Spanish Takeover Bid Act foresees a squeeze-out right for bidders that have launched a takeover bid for 100% of the shares of a listed company but have not achieved a 100% acceptance. Therefore, said bidder may still be able to purchase all remaining shares -at the same price of the takeover bid-, gaining complete control of the target company.

In order for this squeeze-out right to be applicable, the following conditions must be met:

i. The bidder must have reached at least 90% of the voting share capital of the target company, and
ii. The takeover bid must have been accepted by shareholders representing, at least, 90% of the voting rights to which the takeover bid was addressed -therefore excluding the voting rights previously held by said bidder-.

It should be noted, however, that there is no equivalent squeeze-out right when it comes to non-listed companies. Therefore, it is quite common to agree on call option rights (most notably in companies in which there are few minority shareholders). As minority shareholders are typically concerned about the liquidity of their shares, agreeing on put and call option rights is quite usual.

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