The Acquisition and Leveraged Finance Review

Fourth Edition

Editor

Christopher Kandel

The Law Reviews

THE ACQUISITION AND LEVERAGED FINANCE REVIEW

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For further information please email
Nick.Barette@thelawreviews.co.uk

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Fourth Edition

Editor
Christopher Kandel

The Law Reviews

PUBLISHER
Gideon Roberton

SENIOR BUSINESS DEVELOPMENT MANAGER
Nick Barette

BUSINESS DEVELOPMENT MANAGERS
Thomas Lee, Joel Woods

ACCOUNT MANAGERS
Pere Aspinall, Sophie Emberson,
Laura Lynas, Jack Bagnall

PRODUCT MARKETING EXECUTIVE
Rebecca Mogridge

RESEARCHER
Arthur Hunter

EDITORIAL COORDINATOR
Gavin Jordan

HEAD OF PRODUCTION
Adam Myers

PRODUCTION EDITOR
Claire Ancell

SUBEDITOR
Anne Borthwick

CHIEF EXECUTIVE OFFICER
Paul Howarth

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PREFACE

Acquisition and leveraged finance is a fascinating area for lawyers, both inherently and because of its potential for complexity arising out of the requirements of the acquisition process, cross-border issues, regulation and the like. It can also cut across legal disciplines, at times requiring the specialised expertise of merger and acquisition lawyers, bank finance lawyers, securities lawyers, tax lawyers, property lawyers, pension lawyers, intellectual property lawyers and environmental lawyers, among others. An additional area of complexity and interest at the moment comes out of market forces that are driving convergence in the large cap leveraged financings between loan and high-yield bond products generally, as well as between different markets (particularly pressure on markets outside the United States to conform to terms available in the US market but sometimes also vice versa), and increasingly the market is debating whether to adjust for differences in bankruptcy, guarantee or security regimes, and frequently deciding not to.

The Acquisition and Leveraged Finance Review is intended to serve as a starting point in considering structuring and other issues in acquisition and leveraged finance, both generally but also particularly in cases where more than just an understanding of the reader's own jurisdiction is necessary. The philosophy behind the sub-topics it covers has been to try to answer those questions that come up most commonly at the start of a finance transaction and, having read the contributions, I can say that I wish that I had had this book available to me at many times during my practice in the past, and that I will turn to it regularly in the future.

Many thanks go to the expert contributors who have given so much of their time and expertise to make this book a success: to Nick Barette, Gideon Roberton and Gavin Jordan at Law Business Research for their efficiency and good humour, and for making this book a reality; and to the partners, associates and staff at Latham & Watkins, present and past, with whom it is a privilege to work. I should also single out Sindhoo Vinod, Aymen Mahmoud, Angela Pierre and Oliver Browne for particular thanks – their reviews of my own draft chapters have been both merciless and useful.

Christopher Kandel
Latham & Watkins LLP
London
August 2017

Chapter 18

SPAIN

Fernando Colomina and Iván Rabanillo[1]

I OVERVIEW

The Spanish economy has undergone challenging times since the economic crisis began in 2007. Since then the economy has been picking up pace, with the government implementing reforms to revive it, resulting in a recapitalisation of the banks and thereby increasing market confidence. In April 2017, the International Monetary Fund (IMF) forecast economic growth of 2.6 per cent for 2017 – up three-tenths on the January forecast. Although the new Spain IMF forecast is short of the 3.2 per cent GDP growth Spain registered in 2016, it should be noted that the aforementioned forecast puts the country slightly ahead of the United States and Britain in terms of GDP growth for 2017. Besides this, the unemployment rate has been materially reduced, being at its lowest level since 2009.

This environment has translated into more loan and high-yield leveraged financings over recent years, primarily for debt refinancing purposes, and this trend largely continued in 2016. Specifically, there was an increase in the total number of leveraged financings from six in 2015 to nine in 2016. Likewise, the principal amount of debt raised increased 2.25 times year-to-year to €3,366 million in 2016 compared with a principal amount of €1,495 million, as reported by Debtwire.[2] Interestingly, according to the same source, in 2016 high-yield bond issuances (made up of 10 deals with a principal amount of €4,024 million) accounted for 54.4 per cent of the total global raised, with the remainder raised through loans. This differs from 2013 when, to a degree, high-yield bonds seemed to be replacing leveraged loans for Spanish financings.

These figures are, however, somewhat misleading as there is little difference in the number of high-yield bonds from 2015 to 2016, with the value of issuance in 2016 being €4,024 million issued across 10 deals in 2016.[3] This points to the conclusion that it was not an increase in high yield issuances in 2016, but rather a decrease in loan volumes that is most notable.

As for use of proceeds, debt refinancing has remained the main purpose of leveraged loans (72 per cent), followed by mergers, leverage buyout (LBO) financing and capex.

During 2016, some investors turned to payment in kind (PIK) notes, with a total of 11 PIK notes compared with four in 2015.

As for the type of financial advisers, according to MergerMarket,[4] the top 20 advisers by value and by deal count remain mainly non-Spanish traditional banks and advisers,

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1 Fernando Colomina and Iván Rabanillo are counsel at Latham & Watkins LLP.

2 Debtwire Analytics Spain Leverage Finance in Review FY17 edition.

3 Ibid.

4 Mergermarket Global and regional M&A: Q1–Q4 2016 Advisor League Tables.

such as Goldman Sachs, Morgan Stanley, Credit Suisse, Bank of America Merrill Lynch and Rothschild. Compared with last year, a few names have either emerged on the scene or climbed to the top, including Evercore Partners, RBC Capital Markets, Alantra and China International Capital Corporation. It should be noted that there were no Spanish players in the top 20 in 2016.

II REGULATORY AND TAX MATTERS

i General regulatory requirements

Generally speaking, no regulatory permits or authorisations are required to act as a lender or a security agent in finance deals in Spain, although certain regulatory authorisations and registrations are required to act as a credit entity for the general public (in simplified terms, to raise reimbursable deposits from the public). That said, lenders and borrowers that are resident in Spain have general ongoing formal obligations to inform the Bank of Spain about any new transactions, as well as the status of existing transactions, with non-Spanish borrowers and lenders (as applicable).

ii Sanctions and anti-money laundering

Sanctions

As a member of the European Union and United Nations (UN), Spain follows the sanctions imposed by the Security Council of the UN and by the EU authorities under the Common Foreign and Security Policy. Therefore, the identity of all the parties involved would normally be checked prior to starting a financing.

AML regulations

Anti money-laundering (AML) regulations in Spain require that, prior to initiating any business relationship, the ultimate beneficial owner (UBO) of the parties involved in the deal must be clearly identified.

For legal entities, the UBO is defined, in simplified terms, as the natural person who ultimately owns or controls, directly or indirectly, more than 25 per cent of the share capital or voting rights of the legal person, or who by other means controls, directly or indirectly, the management of a legal person.

In the event that a particular legal entity has no UBO (as defined above), the personal details of its directors should be disclosed. In the event that a director is a legal person, the personal details of its representatives (or directors) should be disclosed.

These requirements are of particular significance in Spain because, while notarisation of a loan document is not required by law, notarisation affords the lenders material enforcement advantages; as such, it is market practice to do so. In addition, as a general rule Spanish security interests must be notarised; in any case, it is again market practice to do so. A notary will refuse to grant the relevant deed or materially qualify it if there is any failure to satisfy these UBO requirements.

iii Tax matters

Deductibility of interest

Spanish corporate income tax (CIT) law does not provide for a thin capitalisation regime, but has an interest-stripping regime limiting the deductibility of net interest expenses to

30 per cent of adjusted operating profits (roughly speaking, earnings before interest, taxes, depreciation and amortisation (EBITDA)) in a given fiscal year, with a €1 million floor. The excess difference could benefit from a carryover for an indefinite period of time. Where a taxpayer incurs net interest expenses not exceeding this €1 million floor, the difference between such interest cost and the floor amount will increase the applicable 'cap room' in the five subsequent years. These rules must be tested at a group level where the Spanish borrower belongs to a Spanish fiscal unity (subject to the 'anti-LBO' rules described below).

The existence of a Spanish fiscal unity could have certain advantages. In general, a leveraged holding company may be able to shelter taxable income obtained by its subsidiaries belonging to the Spanish fiscal unity against interest expenses incurred at the holding company level. Furthermore, dividends received by such a holding company from its qualifying subsidiaries not belonging to the fiscal unity[5] (to the extent they benefit from the Spanish participation exemption regime)[6] would be treated as additional EBITDA for purposes of the interest-stripping regime.

It should be noted that the Spanish interest-stripping rules are generally in line with the conclusions of Action 4 of the Base Erosion and Profit Shifting initiative[7] and with the contents of the proposed EU Anti-tax Avoidance Directive adopted by the Council of the European Union in July 2016. At this stage, no significant amendments to the Spanish rules outlined above have yet been announced, but many foreseeable changes that may take place in the interest-stripping rules in order to reflect the Directive's contents (in principle, by 31 December 2018) do not appear to be detrimental to taxpayers.[8]

On the other hand, there are certain anti-abuse rules that may limit the availability of interest deductions within a fiscal unity or upon a post-acquisition merger. For instance, an 'anti-LBO' rule imposes an additional limitation to the deductibility of interest accruing on debt incurred to make acquisitions of shares.[9] Under this rule, where the bidco vehicle and the target company merge or form a fiscal unity in the four years following the acquisition, the above-mentioned 30 per cent EBITDA limitation should be tested taking into account only bidco's standalone EBITDA and not the fiscal unity's (or the EBITDA corresponding to the merged entity, as the case may be). To the extent that bidco is a special-purpose vehicle set up for purposes of performing the shares acquisition (and not an operating entity), this rule would, in practice, prevent that acquisition interest was tax-deductible.

5 For instance, non-Spanish resident subsidiaries, or Spanish-resident subsidiaries that do not meet the requirements to belong to a fiscal unity (in general, a 75 per cent participation in the share capital – 70 per cent if the subsidiary is a listed company – and majority of the voting rights).

6 Roughly speaking, the exemption applies where a Spanish parent company holds a direct or indirect stake of at least 5 per cent (or having an acquisition cost of at least €20 million) in a Spanish or foreign subsidiary, held for a minimum one-year holding period. Foreign subsidiaries must also meet a 'subject-to-tax' test. Certain limitations apply where, for example, the subsidiary is a holding company or where it is deemed to be an 'asset-holding' company.

7 Sponsored by the OECD and sanctioned by the G20.

8 For example, an increase of the minimum interest deductibility floor up to €3 million, the introduction of safe harbours to public infrastructure financing projects and the introduction of a consolidated group ratio rule.

9 This rule is not applicable in respect of target companies that have been integrated in the fiscal unity of the relevant bidco in a fiscal year starting prior to 20 June 2014. Regulated financial institutions and insurance companies (and their holding companies, to the extent they are subject to the oversight of the financial or insurance regulators) may not be subject to the interest-stripping rules and the anti-LBO rule.

In order to dispel allegations that the anti-LBO rule put private equity firms at a disadvantage as regards industrial groups, the Spanish lawmaker introduced an 'escape clause' to the 'anti-LBO' rule, whereby the additional 30 per cent limitation would not apply if: (1) the level of leverage does not exceed 70 per cent of the purchase price of the shares acquired; and (2) such acquisition debt is reduced on a proportionate basis within the eight years following the acquisition, until the debt reaches a threshold of 30 per cent of the purchase price.[10] Where the acquisition is financed through different kinds of loan facilities (e.g., junior, senior, mezzanine, vendor loans or other types of loans), the amortisation required under the anti-LBO rule may be performed in any of such facilities, provided that the combined outstanding principal amount of all of them does not exceed the maximum threshold for the year in question.[11] On the other hand, the indebtedness existing at the target company prior to its acquisition does not appear to fall under the scope of such rule.[12]

In addition, there are other anti-abuse rules under Spanish tax law that may limit the deductibility of interest incurred by a Spanish borrower. Interest expenses arising in connection with intragroup debt, where that debt is used to acquire shareholdings from other group entities or to perform equity contributions into other group entities are non-deductible, unless the borrower is able to evidence to the Spanish tax authorities that there are sound business reasons for the transactions[13] Furthermore, interest accruing on profit-participating loans (PPLs) granted by group entities (provided that the PPLs have been

10 The Spanish tax authorities, in binding tax ruling V1664-15, dated 28 May 2015, have addressed certain queries made by a private equity firms association regarding the practical applicability of the anti-LBO rule. As per the tax authorities, the fulfilment of the second requirement should be tested on an annual basis, by comparing the level of indebtedness of the bidco at the end of each fiscal year with the acquisition debt. Even if the acquisition debt accounted for less than 70 per cent of the purchase price, its principal amount should be nevertheless reduced proportionally on annual basis over such eight-year period until it reaches 30 per cent. Nonetheless, if in a given year the acquisition debt is reduced at an amount exceeding the minimum amount required to be amortised as per the amortisation schedule of the anti-LBO rule, the taxpayer may not be required to reduce it further in subsequent years until the remainder of the debt catches up with the amortisation schedule.

11 See binding tax ruling V1664-15. It should be noted that the failure to meet the mandatory amortisation requirements in a given fiscal year does not jeopardise the taxpayer's ability to deduct interest on the debt in future fiscal years, provided that the taxpayer catches up with the amortisation schedule in such subsequent years.

12 In the context of LBOs, it may be possible to refinance existing acquisition debt deemed to be 'tainted' by operation of the anti-LBO rules without running afoul of the anti-LBO rules, although this possibility should be analysed on a case-by-case basis and bearing in mind the legal ramifications of such refinancing as well. In binding tax ruling V4487-16, dated 18 October 2016, the Spanish Tax Authorities have concluded that the swapping of tainted acquisition debt by refinancing debt used to finance a 'dividend recap' distribution to shareholders might, in some circumstances, not be tainted for purposes of the anti-LBO rules.

13 In that regard, it should be noted that there are good grounds to defend (as per the criterion set forth by the Spanish tax authorities in certain binding tax rulings – such as V0775-15, dated 10 March 2015), that there are 'sound business reasons' where the leveraged intragroup acquisition is performed in a connection with a post-acquisition debt push-down plan (e.g., following the acquisition of a multinational group, partly financed with bank debt, the purchaser group sets up a structure that would allow a portion of such acquisition debt to be allocated to Spain), provided that the portion of the debt pushed down to Spain is reasonable. In any event, it is generally advisable that a taxpayer seeks a binding tax ruling from the Spanish tax authorities in order to implement such a restructuring plan.

granted after 20 June 2014),[14] and interest accruing on hybrid instruments if the interest is not taxed or taxed at a rate lower than 10 per cent at the level of the grantor, are also non-deductible. Spanish transfer-pricing rules may also be used by the Spanish tax authorities to challenge interest deductibility in a related-party loan and to reclassify debt instruments into equity instruments.

Withholding tax

General rules

From a practical perspective, it is standard for foreign lenders to use EU-based vehicles to make loans to Spanish borrowers, as it is not market practice for borrowers to gross-up interest withholding tax (WHT) levied on payments made to lenders who are not 'qualifying lenders' (i.e., lenders entitled to an interest withholding exemption). As a general rule, payments of Spanish-sourced interest are currently subject to WHT at a 19 per cent rate. Tax haven-based lenders will be subject to this standard WHT rate. EU-based lenders (or EU permanent establishments of EU-based lenders)[15] may receive interest free from Spanish WHT, subject to the fulfilment of compliance requirements (e.g., holding a valid government-issued tax residence certificate). Spanish-resident registered banks and registered Spanish permanent establishments of foreign banks also benefit from the WHT interest exemption. Finally, certain tax treaties entered into by Spain may also provide for a WHT exemption on interest (e.g., the Spanish–Swiss tax treaty and the Spanish–US tax treaty (once the new protocol to the Spanish–US tax treaty, which was signed in 2013 and is still pending approval by the US Senate, enters into force)), also subject to the fulfilment of compliance and specific eligibility requirements.

Anti-abuse

Spanish tax law does not provide for a definition of 'beneficial owner' in respect of interest. In fact, the above-mentioned rule exempting interest payments made to EU lenders from WHT does not provide for a 'beneficial ownership' provision. Notwithstanding this, the Spanish tax authorities may, based on general anti-abuse principles, challenge back-to-back lending structures where the lender of record in relation to the Spanish borrower (generally an EU lender claiming the WHT exemption) channels the funds to an ultimate lender. Sub-participation arrangements may be particularly troublesome from a Spanish borrower's perspective, as payments made thereunder may be regarded as interest from a Spanish tax perspective[16] and might give rise to the same anti-abuse concerns. An assessment of the

14 A grandfathering rule ensures that interest accruing on PPLs granted prior to such date remain tax-deductible (subject, however, to the other rules limiting the deductibility of interest described herein).

15 Except for EU-based lenders resident in or obtaining interest through a permanent establishment located in Spain or in a tax-haven jurisdiction. Currently, no EU Member States are deemed to be tax havens from a Spanish tax perspective, but the Spanish tax authorities may revisit the tax haven blacklist depending on certain factors (e.g., where there is no effective exchange of tax information, or where the OECD Global Forum on Transparency and Exchange of Information for Tax Purposes Identifies a jurisdiction as a tax haven).

16 In that regard, the reasoning applied by the Spanish tax authorities in binding tax ruling (V0593-15, dated 16 February 2015), which analyses a crowd-lending scheme with certain features similar to a sub-participation, may indicate that the Spanish tax authorities could favour such interpretation.

robustness of a lending structure against such potential challenges must be carried out on a case-by-case basis. Special attention must be paid to the features of the loan instruments involved, the substance of the lending entity and its level of capitalisation.

Special regime for notes offerings

Spanish tax law provides for a special tax regime[17] applicable to, *inter alia*, qualifying notes offerings made by Spanish resident companies and by wholly owned subsidiaries of Spanish companies resident within the EU,[18] provided that certain additional requirements relating to the offering (e.g., the listing of the notes on a suitable exchange) are met, and certain compliance information is timely supplied by the paying agent involved. This regime provides for a WHT interest exemption on payments made to all foreign noteholders, regardless of their jurisdiction of residence (i.e., tax-haven investors are not penalised) and without requiring individualised tax documentation (such as government-issued tax-residence certificates) to be supplied.

Horizontal tax groups

As a reaction to certain European Court of Justice (ECJ) decisions,[19] several EU countries – including Spain – have amended and extended their tax consolidation regimes in order to prevent challenges to their own rules before the ECJ.

As from fiscal years starting from 1 January 2015, the Spanish Corporate Income Tax Act (the CIT Act) has enlarged the scope of the tax consolidation regime, and allowed that Spanish subsidiaries of a common non-Spanish resident parent company[20] form a horizontal tax group that would include all Spanish-resident direct or indirect subsidiaries in respect of which such ultimate non-Spanish parent company had a shareholding meeting the requirements described above (i.e., generally, 75 per cent of share capital, and majority of the subsidiary's voting rights). The Spanish Congress went beyond the rulings of the ECJ (which would have required that such measures applied in respect of investment from or through EU or EEA entities), and extended the applicability of the tax consolidation regime to holdings

17 Act 10/2014, dated 26 June, on the organisation, supervision and solvency of credit entities.

18 It should be noted that notes offerings carried out by non-Spanish issuer vehicles, where the offering proceeds are ultimately used in Spain, should be carefully reviewed, in light of the criterion set forth in the recent binding tax ruling V4139-15, dated 28 December 2015, where the Spanish tax authorities took the view that interest accrued under such notes could be deemed to be from Spanish sources for Spanish WHT purposes. In such cases, it would be crucial to ensure that the offering meets the criteria to be a qualifying notes offering from a Spanish tax perspective, and that the applicable compliance obligations are duly met by the paying agent involved.

19 Cases C-40/13, and joint Cases C-39/13 and 41/13, where the ECJ ruled that the Dutch fiscal unity regime rules had breached EU law because, *inter alia*, the rules did not allow a fiscal unity between two Dutch 'sister' companies held by a common parent company based in the EU/European Economic Area (EEA).

20 According to the CIT Act, a Spanish parent company (or permanent establishment) holding a direct or indirect participation in a Spanish subsidiary through intermediate holding companies resident in any country other than Spain could form a tax group including such indirect Spanish subsidiaries, provided that the indirect shareholding of such Spanish parent company represents (1) at least 75 per cent of the share capital of the Spanish subsidiary (70 per cent if the subsidiary has its stock listed in a regulated stock exchange); and (2) the majority of the subsidiary's voting rights. Parent companies resident in a tax-haven jurisdiction or not subject to a corporate-level tax are not eligible to be an ultimate parent company for purposes of the tax group regime.

held out of any jurisdiction. The wording of the law (and in particular, the rules governing the formation of horizontal tax groups) creates several pitfalls that may affect a wide array of industries (e.g., multinational groups with Spanish investments, private equity sponsors, and financial institutions financing Spanish acquisitions).

For instance, under the horizontal group rules, a multinational group's parent company holding indirect investments in different businesses without any relationship whatsoever among them from an organisation standpoint (which is a fairly common situation in multinational conglomerates) could be deemed to be the parent company of a sole fiscal unity that should be automatically formed by all the Spanish entities it owns. Under the Spanish CIT Act provisions (which have already been interpreted by the Spanish tax authorities),[21] if these indirect Spanish subsidiaries already formed their own tax groups in Spain, one of the pre-existing tax groups should cease to exist, with the degrouping charges that could derive from such a termination (i.e., recapture of certain intragroup gains that were eliminated in the past owing to the applicability of the consolidated tax regime). Spanish law does, however, not determine which tax group should be terminated.[22] The integration of both pre-existing groups into a single tax group should be effective as from fiscal year 2016.[23]

Another example of unwarranted implications of the horizontal group rules may be followed in private equity structures. Generally, private equity sponsors have 'master' holding companies in an EU jurisdiction, and make leveraged buyout acquisitions through Spanish bidco vehicles partly financed through loans granted by financial institutions. Once the Spanish bidco acquires the shares of the Spanish 'target' company, bidco and target generally form a tax consolidated group. In such structures, the second Spanish investment made indirectly from the same master holding company (with the same bidco–target structure) may turn out not to be eligible to form a standalone tax consolidated group. The fact that there is a common parent company for both the first bidco and the second bidco would mean that the entities related to the second acquisition (i.e., the second bidco and the second target group) should form a single horizontal tax group.

Such an unwarranted outcome may be a great inconvenience for the private equity sponsor (as the financial models prepared for the first acquisition – prepared taking into account the features of the first target and the first bidco's leverage level – may be significantly changed)[24] and for the financial institutions (as the formation of a horizontal tax group may imply an additional exposure to tax risks associated with companies that did not fall under the perimeter of the acquisition that was financed).[25]

21 Temporary provision 25, subsection 2. This provision has been interpreted by the Spanish tax authorities in binding tax ruling V2037-15 (dated 30 June 2015). The case described in the mentioned ruling was the case of two Spanish consolidated tax groups that had a common parent company resident in Luxembourg. As per the Spanish tax authorities, as from fiscal year 2015 both groups should be combined into a single tax group (as the qualifying parent company of both groups was the same Luxembourg entity).

22 See binding tax ruling V2037-15. This means the taxpayer may choose to terminate the pre-existing group that could trigger fewer degrouping costs.

23 Temporary provision 25, subsection 5 of the Spanish CIT Act.

24 Several Spanish CIT rules require the fulfilment of requirements at the tax group level (for instance, the rules limiting the deductibility of interest), and the enlargement of a tax group may lead to unexpected tax inefficiencies (and to a greater tax compliance burden).

25 Entities belonging to a tax group are jointly and severally liable for the CIT debts of the group. In addition, the inclusion of entities in a tax group means that such entities may have accounts payable and receivable

While there may be strategies to structure investments in order to avoid the adverse implications of such regime,[26] their implementation requires individualised tax advice.

III SECURITY AND GUARANTEES

i Parallel debt

Parallel debt structures governed by Spanish law are not used in the Spanish market, as there would be a high risk of their being declared null and void pursuant to the Civil Code owing to the absence of a legal reason supporting the debt. Therefore, a security agent under a syndicated finance deal will not be able to hold any debt or security on behalf of the lenders acting as agents pursuant to a parallel-debt structure. Accordingly, the relevant security interest must be granted in favour of each and every secured party.

From a practical point of view, it is important to bear in mind that all lenders must be party to the relevant security documents by means of duly authorised representatives holding sufficient powers of attorney (which must be notarised and apostilled, or otherwise legalised, as the case may be, for lenders incorporated outside Spain) in order to be deemed secured parties under those security documents. Where the nature of the financing requires a security agent to be party to the security documents on behalf of the lenders, the lenders must grant a special power of attorney (also notarised and apostilled or legalised for lenders incorporated outside Spain) for the security agent to act on their behalf. In this event, the security agent would not act as an agent, but rather as an authorised signatory of the lenders.

ii Financial assistance

When structuring acquisition finance deals or refinancing previous acquisition finance deals, it is important to bear in mind that neither Spanish limited liability companies (SRLs) nor *sociedades anónimas* (SAs, which are the most common form of Spanish corporations, as they limit the liability of the relevant shareholders) may secure or guarantee, or participate, help or render any sort of assistance for the acquisition of their own shares or quotas, or those of their parent companies. Further, Spanish SRLs may not secure or guarantee, or participate, help or render any sort of assistance for the purchase of the shares or quotas of any company within their group. Any security or guarantee created that constitutes unlawful financial assistance in accordance with the foregoing rules is null and void. Additionally, financial assistance may raise civil liability issues for the directors and, potentially, may be criminal offences.

The typical structure to avoid financial assistance was traditionally the 'forward merger'. However, in 2009, the Structural Modifications Act[27] introduced an exception to the general merger rules when the relevant merger implied financial assistance. By means of this law, in

as regards other group entities, depending on whether an entity benefits from tax credits or attributes of another entity of the tax group. This aspect may also be troublesome from the perspective of the financial institutions involved.

26 For instance, the Spanish tax authorities have interpreted that certain investment structures with features designed to ensure that a 'master' holding company could not meet the requirements set out under the Spanish CIT Act to be regarded as a parent entity that could have the status of a head of a consolidated tax group (see e.g., the recent binding tax rulings V1813-16, dated 25 April 2016, and V1083-16, dated 17 March 2016). However, the use of such structures should be approached with caution, and on a case-by-case basis.

27 Act 3/2009 of 3 April on structural modifications of capital companies.

the case of a merger between two or more companies where any of them has incurred debt in the three years prior to the merger in order to acquire control of any of the other companies involved in the merger or to acquire assets of any of the other companies involved in the merger that are essential for normal operation or are significant for the equity value of said company, certain special rules apply, including that an independent expert appointed by the relevant mercantile registry must render an opinion on whether the financial assistance exists. This generates uncertainty, and generally the forward merger leveraged buyout structure is no longer used, having been replaced with different debt pushdown mechanisms chosen on the basis of the accounting situation of the target company.[28]

By means of the above rules set forth in the Structural Modifications Act, the Spanish legislator (based on the former English whitewash procedure) has attempted to find a way for leveraged mergers not to result in financial assistance. Nevertheless, as previously stated, instead of clarifying doubts and filing gaps, this new piece of legislation has created even more doubts, and the effectiveness of this rule in limiting undercapitalisations seems doubtful.

iii Limits to guarantees and security interests of Spanish guarantors

Guarantees provided by Spanish guarantors incorporated in the form of *sociedades de responsabilidad limitad* (SLs) are subject to the following restrictions:

a an SL can only issue notes up to an aggregate maximum amount of twice its own equity, unless the issue is secured by a mortgage, a pledge of securities, a public guarantee or a joint and several guarantee from a credit institution and, to the extent that such restriction may also apply to SLs when guaranteeing notes. A similar restriction is applicable to guarantees granted by Spanish guarantors incorporated as SLs; and

b SLs are prohibited to issue or guarantee notes convertible into quotas.

iv Limitations on security and guarantee

The corporate benefit concept is not expressly recognised under the Spanish legal system. Nonetheless, several points should be borne in mind:

a if a Spanish company grants security or guarantees where the transaction pursuant to which the security granted is not found to result in the ultimate corporate benefit of said company, the directors of that company could be in breach of their fiduciary duties;

b to the extent that the power to grant security or a guarantee for the benefit of third parties is not included in the directors' powers, the directors may need to seek a special authorisation from the company's shareholders; and

28 In addition, the performance of a post-LBO forward merger requires analysis from a Spanish tax perspective, as it is key that such merger can be performed in a tax-neutral fashion (which requires, *inter alia*, that the reorganisation is deemed to have been performed due to sound business reasons and not for tax-driven ones). Such mergers have been contested by the Spanish tax authorities in the past (especially in structures where the merger could give rise to certain tax advantages, such as the recording of amortisable goodwill), and it is market practice that such mergers are performed only to the extent a favourable advanced tax ruling is obtained from the Spanish tax authorities.

c under the Insolvency Act,[29] any agreement entered into by a Spanish company within the two-year period immediately preceding the company's declaration of insolvency may be rescinded by the relevant insolvency court, provided that the insolvency receiver deems that the terms of the agreement are detrimental to the insolvent estate.

There is a presumption in the Insolvency Act that provides that, if they are detrimental to the insolvent estate, the following will be declared null and void: any guarantees that secure a third party's debt and that provide no direct or indirect benefit for the grantor; and any mortgages and pledges granted to secure an existing obligation.

However, any security or guarantees granted as part of a refinancing transaction pursuant to Article 71 *bis* and additional provision 4 of the Insolvency Act are not subject to these general clawback risks.

In view of the above, corporate guarantees may only be granted to the extent that they result in the granting company's corporate benefit, and that said benefit is deemed by the relevant court to effectively exist. Insolvency courts do not always take a 'group' approach when looking into corporate benefit matters; rather, they tend to assess the corporate benefit in relation to the interests of the insolvent company alone. As such, it cannot be completely ruled out that all guarantees that secure third-party debts and that do not have a direct consideration could be declared null and void.

These considerations are particularly relevant when considering upstream guarantees. Insolvency courts have consistently deemed that upstream guarantees or security are gratuitous transactions since there can be no benefit for the guarantor. Downstream guarantees, on the other hand, may be justified by the interest of a parent company to preserve its investment in its subsidiary.

In a non-insolvency situation, the corporate benefit requirement still applies. However, it does not need to be quantified, and it will not prevent a guarantee from covering working capital facilities that are not linked to the acquisition of the company's or its holding company's shares or quotas.

It is worth noting that Spanish SRLs must obtain their shareholders' approval prior to issuing upstream guarantees.

There are certain limitations on guarantees that can be provided by Spanish guarantors incorporated as SLs. As a general rule, SLs can only issue notes up to an aggregate maximum amount of twice its own equity, unless the issue is secured by a mortgage, pledge of securities, public guarantee or a joint and several guarantee from a financial institution. A similar restriction applies to guarantees granted by SLs in order to guarantee the notes. In addition, SLs are prohibited from issuing or guaranteeing notes that are convertible into quotas.

v Security

The most typical securities in the Spanish market are real estate mortgages and pledges over shares or quotas,[30] bank accounts and credit rights. Promissory mortgages are also not unheard of in the Spanish market.

It should be noted that a universal floating catchall security, similar to an English law debenture or US Uniform Commercial Code security interest, are not recognised under

29 Act 22/2003 of 9 July on insolvency.

30 The share capital of SRLs is composed of 'quotas', whereas the share capital of SAs is composed of 'shares'. This distinction is especially important with regards to the application of RDL 5/2005 (see below).

Spanish law. In contrast, each security interest over each asset class is documented in a separate deed and signed before a notary public. In this sense, Spanish law security documents must accurately describe the assets that are subject to a particular charge.

The possibility of creating a single global pledge to secure multiple liabilities is not expressly regulated by the Spanish Civil Code; however, there are grounds to sustain the validity of security interests and guarantees being granted in respect of multiple liabilities. Royal Decree 5/2005, for example, allows for the creation of a single financial security to secure several obligations. The use of global real estate mortgages to secure multiple liabilities is also recognised and regulated by article 153 *bis* of the Spanish Mortgage Law dated 8 February 1946. Lastly, the use of personal guarantees to secure multiple liabilities is expressly recognised by Article 98 of Spanish Royal Decree Law 3/2011 of 14 November, which approves the Consolidated Text of the Public Sector Contracts Act. In light of the above, it is fair to say that it is common to see Spanish pledges securing more than one obligation.

Mortgages

As a general rule, pursuant to the principle of speciality, each mortgaged asset may secure the obligations arising from one debt instrument only. However, when all lenders are financial entities (as defined in Article 2 of the Spanish Mortgage Market Act)[31] and certain formal requirements are also met, the relevant mortgage may be created in the form of a maximum liability mortgage, which may secure obligations arising from several debt instruments up to the said maximum liability (the global real estate mortgages).[32]

Spanish law mortgages can be created over real estate assets and over moveable assets such as intellectual property rights, industrial machinery, aircraft, vehicles and business premises; as a perfection requirement, they must all be registered with the relevant public registry.

The mortgage deed must expressly mention the maximum amount of the underlying obligations that is secured by the mortgage. In this sense, it is important to carry out a cost-benefit analysis, given that stamp duty must be paid on the basis of the maximum secured amount. Currently, the stamp duty applicable to public deeds of mortgage may generally range between 0.5 and 2 per cent of the secured amount.

It should be noted that assignments between lenders of commitments under the relevant facility agreement do not automatically result in the assignment of the assigning lender's participation in the mortgage. The assignment of the mortgage must be expressly documented and registered with the relevant public registry in order for the acquiring lender to become a mortgagee of record. Further, stamp duty is levied on the basis of the commitment being transferred.

The mortgage deed must include the Spanish tax identification numbers of all of the parties to enable the Spanish authorities to identify each party thereto. It should be noted that acquiring a tax identification number in Spain does not entail *per se* any tax obligations or mean that the relevant entity has a permanent establishment in Spain: this will depend on the facts and circumstances regarding a foreign person's actions and business in the Spanish territory.

31 Act 2/1981 of 25 March, on the regulation of the mortgage market.

32 Article 153 *bis* of Spanish Mortgage Law dated 8 February 1946.

Finally, although the Spanish regulations set forth that mortgages may be enforced through court or by out-of-court (i.e., notarial) proceedings, recent case law suggests that out-of-court enforcement may not always be available, particularly in the event that the mortgagor is a consumer and the mortgaged asset is the mortgagor's home.

Pledges

Spanish law does not expressly regulate the possibility of creating a single global pledge to secure several obligations. However, both global real estate mortgages[33] and global guarantees are expressly recognised under Spanish law.[34] In this sense, based on the acceptance of the application by analogy of the mentioned regulations, it is a widespread market practice to grant a single global pledge to secure several obligations, which is generally considered acceptable in Spanish academic literature.

There are two main types of pledges under Spanish law: pledges with transfer of possession and pledges without transfer of possession.

Pledges with transfer of possession

Pledges with transfer of possession require the possession of the pledged asset to be transferred to the creditor or to a third party for the purposes of perfecting the pledge. For assets that are not physically transferable, there are presumptions that certain actions (e.g., granting the pledge as a Spanish deed, delivering notices) are equivalent to transferring possession of the relevant asset.

Under certain circumstances, pledges with transfer of possession may be subject to RDL 5/2005,[35] which incorporated the European Financial Collateral Directive[36] into Spanish law and aims to facilitate enforcement of financial collateral arrangements.

To benefit from this regime, the following requirements, *inter alia*, must be met:

a at least one of the parties to the arrangement must be a financial institution, as defined in Directive 2006/48 of the European Parliament and of the Council of 14 June 2006 relating to the taking-up and pursuit of credit institutions;

b the pledged asset must be cash (i.e., the money credited to an account in any currency); marketable securities[37] and other financial instruments; or specific receivables (i.e., those money claims arising out of an agreement whereby a credit institution grants credit in the form of a loan agreement or a credit line); and

c the financial collateral arrangement must have been formalised in writing.

The main advantages of RDL 5/2005 for lenders are as follows:

a no formalities (e.g., registration, notices, transfer of possession) are required other than documenting the arrangement in writing;

b it allows for the direct sale or appropriation of the pledged asset; and

33 See Section III.iv, 'Mortgages', *supra*.

34 Article 98 of Spanish Royal Decree Law 3/2011 of 14 November, which approves the Consolidated Text of the Public Sector Contracts Act.

35 Royal Decree Law 5/2005 of 11 March on urgent reforms for boosting productivity and to improve public procurement.

36 Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements.

37 Quotas in a SRL do not qualify for these purposes.

c it provides certain protections against insolvency, given that the initiation of insolvency proceedings is not considered sufficient grounds to declare null or to rescind a financial collateral arrangement.

Finally, to the extent that the pledged asset is located in Catalonia, the Catalonian Civil Code[38] applies. In this case, it should be noted, *inter alia*, that second and subsequent pledges are expressly prohibited (unless they are created for the benefit of the same creditors and the secured obligations are split among them); and that the maximum amount secured by the pledge must be clearly stated in the deed of pledge (in a similar way as previously mentioned for mortgages).

Significantly, this type of security does not attract stamp duty.

Pledges without transfer of possession

Pledges without transfer of possession do not require the possession of the pledged asset to be delivered. However, they must be registered in the relevant moveable assets registry as a perfection requirement.

Unlike mortgages, provided the pledge is granted as a Spanish commercial deed and not as a notarial deed, no stamp duty will be levied. However, the deed of pledge must still include a reference to the maximum amount of secured obligations that is secured by the pledge without transfer of possession. Spanish tax identification numbers are required to have the pledge registered.

As regards assignments between lenders, similarly to mortgages, the assignment of a lender's position under a pledge without transfer of possession must be expressly documented and registered with the relevant public registry.[39]

Similarly to pledges with transfer of possession, to the extent that the pledged asset is located in Catalonia, the Catalonian Civil Code[40] applies. In this event, it should be noted, *inter alia*, that it is unclear whether a pledge may secure the obligations arising from more than one debt instrument.

As a result of certain legal interpretations arising from some unclear amendments to Article 90.1.6 of the Spanish Insolvency Law, it was usual during a short period of time to structure pledges over credit rights as pledges without transfer of possession. On 1 October 2015, however, the Spanish parliament passed the Public Sector Legal Regime Act, which amended Article 90.1.6 of the Spanish Insolvency Law, removing any doubt as to the validity of pledges over credit rights, whether present or future (arising from agreements entered into before the declaration of insolvency), if those pledges are structured by means of an ordinary pledge with a transfer of possession, following the Spanish Civil Code. Therefore, currently there is no material benefit from granting non-possessory credit rights pledges instead of traditional credit rights pledges and, hence, market participants are structuring pledges over credit rights as pledges with transfer of possession in order to avoid registration requirements.

38 Act 5/2006, of 10 May, of the fifth book of the Civil Code of Catalonia, regarding *in rem* rights.

39 See Section III.ii, *supra*.

40 Act 5/2006, of 10 May, of the fifth book of the Civil Code of Catalonia, regarding *in rem* rights.

Promissory mortgage

Promissory mortgages are not unusual in Spanish finance deals. A promissory mortgage does not create an *in rem* right of mortgage, but rather creates an obligation for the grantor in relation to the relevant lenders party thereto to create an *in rem* right of mortgage upon the agreed trigger event.

Promissory mortgages are typically used when the amount of stamp duty that would be levied on the relevant mortgage deed is too large compared with the risk of default or, generally, with the benefit of creating a mortgage upon closing a deal.

In any case, lenders should bear in mind that the conversion of the promissory mortgage into a legal mortgage requires the payment of the stamp duty that was initially avoided, and that it entails significant insolvency limitations and a high rescission risk.

Irrevocable powers of attorney

It is usual in the Spanish market to have the mortgagor or pledgor grant a special power of attorney in favour of the security agent (or even the lenders) to carry out certain actions on its behalf. Pursuant to such irrevocable power of attorney, the security agent is typically authorised to carry out perfection, further assurance and enforcement actions on behalf of the relevant mortgagor or pledgor with respect to the relevant security documents.

To ensure that the mortgagor or pledgor may not unilaterally revoke the power of attorney, the security agent is usually party to the deed of power of attorney, and certain specific language is included.

Finally, it is worth mentioning that the scope of the powers granted in favour of the security agent or lenders should be carefully defined in order to avoid their potential classification as shadow directors in an insolvency proceeding of the grantor.

IV PRIORITY OF CLAIMS

i Types of claims

Once insolvency has been declared, the court receiver draws up a list of acknowledged claims and classifies them according to the following categories.

Claims against the insolvency estate

These claims are payable when due according to their own terms (and, therefore, are paid before all other claims under insolvency proceedings; see below). Claims against the insolvency estate include the following:

a a certain amount of the employee payroll;

b the costs and expenses of the insolvency proceedings;

c certain amounts arising from services provided by the insolvent debtor under reciprocal contracts and outstanding obligations that remain in force after insolvency proceedings are declared, and certain amounts deriving from obligations to return and indemnify in cases of voluntary termination or breach by the insolvent debtor;

d amounts deriving from the exercise of a clawback action during the insolvency proceedings regarding certain acts performed by the insolvent debtor and corresponding to a refund of consideration received by it (except in cases of bad faith);

e certain amounts arising from obligations created by virtue of law or from tort after the declaration of insolvency and until its conclusion;

f 50 per cent[41] of the funds lent under a refinancing arrangement entered into in compliance with the requirements set forth in Article 71 *bis* (refinancing agreements) or additional provision 4 (homologation of refinancing agreements) of the Spanish Insolvency Act; and

g certain debts incurred by the debtor following the declaration of insolvency.

Insolvency claims

Insolvency claims are subject to the insolvency proceedings and, unlike the claims against the insolvency estate, are paid in accordance with the waterfall set forth in the Spanish Insolvency Act. Insolvency claims, in turn, are classified as follows:

a claims benefiting from special privileges, representing basically security on certain assets (essentially *in rem* security, to the extent secured by *in rem* security);

b claims benefiting from general privileges include certain labour debts and certain debts with public administrations corresponding to tax debts and social security obligations (which are recognised as generally privileged for half of their amount), and debts held by the creditor applying for the corresponding insolvency proceedings (to the extent such application has been approved) up to 50 per cent of the amount of such debt. Funds under a refinancing arrangement entered into in compliance with the requirements set forth in Article 71 *bis* of the Spanish Insolvency Act in the amount not admitted as a debt against the insolvency estate will benefit from general privileges;

c ordinary claims (unsubordinated and non-privileged claims); and

d subordinated claims, which are classified contractually or by virtue of law). Debts subordinated by virtue of law include, *inter alia*, claims that have been notified late by the creditors, fines, claims related to accrued and unpaid interest unless and to the extent they are secured by an *in rem* right, as well as, in particular, credit rights held by parties that are specially related to the debtor (discussed further in Section IV.ii, *infra*).

In the event of liquidation of the insolvent company, claims are paid in accordance with the above waterfall (i.e., claims against the insolvency estate first, specially privileged claims (to the extent secured) second, generally privileged claims third, ordinary claims fourth and subordinated claims last). In the event that there is more than one creditor within a particular class, claims are paid on a *pro rata* basis.

ii Subordination

Credit rights may be subordinated by virtue of law, by contractual agreement or as a result of the structure of the debt.

Pursuant to the Insolvency Act, credit rights held by parties that are specially related to the debtor are subordinated. In the case of individuals, this includes their relatives. In the case of legal entities, this includes:

a shareholders, group companies and their common shareholders, provided that:
- they are personally liable for the debtor's debts;

41 From 2 October 2016, 50 per cent of the new funds under a formal refinancing are regarded as a claim against the insolvency estate and the remaining 50 per cent as a generally privileged claim.

- they owned directly or indirectly over 5 per cent (for companies that have issued securities listed on an official secondary market) of the entity's share capital when the relevant debt was incurred; or
- they owned directly or indirectly over 10 per cent (for companies that have not issued securities listed on an official secondary market) of the entity's share capital when the relevant debt was incurred; and

b directors and *de facto* (shadow) directors, liquidators and attorneys holding general powers of attorney, as well as those who held such positions within the two years immediately preceding the initiation of insolvency proceedings.

In addition to the above, there is a presumption that any persons who have acquired credit rights from the specially related persons described above within the two years immediately preceding the initiation of insolvency proceedings are also specially related to the debtor. Therefore, such claims will become subordinated.

Notwithstanding the above, it is noteworthy that creditors who have capitalised all or part of their claims pursuant to a specially protected refinancing agreement under Article 71 *bis* or additional provision 4 of the Insolvency Act are not deemed specially related persons as a result of said refinancing; and any creditors who enter into a specially protected refinancing agreement under Article 71 *bis* or additional provision 4 of the Insolvency Act are deemed not to be *de facto* directors due to the obligations assumed by the debtor pursuant to said refinancing agreement (although evidence to the contrary may be admitted).

As regards first-lien and second-lien structures, the part of the first-lien facility that remains unsecured after enforcement of the relevant security will rank *pari passu* with the second-lien facility. In this sense, lenders would have to rely on the provisions of the relevant intercreditor agreement for effective subordination of the second-lien lenders. It should be noted that the subordination provisions of intercreditor agreements have not yet been tested in Spain, although they should work among relevant creditors pursuant to Article 1255 of the Civil Code.

V JURISDICTION

Choosing the laws of any jurisdiction other than Spain will generally be given effect by the Spanish courts subject to, *inter alia*, the terms of the Rome I Regulation[42] and in accordance with the exceptions and provisions of the laws of Spain, provided that the relevant applicable law is evidenced to the Spanish courts pursuant to Article 281 of the Spanish Civil Procedure Act,[43] and pursuant to Article 33 of the Act on International Legal Cooperation in Civil Matters.[44]

Further, a final judgment obtained against any debtor or guarantor in a country other than Spain that: (1) is not bound by the provisions of EU Regulation No. 1215/2012;[45] and (2) is not party to an international treaty providing for the recognition and enforcement of

42 Regulation (EC) No. 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I).

43 Act 1/2000 of 7 January on Civil Procedure.

44 Act 29/2015 of 30 July on International Legal Cooperation in Civil Matters.

45 Regulation (EU) No. 1215/2012 of the European Parliament and of the Council on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.

judgments between Spain and the countries where the judgements were rendered, would be recognised and enforced by the courts of Spain in accordance with and subject to Article 523 of the Spanish Civil Procedure Act and subject to the Act on International Legal Cooperation in Civil Matters.[46]

The party seeking for enforcement should initiate the recognition proceedings in Spain before the relevant Court of First Instance or Commercial Court, as the case may be. According to Article 46 of the Act on International Legal Cooperation in Civil Matters:

> *a final foreign judgment would not be recognised:*
> *a) if the judgment contravenes Spanish public policy rules (orden público);*
> *b) if the judgment was rendered infringing the rights of defense of either party. If the judgement was rendered by default, it would be understood that the rights of defense have been clearly infringed provided that the defendant was not served with the document that instituted the proceedings in a timely manner that allowed for adequate defense;*
> *c) if the judgement addresses a matter over which Spanish courts have exclusive jurisdiction or, in relation to other matters, if the jurisdiction from the court of origin over the matter is not clearly connected to said country of origin in which the judgment was rendered;*
> *d) if the judgement is irreconcilable with a judgment rendered in Spain;*
> *e) if the judgement is irreconcilable with an earlier judgment rendered in any other State provided that such judgment complies with the applicable conditions to be recognized in Spain;*
> *f) if there is judicial proceeding outstanding in Spain between the same parties and in relation to the same issues in Spain, instituted before the foreign proceeding."*

The Act on International Legal Cooperation in Civil Matters expressly prohibits that a foreign judgment is reviewed as to its substance by the Spanish competent court.

Finally, any judgment obtained against any debtor or guarantor in any country bound by the provisions of EU Regulation No. 1215/2012 would be recognised and enforced in Spain in accordance with the terms set forth therein.

VI ACQUISITIONS OF PUBLIC COMPANIES

Loans in the context of Spanish public-to-private (P2P) transactions are not that different from non-P2P acquisition finance deals, although lenders need to focus on the bank guarantees that the Spanish Securities Market National Commission requires as evidence that the relevant acquirer will be able to comply with its obligations under the public offer to purchase, to make sure that these are adequately integrated in the financial documents and to consider the unconditional nature of these guarantees at the time issued. These requirements obviously vary on a case-by-case basis.

Spanish stock corporations are governed by the Spanish Securities Market Act (Ley 24/1988, de 28 de julio, del Mercado de Valores, as restated by Legislative Royal-Decree 4/2015, of October 23), as amended by Act 4/2015, and further developed by Royal Decree 1066/2007 of 27 July on the rules applicable to takeover bids for securities. The Spanish authority responsible for approving any takeover bid launched is the Spanish Stock Exchange Commission.

46 The Act on International Legal Cooperation in Civil Matters repealed Articles 951–958 of the former Spanish law civil procedural of 1881.

When someone directly or indirectly acquires control over (i.e., has at least 30 per cent of the voting rights) a publicly listed company, a tender offer for all outstanding shares in that company is mandatory. The mandatory takeover bid will also be triggered when someone does not hold more than 30 per cent of the voting rights but has appointed, within 24 months following the acquisition, a number of directors that, together with those already appointed by the bidder, if any, represents more than one-half of the members of the board of directors.

The aforementioned threshold can be obtained: (1) by means of an acquisition of shares or other securities that confer, directly or indirectly, voting rights in such company; (2) through shareholders' agreements; or (3) as a result of indirect or unexpected takeovers.

Mandatory takeover bids must be made at an 'equitable price', that is to say, an equal price to the highest price that the party required to launch a takeover bid (or those persons acting in concert with it) has paid for the same securities during the 12 months prior to the announcement of the bid. Contrary to this, in a voluntary takeover bid, the offerer is free to offer whatever price it wishes.

VII OUTLOOK

Given the regulatory requirements that still remain in place for Spanish banks and the credit restrictions they entail, it can be anticipated that borrowers will continue to look to alternative, more creative and perhaps even aggressive ways of financing their corporate needs. Further, it would make sense for borrowers to look for more flexible and cost-efficient structures, and it can be expected that alternative financing providers will continue to gain further entry into the market.

In view of the above, it is likely that more borrower-friendly structures, such as high-yield bonds and covenant-lite deals, will become commonplace in the medium to long term. In addition, alternative and more flexible financing providers are likely to become strong players in the market.

Market players will also be considering the impact of further anticipated amendments to the Spanish Insolvency Act, which are expected, *inter alia*, to facilitate the reorganisation and survival of viable companies with financial difficulties.