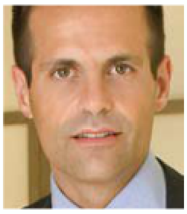

"As a result of the ongoing crisis, transaction timelines are extending and becoming extremely unstable, buyers become nervous and sellers are reluctant to accept price corrections, and international investors need stronger business cases to overcome the 'Spanish risk factor'"

José A Sánchez-Dafos, Head of Corporate, DLA Piper Spain

wide and solid international presence, not dependent on the Spanish internal market.

The Spanish market is also being dominated by asset deals, namely transfer of business units, also at very low prices. Lawyers are seeing businesses looking to sell unproductive assets so as to reduce their losses instead of waiting to obtain the asset's real value.

With insolvency now a big part of crisis-induced day-to-day business, proceedings are being used a lot more as one of the available strategies to take control of a company and its assets, says Rafael Lucas Pires, Corporate and M&A Partner at Serra Lopes, Cortes Martins . But many believe not enough is being done to prevent companies falling into insolvency. "Insolvency is seen as a tragedy," says Octávio Castelo Paulo, Head of Corporate, M&A and TMT at SRS Advogado, "and when companies finally give in its too late to avoid litigation.

'Distressed' is top of the agenda as the year draws to a close – for assets and debt. "The trend in Spain is for restructuring transactions being carried out in almost all areas of economic activity, in particular affecting the financial system and especially relating to restructuring real estate assets," says Federico Roig, Partner, Head of Corporate at Cuatrecasas Gonçalves Pereira in Madrid. The recent creation of the *banco malo* (SAREB) being a good example of this.

Since the beginning of the crisis, many profitable companies have turned into distressed assets due to lack of financing and the collapse of the retail market, adds Francisco Aldavero, M&A Partner at Araoz & Rueda. "Unsurprisingly, the total investment by private equity players as of Q3 2012 fell more than 40% with respect to 2011. "

Lawyers see a recent trend in so-called 'boutique transactions' – the acquisitions of distressed Spanish businesses, mainly through asset deals, which provide value to a foreign investor in terms of goodwill, technology and know-how, among others.

And private equity investors are no longer, therefore, the main players in the investment market. Lawyers are seeing more and more industrial investors taking an active role, demonstrating a trend for defensive transactions involving disinvestment in non-strategic areas and transactions to restructure portfolios, as opposed to those leaning towards growth and expansion.

"We are in a buyer's market," says Francisco Santos Costa, Corporate and M&A Partner at Cuatrecasas in Lisbon, "and there is no rush from investors to close deals since they could always expect that within six months the prices will go down further". In this environment, he explains, investors are likely to put in place strategies to delay negotiations to see how low prices will go before they start taking advantage of market opportunities at cheaper levels.

In Spain, lawyers are seeing transaction timelines extending and becoming extremely unstable. "Buyers become nervous and sellers are reluctant to accept price corrections," says José A Sánchez-Dafos, Head of Corporate at DLA Piper Spain. "International investors need stronger business cases to overcome the 'Spanish risk factor'."

And there is overall high-pressure on divestments as a way to liquidity, adds Carlos Pazos, Managing Partner at SJ Berwin in Madrid. However, there is still a certain divergence in price terms with potential purchasers that are expecting hard discounts, which are not always justifiable other than for reasons of 'country risk'.

Ultimately, says Pires at Serra Lopes, Cortes Martins, restructurings and distressed assets activity are what is rescuing M&A lawyers right now.

Lacking finance

Across Iberia, financing is scarce for all kinds of transactions, there is almost none for new investments and credit flow is limited. Financing is a kind of "never achievable dream" nowadays, says Ignacio Legido, Managing Partner at BDO Abogados. "It is almost like winning the lottery."

The financial instability of both Spain and Portugal reinforces these difficulties, and the level of guarantees required, equity demanded and interest rates mean a scarcity of feasible options for investors. Leveraged loans are also practically non-existent. And a key concern, says Sergio Giménez, Commercial and M&A Partner, Jausas in Barcelona, is the chain effect that the lack of financing is having on payments from clients to their suppliers.

"The situation is extremely difficult," says Fernando de las Cuevas, Head of M&A at Gómez-Acebo & Pombo in Madrid. "There is refinancing but little new financing, and alternatives are, for example, corporate finance through bond or share issues."

Many current transactions, say lawyers, are being financed by existing, rather than new, debt, and more than ever it is necessary to seek out alternative financing formulas if a transaction is to stand a chance of going ahead.

"In Portugal, a trend continues to be the difficulty in getting financing approved," says Corrêa de Sampaio at Abreu Advogados, "which means that transactions are facing delays, with many unable to move forward."