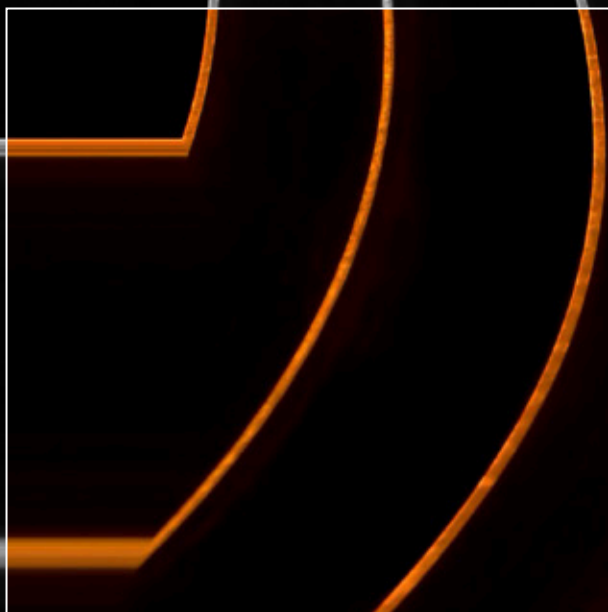


Support services in M&A operations

seegman 

Services



All company or business acquisition operations, regardless of value or size, are complex processes that require a professional financial and legal advisory team to ensure their proper execution. At Seegman we help companies and their advisory teams to successfully close transactions while containing costs.

Our team is accustomed to working at the pace of transactions with a variety of parties and jurisdictions, providing support to leading firms, as well as negotiating and leading mid-market and small market M&A transactions in Spain, so we can integrate with the client's core team of advisors or in-house lawyers in providing these support services.

Our services include the execution of tasks during the whole buy or sell process.



1

Starting phase: origin and preparation of the process

M&A operations can originate in organized processes, in which the sale of a company or business is sought after a strategic decision, or in informal, unorganized processes, in which the partners or management teams of two companies or businesses detect the synergies and advantages of a possible integration between the two and decide to negotiate the operation.

An organized sales process begins with the design of the sales strategy and preparation of the documentation. At this point, the scope, objectives, initial valuation (or initial valuation range) and an indicative timetable for the transaction must be defined. Normally, this type of sales has specialized advisors from the beginning that help in a professional design of the process and documentation, including the preparation of a teaser (blind profile with a brief summary to allow the evaluation of the interest of potential investors), an NDA (non-disclosure agreement) (contract to be signed with potential interested investors that ensures the protection of confidentiality of the information provided by the seller during the entire transaction) and an Info Memo (the sales notebook that, unlike the teaser, is not anonymous and includes detailed information of the business, its structure and its commercial and financial plan).

During this phase, the seller and its advisors also prepare a data room and, on occasion, a vendor's due diligence, consisting on the collection of all the company's information, including financial, tax, commercial, legal and technical information, and the preparation of a report describing the conclusions drawn from such documentation, including possible contingencies in the relevant areas, for subsequent availability to potential buyers.

The construction of the data room and the preparation of the vendor's due diligence report are very relevant actions in the sale of the company that in many occasions can be carried out internally by the company itself and whose outsourcing can be excessively costly.

These actions are of great relevance to the process, since they represent the information on which the company will receive the offers for sale, so it is important to do it with rigor and attention to detail. On many occasions, these preparatory actions cannot be internalized due to issues such as the lack of organizational capacity or the confidentiality of the transaction, and their outsourcing to the main legal or financial advisors of the operation can be excessively costly.

As an example, at this stage, the services we can offer from Seegman include

- Support in the preparation of the vendor's due diligence report following the review guidelines set by the client or its advisors, from the analysis of information contained in contracts, licenses, forms and documentation in general, to the completion of files and reports deliverable to the client.
- Support in the establishment of the corporate structure to carry out the operation with the defined perimeter:

At Seegman we offer the possibility of incorporating or providing vehicle companies for the execution of the acquisition or for the agile execution of the restructuring operations prior to the sale.

We coordinate and execute the corporate changes to adapt the vehicles involved to the needs of the operation, such as change of object, management body.

We advise and support in the implementation of structures and corporate changes, including the drafting of corporate agreements, as well as the public filing and registration when necessary.

2

Bid reception and due diligence phase

Once the teasers are sent, access to the Info Memo is given to those potential buyers interested in the transaction, after signing an NDA. With the information from the sales notebook, non-binding indicative offers will be requested, after which the seller selects the potential buyers to be given access to the data room and the vendor's due diligence report.

In operations that begin informally, without an organized sales process, it is also common to sign a confidentiality agreement between the parties that allows the potential investor access to the seller's data room information. In these cases, the existence of a vendor's due diligence report is very rare. The presentation of the indicative offer in this type of operation would be replaced by an agreement between the parties (MOU, memorandum of understanding or LOI, letter of intent), which includes in a generally simple contract the key aspects of the initial agreement between the parties that will be reviewed, negotiated and agreed upon once the data room information has been reviewed. These agreements may include the valuation or method of valuation, the key aspects of the investment or co-investment if applicable, the fundamental aspects of the seller's liability, the permanence or not of the management team, and those other points that the parties may consider relevant to their transaction.

In any case, during the buyer's due diligence process, the seller may choose to give more or less access to the management team by organizing presentations (Management Presentation) and Q&A sessions, both with the buyer and with its various advisors. With the information received during the due diligence process, each potential buyer must present the seller with a binding offer (BO) with its adjusted valuation. It is also common to make available to potential investors, together with the data room, a draft of the share purchase agreement (SPA) and, if applicable, of the shareholders' agreement (SHA), for the inclusion of their comments and modifications, and their valuation by the seller together with the binding offer.

In both organized and informal sales processes, the treatment and analysis of the information obtained during due diligence is the basis of the buyer's knowledge for its negotiation and closing of the transaction.

This phase is of vital importance for potential investors, since the information obtained during the due diligence process must be carefully analyzed and taken into account both for the preparation of the binding offer (including comments to the transaction agreements) and later in the negotiation phase. The information obtained by the buyer and its advisors in this phase is the essential basis on which the buyer bases the transaction. Sometimes, the processing of all the information requires a labor-intensive team that may hinder or delay the work of the legal team in the preparation and/or negotiation of the binding offer or the letter of intent.

As an example, at this stage, the services we can offer from Seegman include

- Support in the preparation of the due diligence report following the review guidelines set by the client or its advisors, from the analysis of information contained in contracts, licenses, forms and documentation in general, to the completion of files and reports deliverable to the client.
- Coordination in the granting of the necessary powers of attorney by the potential buyer for the signing of the binding offer, and the negotiation, signing and closing of the transaction.

3

Exclusivity phase: negotiation and signing of the contract

In organized sales processes, with the receipt of binding offers, buyers usually wait for the selection of a single buyer or investor with whom to start a period of exclusivity for the negotiation and signing of the sales contract. In the case of informal sales processes, the buyer may also demand a period of exclusivity for the negotiation and signing of the contract. In both cases, the buyer seeks to protect the increased expenses incurred during this phase. This exclusivity can also benefit the seller to protect the higher level of access to information about the company that inevitably occurs during this phase.

During the negotiation phase, the costs incurred by both parties increase, as does the exchange of sensitive information between them.

During the negotiation of the contracts, the need may arise to subject the sale and purchase to certain conditions precedent, such as the obtaining of certain administrative authorizations (competition, foreign investment, etc.) or the execution of carve-out transactions or definition of the scope of the transaction, and this is effectively the case in 60% of transactions in Spain. In this case, the negotiation phase will normally culminate in the signing of the purchase agreement, subject to conditions precedent, and the agreement between the parties on the content of the remaining ancillary agreements of the transaction.

Negotiations of purchase and investment contracts are generally intense and require the exclusive dedication of the teams on both sides and their financial and legal advisors. However, for an effective execution once negotiations are completed, parallel work needs to be carried out by all parties involved in the operation.

As an example, at this stage, the services we can offer from Seegman include

- Coordination in the granting of the necessary powers of attorney for the signing and closing of the transaction, both by the buyer and the seller, including the obtaining of corporate authorizations and permits that may be required by each of the parties.
- Support in establishing the corporate structure to carry out the operation:

At Seegman, we offer the possibility of incorporating or providing vehicle companies for the execution of the acquisition or for the agile execution of the restructuring operations prior to the sale.

We coordinate and execute the corporate changes to adapt the vehicles involved to the needs of the operation, such as change of object, management body.

We advise and support in the implementation of structures and corporate changes, including the drafting of corporate agreements, as well as the public filing and registration when necessary.

- Support in obtaining identification documentation for foreign partners and administrators (NIE, NIF).
- Support in the correction of contingencies detected during the due diligence process.

4

Interim phase: period between the signing of the contract and the closing of the transaction

In contracts subject to a suspensive condition, the interim period between the signing date and the date of effectiveness of the sale (closing date), is a period of compliance with obligations and preparation for the execution of the transaction. Depending on the agreed conditions precedent, this period can be more or less long, normally between three and six months in Spain, but requires less intensive work than the previous phases. The obligations and actions to be carried out during this phase are usually agreed and described in detail in the SPA, which allows the outsourcing of many of them to help the company prepare the integration of the business once the transaction is completed.

60% of M&A transactions in Spain are subject to conditions precedent and therefore provide for a period between the signing and the closing of the transaction.

During this stage, the services that we can offer from Seegman are very numerous and include, among others, the following

- Support in the fulfillment and follow-up of conditions precedent including sending of contractual, administrative, labor, etc. notifications.
- Obtaining certificates of compliance with obligations with the tax and social security authorities (normally required in asset deals).
- Support in the correction of contingencies detected during the due diligence process.
- Support in the execution of corporate restructurings for the closing of the operation including structural modifications, carve-outs, and the establishment of the vehicle or vehicles necessary for the acquisition.
- Support in the procedures necessary for the preparation of corporate actions at closing, such as the application for corporate names, application for identification numbers for foreigners, etc.
- Coordination in the granting of the necessary powers of attorney for the closing of the transaction, both by the buyer and the seller, including obtaining the corporate authorizations and permits that may be required by each of the parties.
- Preparation of bank compliance files, as well as opening of accounts to ensure receipt of funds and management thereof.

Closing, when the buyer takes control of the target company, implies the execution before the Notary Public of numerous contractual and corporate actions by both parties, including the closing deed, the public execution of the main and accessory agreements, the execution of the contracts, the execution of deeds establishing guarantees (such as an escrow or deposit), the public execution of agreements on corporate modifications in the acquired companies, the delivery of documentation and even the notification of the operation to different authorities and social agents. Especially in the case of the acquisition of a group of companies, these actions may require intensive legal work of coordination between buyer, seller, companies and notary's office, the preparation of which by the legal advisors of the operation may be costly.

Also, in more than three out of every four transactions in Spain, the price is paid in cash at closing, so it is necessary to ensure in advance coordination between the parties and the various financial institutions so that on the day of closing the issue and receipt of funds is carried out efficiently.

Seegman offers its support services to the legal advisors and the parties for the following actions that allow for a reduction in the costs incurred and the level of work during the days prior to closing, leaving them with a greater capacity for negotiation and resolution of unforeseen events that arise at the last minute. For example:

- Preparation of corporate documentation for the implementation of the changes agreed in the SPA or the structure agreed in the SHA.
- Coordination with the notary's office for the preparation and review of complementary/accessory deeds, such as those of the public filing of corporate agreements, information deposit, etc.
- Representation of the parties in the execution of the documentation before a Notary Public.
- Elaboration and presentation of contractual, administrative and labor notifications required for the closing
- Coordination with banks for the issuance/reception of funds.



5

Post-closing phase

The M&A operation does not end once the purchase or sale of the company or business is completed. At that time there may be outstanding obligations for both parties, such as compliance with obligations arising from transitional service agreements (TSA), price adjustment payments (in 50% of operations in Spain), price payments subject to the future development of the company (earn-out, in 60% of operations in Spain), and even obligations arising from the seller's liability regime.

The M&A operation does not end at closing.

Many of these obligations are clearly defined in the SPA and require a legal follow-up that does not require the associated work of the operation's main advisors, but neither can they be assumed internally by the company, focused on the operational integration of the transaction. During this stage, the services that we can offer from Seegman are very numerous and include, among others, the following

- Follow-up of procedures before registries and administrative authorities.
- Support in the correction of contingencies detected during the due diligence process.
- Support in the procedures necessary to complete post-closing obligations, such as applications for change of ownership of assets, licenses, etc.
- Carrying out communications to public and private entities about corporate changes derived from the operation, such as change of administration, change of name, address, bylaws.
- When required, coordination of assignment of contracts and obligations.
- Basic accounting services of the holding vehicle until it is taken over by the final accounting providers selected by the client.
- Secretarial services and maintenance of companies, including representation on the board of directors.
- Notification to workers and labor and social security authorities, transfer of workers.
- Support in making notifications of liability claims by the buyer to the seller.
- Support in carrying out other notifications based on the purchase contract for actions derived from price adjustment, release of deposits in guarantee, payment of variable price, etc.



Seegman is a law firm located in Madrid and Lisboa, with a multidisciplinary and international team, with experience in providing personalized legal advice to foreign clients who wish to invest in Spain.

This brochure is of an advertising and informative nature.

For the provision of professional legal advice you should contact the firm directly through the specialized contacts.

Seegman refers to the company Seegman Servicios Jurídicos, S.L.P., with tax identification number B88144852.

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