

Farewell and our last note on M&A and the business judgment rule

Madrid, May 2026

After more than 13 years in practice, J. Almoguera Abogados will come to an end in a few days. Our whole team (Cinta Garrido, Gabriela Fernández, Guillermo Amat, Ignacio Redondo, Carlos González, Rocío Sancho, Eduardo Vázquez de Prada and Jesús Almoguera) are joining the international law firm Stephenson Harwood (SH) to launch its Spanish practice alongside a number of excellent lawyers from different Spanish and international firms. We all are very keen to start this new chapter and, at the same time, feel nostalgia for the one that is about to end, for which we are grateful and of which we are proud.

We started in 2013 with a complex and groundbreaking insolvency case relating to an international fashion group, which ended up with the sale of the business. The case was handled swiftly (in less than a year) and inspired some of the eventual reforms of Spanish insolvency legislation.

Our practice quickly evolved beyond insolvency to also encompass arbitration and complex litigation. In these years we have secured important court wins in disputes concerning, for instance, large financings of infrastructure projects or the -as far as we know- first large and discrete stand-alone antitrust action in Spain. Other areas of our practice have included restructurings, securities litigation and M&A, corporate and construction disputes.

We continue to believe that the legal profession requires passion for the law, intellectual curiosity, humility, non-conformism, creativity, mettle, hard work and attention to detail, and look forward to the new adventure with SH with enthusiasm and confidence and this same professional philosophy. Please do get in touch if you have any questions about our move.

And, now, our last note.

Last February the Madrid Court of Appeal (MAC) rendered a judgment¹ concerning a build-up acquisition by a portfolio company of one of Spain's leading private equity firms (PE).

Although the judgment is not entirely clear in this regard, it seems that PE owned a majority holding in a healthcare company, GHE, which in turn purchased Grupo Dental Vera (GDV). We can speculate that one of GHE's minority shareholders, probably the founder, disagreed with that build-up acquisition and sued several PE entities and individuals in their capacity as directors of GHE, seeking a compensation for GHE for the damage allegedly resulting from having overpaid for the acquisition of GDV.

The disgruntled shareholder claimed that the directors had been negligent in the due diligence and negotiation process that resulted in the purchase of GDV at a price substantially higher than the real value of the business. He reproached GHE's directors

¹ Judgment 52/2026 of 13 February.

for, *inter alia*, (i) having agreed to use the financial statements as of 31 December 2017 as the closing accounts, despite the SPA had been signed on 29 November 2018, and (ii) having failed to act consistently with the red flags and limitations identified in PwC's due diligence report, in particular, as regards PwC's advice to link the purchase price to future EBITDA. In the claimant's view, negligence of this sort could not fall within the business judgment rule. The damage suffered by GHE was said to be the difference between the price actually paid and the right price, which, according to the claimant's expert, should have resulted from adjusting the EBITDA used to determine the initial price.

The MAC dismissed the appeal, as it found no evidence that the price had been determined by applying a multiple to an allegedly inflated EBITDA. Thus, no damage to GHE was proved.

To "close the debate", MAC went on to say that the decision to acquire GDV had satisfied the requirements of the business judgment rule laid down in article 226 of the Companies Act, namely acting in good faith and with no personal interest, with sufficient information and following an appropriate decision-making process. The fact that the price initially offered had been materially reduced during the negotiations showed that the directors had conducted the process properly.

The most interesting takeaway from the judgment, however, is that it appears to be the first or one of the first cases where a minority shareholder has sued directors not for an outright damage, but for allegedly having negotiated poorly the purchase price of a company.

The MAC did not dismiss the claim altogether but examined the economic arguments of the claim and only after finding that they were not grounded did it discuss the business judgment rule defence.

It could have done it the other way round, namely determining whether the conditions of the rule had been met and, in case it found they had, dismissing the economic arguments about what the right price should have been.

Hence, directors of acquisitive companies should be cautious about the process they put in place to buy businesses and be able to fully justify its rationale and economic terms.