Bankinter acquires Barclays Portugal

EUR 175m

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PLMJ

On 1 April Spain's Bankinter closed the acquisition of Barclays Portugal, marking its first foray beyond its home market. Hugo Rosa Ferreira led the PLMJ team that advised Barclays Portugal on the sale of its branch network, comprising commercial, private and corporate banking, along with asset management, insurance and pension portfolios.

Q: Why was PLMJ selected as the seller's legal advisor?

A: The transaction relates to a Portuguese branch of the UK bank, so the seller needed local advice to structure the deal from a regulatory perspective and a transactional perspective. At the end of the day we had to transfer all the assets, including all the underlying contractual relationships governed by Portuguese law.

Q: How long has PLMJ been working with Barclays Portugal?

A: We had been advising the seller on a regular basis for six years. We were on retainer since 2011, although we began working with Barclays in 2010. We advised not only on the banking products but on restructuring the corporate loan book. That was the bulk of our work from 2010 to 2015. We also had a very large chunk of the corporate litigation and insolvency and restructuring of corporate clients. We also worked a little bit with Barclaycard and occasionally we provide some corporate banking advice.

Q: Why was the business structured as a branch network rather than a subsidiary?

A: It was a decision made when Barclays decided to come into Portugal. Under the EU banking directive it is a much easier process to establish a local branch rather than apply for a license. Barclays established a local branch network and grew organically.

Q: What prompted Barclays to exit Portugal?

A: The exit was made within the context of a more global strategy of withdrawing from smaller operations. It has been doing that in a few other countries such as Spain and Italy. Barclays exited Spain two years ago, and this deal falls within its global strategy of withdrawing from non-core continental European markets and focusing on its core operations.

Q: What made this transaction so complex?

A: The fact that we had to structure the deal as an asset sale rather than a share sale added complexity. In a traditional M&A deal you negotiate a traditional share purchase agreement. Since we didn't have a company, we couldn't sell the shares. We had to transfer each and every one of the contractual relationships, with clients, suppliers, tenants, landlords, each of those contractual agreements. We had to structure the deal in the most efficient and legally robust way possible. We had to identify all these contractual relationships to be transferred, how to do so without raising any regulatory issues and we had to try to mitigate any scenario where the counterparty would object. We had to structure the transfers differently for certain types of assets. For example, the retail banking business had one structure and the corporate banking business had another. Property and derivatives each had a specific legal structure. Most of the Portuguese operation was sold. The seller kept a little bit of core corporate and the Barclaycard business, which was its decision from the beginning.

Q: To what extent did clients object to the transfer of those contractual agreements?

A: Only an extremely small number of clients objected initially, insisting they wanted to keep their relationship with Barclays. Some were in litigation and for strategic reasons they didn't want to transfer those contracts, or clients in default on their mortgage loans for example. There are several alternatives for those clients. Barclays has resolved nearly all the objections. Some of them required additional information. For those that really did want to stay with Barclays, there are solutions from a relationship standpoint. Barclays does have the ability to continue to serve those clients, but these really amount to a very small number. Most of the objectors were duly transferred since the deal closed, either they transferred to Bankinter or they were transferred to another bank. After all those were sorted out the number was even smaller.

Q: What practice areas were critical to closing the deal?

A: Banking and finance, property, employment, privacy and data protection. I would say that these four were the main practice areas that were paramount to the success of the deal. Others involved were competition, litigation and tax.

Q: How were M&A considerations incorporated into the asset sale structure?

A: Although we had to structure the deal as an asset sale, we did have all the M&A type terms and conditions that you'd have in a share purchase agreement. We had everything transferred under an umbrella business sale and purchase agreement where we set out all the terms for the transfer. The transfer had to be carried out under specific types of agreements, but overall the terms and conditions are similar to what you'd find in an M&A deal, including price adjustments, warranties, covenants and conditions for indemnity, time frames for indemnities to begin and be waived, relieved. All those typical M&A conditions were brought into the deal under the framework agreement, although we had to transfer all the assets under specific transfer type agreements.

Q: What made these assets attractive for Bankinter?

A: This is Bankinter's first expansion outside of Spain. Barclays had an established presence in Portugal. It has been in Portugal for at least 30 years. Barclays had a small-to-medium size operation in Portugal, which made it a good fit for what Bankinter was looking for in terms of expanding beyond Spain. It's a small step towards becoming international, but it's a reasonable and sustainable step for the buyer.

Q: How much competition was there for these assets?

A: There was a lot of interest from all types of potential buyers, from banks and investment funds, some of them looking to buy the entire operation, others part of the operation, including Portuguese and foreign banks, and mostly foreign funds.

Q: What made Bankinter's offer the winning bid?

A: I believe that it was a combination of things. Bankinter did exactly what Barclays did when it entered the market to consummate the deal by opening a branch to acquire the assets. It "passported" its banking license from Spain. That was a relatively smooth detail. The fact that it was already an EU bank was a plus in its proposal, as some of the other bidders were not. Bankinter simply notified the Bank of Spain, which then notified the Bank of Portugal. It usually takes about four months to obtain the branch license.

Q: What conditions were imposed by market regulators for the deal to be approved?

A: None expressly as the deal was not subject to any conditionality. The deal was structured so that it was not subject to regulatory approval, at least the banking part. For the insurance part, the transfer of the portfolio was subject to regulatory approval, which was obtained. From the banking side, it was not, but implicitly we had to follow the principle of neutrality, in that it had to be neutral to all clients, and that was expressed in all the documents of the transaction itself and in the documentation used to seek the approval of clients. That was the only rule, not a written rule, but it was something that we had to follow. Although we didn't need approval, we were in constant contact with the Bank of Portugal to keep the regulator apprised.

Q: Beyond the EUR 175m purchase price, what other investment does this deal imply?

A: The bank needed to be funded, so Bankinter had to provide the funding that was released to Barclays. On closing, Barclays UK no longer had to fund the bank, whereas conversely, Bankinter needed to inject the funds required to comply with capital requirements, which implies around EUR 2bn.

Q: What does this sale mean for Portugal's financial services sector?

A: It's an example of the appetite that the market has for Portuguese banks. The Portuguese banking market was traditionally concentrated among four or five large banks. One of them was Banco Espirito Santo, which was subject to resolution. Another, BCP, has been under distress for years now, while BPI and Caixa are also not in good shape. This presents an opportunity for foreign banks to establish themselves in Portugal with a solid operation. This deal shows there's appetite for the Portuguese banking market, especially for these kinds of transactions.

Q: What has buoyed interest in the sector despite systemic problems?

A: The financial sector's problems are the result of bad management and fraud. The problem is not with the customer base; the problem is with management. This deal is absolutely a positive indicator. There's a discussion whether to completely open the market to foreign investors. There's no restriction on foreign ownership, it's more of a political issue with the left wing parties raising concerns. We've seen that the traditional Portuguese banks were not well managed. There are some examples of foreign banks coming in and being successful, such as Santander, one of the soundest, if not the soundest, bank in Portugal, and Deutsche Bank, which is also very successful in Portugal with certain types of clients. I don't see any reason why banks wouldn't open themselves to foreign investment. Where such investment has been made, it's been positive. We will soon see the sale of Novo Bank, likely to a foreign bank or investment fund. There's talk about consolidation among the market's largest four or five banks, which are those that are in worst financial shape. The market is very much alive and I'm sure we're going to continue to see, if not this type of transaction, large holdings in Portuguese banks sold to foreign investors in the next 12 to 24 months.

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