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INTERVIEW

M^a Pilar García Guijarro, WFW's Madrid office managing partner and expert Energy lawyer

THE LIONS

Patrícia Silva Lopes, senior Legal counsel at Sporting Clube de Portugal

MOZAMBIQUE, SO FAR SO CLOSE

Fabrícia de Almeida Henriques, HRA's managing partner, and non-equity partner at Morais Leitão in Mozambique

Iberian Lawyer talked with Dentons' Spain new managing partner, Jabier Badiola, about his plans for the firm after the departure of Jesús Varela along with two other partners

HEADING NORTH



START-UPS, KEY PLAYERS IN ECONOMIC RECOVERY

by desiré vidal

According to the report “Evolution of Investment in Spain 2019/2020”, by specialised media StartupsReal (El Referente), the first half of 2020 closed with an aggregate amount of €578 million invested in start-ups, only a €20 million drop compared to same period last year. Considering the pandemic, we at Iberian Lawyer wonder if it is the new investments in start-ups in the health and retail sector (eCommerce) that have readjusted the balance sheet. To learn more about this and to find out which sectors are standing out in this market, we interviewed DWF-RCD Innovation and Entrepreneurship area partners Judith Saladrigas and Carles Ros, along with Montserrat Vendrell, partner at Alta Life Sciences.



START-UPS, HEALTH AND OTHER INVESTMENT SECTORS

“As has happened with investment in other sectors, investment in start-ups has not been immune to the crisis resulting from COVID-19. However, there are signs of a certain recovery and an appetite for investment that is waiting for a more propitious scenario. Sectors such as finance and insurance, retail –with the enormous growth of eCommerce during the confinement period–, life sciences or technology, are the ones that have acted as a tractor in recent months,” explains **Judith Saladrigas**, Innovation and Entrepreneurship area partner at **DWF-RCD**. The firm explains that in recent years there has also been a diversification in the range of investors in start-ups. “Each one for different motivations,” says **Carles Ros**, partner and Judith’s colleague in the Innovation and Entrepreneurship area at DWF-RCD. “It should be noted that the investment is led by Venture Capital funds, although other modalities must be taken into account (3 Fs, seed capital fund, accelerators, Business Angels, Fintech, Corporate Venture, Crowdfunding...), which have positioned or repositioned themselves in this context, defining or redefining their priorities, considering the sectors in growth, as well as

their contribution of value and interests.

They explain that investors are looking for technological models, start-ups in sectors they know or which are growing exponentially, which offer a distinctive product or way of doing things, generating high value-added, covering a market demand and with competitive economic valuations, compared to other countries. “They also analyse the market: its size, the concentration index of the area in which the start-up will operate (if it is very high or not), competitive advantages, divestment alternatives... In other words, they look for opportunities. However, equally or more important than the above is the human factor, the team that forms the project and, especially, the affinity that all the parties that will make this journey together may have,” Saladrigas highlights.

“Both local and international investors analyse operations in a similar way, looking for problem-solving start-ups applying technology or science. In the pharmaceutical sector, for example, some large group investments are targeted at projects in the early stages of science, which leads to the emergence of spin-offs. It is also worth noting the high level of local investors, who lead important rounds (>€20-30 million) with the participation of international funds. Some domestic funds have been able to convince international investors to invest in local projects that they might not have entered before,” says Ros.

For her part, **Montserrat Vendrell**, partner at **Alta Life Sciences**, the exclusive investment advisor to Alta Life

Sciences Spain I FCR (ALSS I FCR), a Venture Capital fund managed by Altamar PrivateEquity SGIIC, which invests in life sciences companies, confirms that “COVID-19 has highlighted the relevant role of the health sector, with unmet needs such as new diagnostic systems, new antivirals or effective vaccines. In the health sector, innovation tends to come from start-ups, with more agile models that allow them to be more efficient in early innovation processes and, in turn, be able to assume the risk inherent in these stages. Likewise, the pandemic has imposed virtuality not only in the connections at work but particularly in the relationship with health systems. Start-ups in the digital and health sector (biotechnology, diagnostics or medical devices) have continued to grow and will continue to do so. In the case of ehealth companies, the main challenge was the adoption of new technologies by doctors, insurers and hospitals. The imperative need to gain in efficiency and minimise the number of face-to-face patient visits has driven this sector, which has raised more funding in the first half of 2020 than the equivalent period last year. In the Due Diligence process, we always look for proposals that address unmet clinical needs; for top-notch disruptive science or technology and properly protected industrial property with a track record; a large enough market; a team capable of taking it forward; that the funding round allows for a potential leap in value; in general, a combination of all of the above.”

FINANCING

“Start-ups are born with very limited resources and it is common that, in the initial stages, they are the ones who go to the investors with the objective of making themselves known and arousing their interest for a potential investment,” says Judith. She explains that, however, it also works the other way around. “The path is also reversed: many investors track the ecosystem looking for opportunities to invest in, at an early stage. Sometimes funds even follow up on projects they haven’t invested in because they don’t fit in, in terms of their level of development, amount of investment or other factors, to address an investment at a later time, when the criteria match.” “Start-ups know well how to access funding sources,” says Montserrat. “So far, mostly through partnering events or contacts. Normally, the first stages are covered with investment by public seed funds, and individual investors. Later, funding rounds are usually led by professional investors (Venture Capital funds or VCs). Depending on the size of the fund and investment strategy, they participate throughout the growth of the start-up. DWF-RCD agrees with Vendrell that start-ups are increasingly focusing their efforts. “In this search for financing, start-ups take advantage of the different opportunities for connection with the investment ecosystem to present and defend the benefits of their projects. However, the financing strategy is increasingly cured and start-ups are becoming more informed about the target investors,” says

Saladrigas.

But, at what point in the “life” of a start-up is it best to invest? Saladrigas answers that “projects go through different stages of maturity and each one presents very specific risks and opportunities. There are different profiles of investors, with a lot of specialisation in investing in very specific phases of the life cycle of start-ups, but in general terms the investment occurs at times when there is an expectation about the potential of the start-up, based on its context and the milestones achieved, or when the investment can be aligned with the strategic objectives of the investor. Usually, the phase in which an investor invests is related to the amount he wants to invest.”

“IN GENERAL TERMS, INVESTMENT OCCURS AT TIMES WHEN THERE IS AN EXPECTATION ABOUT THE POTENTIAL OF THE START-UP, BASED ON ITS CONTEXT AND THE MILESTONES ACHIEVED, OR WHEN THE INVESTMENT CAN BE ALIGNED WITH THE INVESTOR’S STRATEGIC OBJECTIVES”

Judith Saladrigas | DWF-RCD

KEY ADVICE

“Start-ups and investors have very particular characteristics and different interests, and combining them is not always easy,” says Carles. “One of the main challenges, especially in the case of start-ups, is to become aware of how important legal issues are related to the project and to avoid making decisions without advice, or to do so without a minimum degree of specialisation. Entrepreneurs are specialists in their businesses, but they do not necessarily need to have in-depth knowledge of the legal aspects involved in setting up a business project, nor of the implications of bringing in an external investor, which is why it is advisable to be counselled by experts from the outset.”

“There is also a fairly widespread belief in the figure of the lawyer as a problem solver, when the focus should be on a preventive vision,” notes Judith. “In both venture projects and investments, strategy – in this case legal – is much more important than tactics, not only at the outset but also throughout the project life cycle. Therefore, specialised advice with strategic vision is key to minimising eventualities that may arise. Consequently, from a legal point of view, the challenge would be to advise the start-up, with a legal-strategic approach, so that it grows solidly and invests and a balance between the interests of the parties can be achieved in the development of the investment process. At the level of investors, this is a type of investment with very peculiar characteristics, in terms of the existence of specific mechanisms to protect the risks

ABOUT THE ADVISERS



JUDITH SALADRIGAS

Judith Saladrigas is an Innovation and Entrepreneurship area partner at DWF-RCD. She has extensive experience providing Legal and strategic advice and specialised training to the main actors, public and private, of the innovation and entrepreneurship ecosystem. Recognised by several legal directories in her main practice areas, she has a wide experience in the design and implementation of her own initiatives or in the support of start-ups or incubation or acceleration programs, corporate venturing and venture building.



CARLES ROS

Carles Ros is a partner of the Innovation and Entrepreneurship area at DWF-RCD. He has extensive experience in advising start-ups, technology-based companies and public entities on M&A and international operations, on Private Equity investments and divestments, as well as on the protection, management, exploitation and transfer of their technology. Carles has been recognised by the most prestigious international legal directories in his specialties and stands out year after year as one of the most active Legal advisors in the M&A and Private Equity market.



MONTSERRAT VENDRELL

Montserrat Vendrell is a partner at Alta Life Sciences S.L. Previously, she was CEO of Biocat, the Barcelona Science Park and the Barcelona Institute of Science and Technology (BIST). She holds a PhD in biology from the UB and has spent post-doctoral periods at Hoffmann La Roche (NJ, USA) and the Spanish National Research Council (CSIC). She holds a Master's degree in Scientific Communication from the Barcelona School of Management-UPF, a PDG (General Management Program) from IESE and Promociona from ESADE. She is president of the Executive Committee of the Pasqual Maragall Foundation and a member of the Board of Directors of the RACC. Since 2019, she has been president of the Social Council of the Universitat Pompeu Fabra (UPF).

and interests of the investor and the need to cover the concerns and risks of the VCs that are not shared with other types of investments such as Private Equity.”

The maturity point of the project will also determine the type of advice the start-up will need or the type of investment it can receive. “In the initial stages, the traditional concerns of entrepreneurs have to do with the need to attract funding for the structuring of the project and advice must be focused to that end, establishing a solid legal basis and strategically underpinning the project. Seed investors take care of this phase, this is the risk they assume, providing, in many occasions, capacities, beyond the financial ones, directed to business and all this in favor of the expected returns,” Carles points out. “As the company grows, the search for financing is aimed at its consolidation, so the issues on which it has an impact expand, and aspects such as, for example, the implementation of policies to attract, motivate and retain talent become relevant both for entrepreneurs and for investors who seek to encourage the talent needed to scale up the project and value their investment, in accordance with the policy defined. Investors who are committed to financing growth focus on this risk, which has different characteristics from the previous one, as the start-up already has milestones achieved.”

“In later stages of development,” Judith

continues, “the capital is directed towards the expansion of the company, addressing, for example, a possible international adventure –although it is true that it is increasingly taking place in earlier stages– which means that the solid project, tested and developed, expands, and it is key to reconcile the interests of its managers with those of the investors, in terms of risk and return criteria. In short, needs are changing, so it is necessary to have a legal and strategic vision as broad as possible, which takes into account the entire life cycle of the project and knows how to combine the interests of entrepreneurs and investors.”

“ENSURING THAT LEGAL VIABILITY IS ONE OF THE FIRST ASPECTS TO WORK ON FOR ANY START-UP PROJECT, AND SPECIALISED LEGAL ADVICE IS KEY ”

Carles Ros | DWF-RCD

From the point of view of Alta Life Sciences, however, “there are certain elements common to all stages that have to do with protecting industrial property and competition, ensuring the ability to make decisions or exit scenarios. Depending on the state of development of the company, it will be more relevant to guarantee

a good technology transfer contract or, in more mature companies, an advantageous contract with a potential buyer (M&A). The advisers must be clear about the whole process of development of the start-up because mistakes in initial processes can have a very important effect in later stages. Vendrell also explains that “many of the investment rounds of SMEs are handled by small firms... Start-ups in the health sector have very different characteristics. Therefore, firms that know the sector and have worked with companies of the same type are required. Normally, a capital increase has a syndicate of several investors, some international, and each of them has its specialised legal advisor. It is vitally important that the advisers have a good knowledge of the business model of biotechnology, medical device or diagnostic start-ups.” “In the entrepreneurial ecosystem everything happens very quickly,” warns Judith. Start-ups are agile and dynamic, they know their product, business and sector perfectly well and, logically, they expect the same from the firm that advises them. Advising start-ups has its own idiosyncrasies, so it is extremely important to have specialisation, technical knowledge and the ability to understand the entrepreneur’s business, experience and, if necessary, to be able to complement legal advice with support in business management. In addition, in the case of operations of a certain magnitude due to their size

ABOUT THE FIRMS

DWF-RCD

DWF-RCD is a global, dynamic and innovative law firm, a reference in integral Legal advice. Formed by more than 300 professionals in Spain, the firm, as part of the DWF Group, operates in more than 30 cities around the world and has a team of more than 3,600 professionals. Featured by the Financial Times as one of the most innovative firms in Europe, the firm is also one of the most active in the transaction market, as recognised in the main international rankings, and year after year it is the leading adviser by transaction volume in the Venture Capital market.

ALTA LIFE SCIENCES S.L.

Alta Life Sciences is a multi-stage Venture Capital investment firm. Alta LS invests in companies at all stages of development: from early stage financing to commercial growth. Alta LS identifies cutting-edge scientific discoveries that address unmet medical needs in all areas of life sciences, including biotechnology, medical devices, diagnostics, genomics and digital health, and invests in pursuit of both the greatest impact on society and the highest potential returns. Alta LS is a "bridge" fund, based in Barcelona, which connects both sides of the Atlantic, uniting the Spanish ecosystem of life sciences with the experience of Silicon Valley Venture Capital. 

or international component, it is key to be able to count on equipment with certain background that can respond to complex issues. In our case, the Innovation and Entrepreneurship area of DWF-RCD was born in 2003 with only two or three professionals, and in 15 years it has grown to 6 partners, more than 50 professionals completely dedicated to the practice and a level of specialisation highly recognised at the domestic and international level. Being pioneers, we have been spectators of the phenomenon,

but also a very active part of it, with more than 1,000 advised initiatives related to entrepreneurship. In addition, we complement this legal team with Ges-Start, a firm of the DWF-RCD group whose name comes from Gestión para Start-ups (Management for Start-ups), which specialises in the business management leg and has extensive knowledge of the tax, labour and accounting system. This very high level of specialisation, derived from our initial bet, which allows us to cover all the vicissitudes linked to the life of start-ups due to our commitment to

the entrepreneurship and innovation ecosystem in Spain, is combined with a personalised, dynamic and passionate practice, very much aligned with the DNA of start-ups."

The interest in this sector is not new, they firm says. "In Spain we were pioneers and set the pace for other firms –both large firms that created departments focused on advising start-ups and boutiques– that followed our example. The ecosystem has grown exponentially in the last two decades and the development of the legaltech sector has also grown strongly in recent years. We have seen the birth of many entrepreneurial projects in this field, developing very interesting initiatives thanks to the emergence of technological –and digital– advances that have taken place. Many of these projects are already implemented in the law firms or will be soon."

START-UPS AND COMPLIANCE

"Entrepreneurs are specialists in their business, but they don't necessarily have to be up to date or know all the regulations that affect the development of their start-ups' activity," says Carles. "Ensuring that legal viability is one of the first aspects to work on for any start-up project, and specialised legal advice is key." Vendrell also agrees with this observation, stating that "start-ups are often unaware of many of the regulatory elements. It is part of the Due

Diligence process, but mainly, it is part of the subsequent advice, once the investment is made. Particularly in the health sector, regulatory strategy is especially relevant, and can represent savings in time and money. For example, it is very different to position a drug in an orphan indication, which gives us additional protection and allows us to conduct smaller trials to validate our proof of concept, than to pursue broader indications.”

“Every investor has particular interests, but many are looking for start-ups with projects that

“OUR LEGAL FRAMEWORK LACKS THE FLEXIBILITY OF OTHERS IN MANY ELEMENTS THAT AFFECT START-UPS, FROM THEIR CREATION PROCESS TO TECHNOLOGY TRANSFER OR AGREEMENTS AT LATER STAGES OF THE COMPANY. THE PROCEDURES FOR CREATING A START-UP ARE MUCH MORE LABORIOUS THAN IN OTHER EUROPEAN COUNTRIES”

Montserrat Vendrell | Alta Life Sciences

are underway, products that are quite developed and that are billing, and therefore have the regulatory part solved,” continues Judith. “On the other hand, for those investors interested in financing structuring and entering the

early stages, it is essential that the underlying legal framework applicable to the new business they are considering investing in be clarified in order to reduce risks. From a legal point of view, the problem lies in the fact that the legal reality is behind the social reality, therefore, innovation in business (derived, for example, from applying technology to traditional sectors), is not resolved in the current legal framework, hence a proper diagnosis is key to incorporate precautions and reduce risks. In DWF-RCD, our initial commitment to innovation has allowed us to intervene with solvency in favor of the indicated objective, attending to the interests of the parties.”

LEGAL FRAMEWORK

“Spain’s entrepreneurial ecosystem is solid and a paradigm for others that have emerged subsequently, but it depends on the legal framework to evolve and, as we pointed out earlier, the legislative reality usually moves at a slower speed than the social reality. For this reason, it would be highly advisable to implement laws or regulations that favour and promote the activity of start-ups and that encourage their financing and domestic and international investment activity. Even more so at a time when it is necessary to boost all the value-added structures –including start-ups– that contribute to traction in the economic situation and, above all, those that affect key sectors,” says Judith.

“In this line,” adds Carles, “measures in the area of taxation

are essential: Incentives for private investment, improved taxation of stock option plans (a tool with which these companies make up for their cash flow limitations in order to attract and retain talent); a more favourable tax regime for companies that carry out corporate incubation or acceleration initiatives or that use external talent to complement their internal innovation; o the implementation of a special regime allowing start-ups to optimise the monetisation of tax incentives or to reduce or defer tax and social security costs in the early stages of their activity, in order to minimise their high mortality risk.”

Vendrell is adamant about that. “Our legal framework lacks the flexibility of others in many elements that affect start-ups, from their creation process to technology transfer or agreements at later stages of the company. The procedures for creating a start-up are much more laborious than in other European countries. It is in turn unfavourable for investors, both for individual investors in Venture Capital funds and for Venture Capital funds investing directly in start-ups. Aspects such as the tax deduction of an investment for a business angel, (which requires a minimum participation in the shareholding of 5 per cent) or the taxation on the capital returns (equivalent to work returns) of the Venture Capital funds, are some of the factors that do not make us competitive with respect to environments such as France, Germany or the UK.” ■