International Comparative Legal Guides

Mergers & Acquisitions 2020

A practical cross-border insight into mergers and acquisitions

14th Edition

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Contributing Editors:

Lorenzo Corte & Scott C. Hopkins
Skadden, Arps, Slate, Meagher & Flom (UK) LLP

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Group Publisher
Rory Smith

Senior Editors
Suzie Levy
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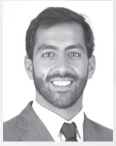

Francisco de Almeida Viegas

Vieira de Almeida

1 Relevant Authorities and Legislation

1.1 What regulates M&A?

M&A transactions in Portugal follow the general principles of Portuguese Civil Law, which allows contracting parties to establish a wide range of clauses, covenants and conditions that they deem convenient, provided that they do not conflict with the law, morals and what is defined as public order.

The general framework for M&A transactions in Portugal is established by the Portuguese Civil Code, enacted by Decree-Law no. 44/344, 25 November 1666, as amended from time to time ("**Civil Code**"), the Portuguese Commercial Companies Code, enacted by Decree-Law no. 262/86, 2 September 1986, as amended from time to time ("**PCC**"), and the Portuguese Security Companies Code, enacted by Decree-Law no. 486/99, 13 November 1999 ("**PSC**"), along with ancillary legislation and regulations. The Civil Code contains the general principles and rules of civil law, widely applicable to M&A transactions and to the relationship between the parties, and the PCC sets out a thorough regime applicable to companies operating in Portugal, ranging from general principles applicable for all companies to specific rules and regulations regarding corporate governance. Lastly, the PSC contains the key provisions regarding public companies' transactions and governs the main aspects concerning public takeover bids, as well as the requirements concerning the transfer of a company's shares.

Given the increasing importance of transactions involving corporate restructuring proceedings or even transactions made in insolvency, the Insolvency and Companies Recovery Code ("**ICRC**"), enacted by Decree-Law no. 53/2004, 18 March 2004, can also be a crucial element when assessing a specific deal.

Finally, for transactions in regulated sectors, specific laws and regulations also need to be accounted for.

1.2 Are there different rules for different types of company?

The Portuguese legal regime provides for the possibility of incorporation of four main types of companies in Portugal, which have different set of rules ascribed to them, i.e., (i) limited liability companies by quotas ("*sociedades por quotas*"), (ii) limited liability companies by shares ("*sociedades anónimas*"), (iii) "*sociedades em nome colectivo*" and (iv) "*sociedades em comandita*", the last two being less common on a typical M&A transaction. As mentioned, each type of company follows a different set of rules when it comes to the relationship among shareholders, including the terms of the liability regime or the type of organisation and duties regarding the several corporate bodies envisaged under Portuguese law. Regarding foreign companies, and although the Portuguese legal system is based on civil law as mentioned in question 1.1 above, common law jurisdictions have a large influence when it comes to cross-border transactions. The majority of deals affecting Portuguese companies remain subject to Portuguese law, but the parties can choose to submit the transaction documents to other law, provided that the mandatory rules established under Portuguese Law are complied with.

1.3 Are there special rules for foreign buyers?

As a general principle, there are no special rules or constraints for foreign buyers in a M&A transaction in Portugal besides certain reporting obligations for administrative and statistical purposes. Notwithstanding, in certain regulated sectors – such as banking, insurance, infrastructure and transportation – the acquisition of a qualified holding (which may differ from sector to sector) may be subject to prior approval and/or notification of the relevant regulators.

1.4 Are there any special sector-related rules?

Regarding special sector-regulated rules such as the ones mentioned above, we would highlight the following: (i) the need for notification in advance of the regulator of the banking sector, the Bank of Portugal, of an entity's intention to reach or exceed, directly or indirectly, the following thresholds of the share capital or voting rights of the regulated company: 10%; 20%; ⅓; or 50%, or the intention to acquire a stake enabling a significant management influence to be exercised must be previously notified to the Bank of Portugal. The intention to decrease shareholding participations below a threshold must be previously notified to the Bank of Portugal and the completion of the relevant acquiring and disposing transactions are subsequently subject to notification to the Bank of Portugal; or (ii) the need to also notify in advance the insurance sector regulator, *Autoridade de Supervisão de Seguros e Fundos de Pensões* ("**ASF**"), of an entity's intention to reach or exceed, directly or indirectly, the following thresholds of the share capital or voting rights of the issuer: 10%; 20%; ⅓; or 50%. Also, the intention to acquire a stake enabling a significant management influence to be exercised in the target company must be previously notified to the ASF.

1.5 What are the principal sources of liability?

Specific liabilities may emerge in M&A transactions from multiple sources; however, pre-contractual liability, contractual liability (i.e., breach of the relevant agreements, including the breach of Reps & Warranties), as well as tax liabilities, are identified as the most common sources. Failure to comply with the relevant rules and procedures established in regulated sectors is also a common way for a party to incur liabilities and/or penalties. Concerning transactions involving public companies, failure to comply with the disclosure and procedural requirements may be a source of liability, such as market manipulation in takeover processes or omission of relevant information or even infringement of the procedure stipulated. These types of breaches may lead to the imposition of a sanction.

2 Mechanics of Acquisition

2.1 What alternative means of acquisition are there?

In Portugal, the acquisition structure of an M&A transaction depends on several aspects such as: (i) the business type that is being acquired; (ii) the buyer's funding capacity; (iii) the purposes of the transaction, its risks and potential liabilities; (iv) the legal and tax considerations affecting the target company; and (v) the target's financial condition. The most common means of acquisition are (i) share deals, (ii) asset deals, (iii) transfer of a business as a going concern, and (iv) mergers.

For public M&A transactions and in order to acquire the control of a listed company, the most common means are the acquisition of shares or other securities directly or indirectly, the grant of voting rights in a company, through entering into shareholders agreements with other shareholders, or as a result of a takeover where a merger or another combination of entities, directly or indirectly holding shares in a listed company, results in a change of control in such company.

2.2 What advisers do the parties need?

As mentioned above, the different factors surrounding a specific M&A transaction will affect the type and extent of the advisory services needed. Typically, the parties would be assisted by a financial adviser in charge of managing the transaction and coordinating the various teams involved alongside the legal counsel and/or the tax experts which are mainly engaged in the preparation, discussion and execution of the transaction documents. In public takeovers, public relations advisers are also usually involved.

2.3 How long does it take?

In theory, most M&A transactions can be completed in a relatively short period of time, provided that the parties are aligned when it comes to the terms and conditions of a specific deal, i.e., the value of the target. However, the reality has showed otherwise. The complexity and sophistication of the transaction documents necessary to complete an M&A deal have increased substantially and the deals are now typically subject to multiple variables, such as specific features of the target, the scope of the due diligence process, the number of conditions precedent required or even the structure of the transaction, divided in several rounds of negotiation, which has increased the normal duration of an M&A transaction. It is also important to note that the duration of M&A transactions may be affected by specific laws and regulations applicable for certain sectors or the procedures applicable to merger processes. In regard to a takeover bid transaction, the duration of the procedure will range from three or four months to a year, depending of the type of bid, the existence of competing bids, and the process of the announcement of the decision to make the bid or the authorisation from the regulatory authorities, among others.

2.4 What are the main hurdles?

As mentioned above, the main hurdles of an M&A transaction depend largely on the type of transaction concerned. Notwithstanding, the most common obstacles are the information gap between sellers and buyers which may lead to relatively long and thorough due diligence processes, which automatically lead to lengthier negotiations concerning the set of Reps & Warranties, for example. For public M&A bids, the amount of formalities required, such as approvals and acceptances, are the main hurdles to consider as well as the many deadlines to push for such authorisations.

2.5 How much flexibility is there over deal terms and price?

In general, there is much flexibility over deal terms and price, as M&A transactions are mainly governed by the free will of the parties, limited only by the applicable mandatory rules and principles.

2.6 What differences are there between offering cash and other consideration?

In most M&A transactions, the parties are free to choose between offering a cash consideration or other type of consideration. Specific tax aspects must be taken into consideration in this respect. In public takeovers, however, there are certain restrictions and procedures that apply depending on the type of consideration chosen. As mentioned, in such type of transactions the consideration may consist of cash, securities (issued or yet to be issued), or both. In case cash is offered, the offeror must deposit the relevant amount with a credit institution or provide a bank guarantee. In case securities are offered, such securities must have the appropriate liquidity and be readily assessable.

2.7 Do the same terms have to be offered to all shareholders?

In general, there is no obligation for the same terms to be offered to all shareholders, as the parties are free to negotiate and offer different terms to different shareholders of a target company, with some exceptions. In case of public takeover offers, due to the specific regulation these types of transactions are subject to, the terms and conditions should be the same for all potential buyers and the offeror's proposal must contain all the mandatory information established in the PSC.

2.8 Are there obligations to purchase other classes of target securities?

In general, there is no obligation to do so, unless such obligation arises from the target's articles of association or from a shareholder's agreement. In case of public M&A bids, a bid should be made for all holders of (i) shares with voting rights and pre-emptive subscription rights, as well as of (ii) convertible or exchangeable bonds.

2.9 Are there any limits on agreeing terms with employees?

The terms to be agreed with employees must be compliant with Portuguese Labour Law mandatory rules and principles and other specific provisions applicable to each case, namely regarding the transfer of employees of a target company and other specific employment issues, and the need to comply with information and consultation obligations before negotiating directly with the employees.

2.10 What role do employees, pension trustees and other stakeholders play?

The roles of employees, pension trustees and other stakeholders depend on the type of M&A transaction concerned. Whether it is a share deal, a merger, an asset deal or the transfer of businesses as an ongoing concern, in some cases it is granted to the employee the right of opposition to the transfer of his/her position in the envisaged transaction. Such opposition may prevent the transfer of the employer's position, maintaining the link to the transferring unit, for example. It is important to note that in transactions involving the transfer of businesses, the transferee is under an obligation to continue the employment relation under the same terms and conditions as the transferor, including the benefits to employees. However, Portuguese Labour Laws do not establish express rules concerning the transfer of pension entitlements of employees, although it is advisable to consider that the rights under pension schemes will transfer together with the remaining employment conditions. In terms of public M&A transactions, no specific role is foreseen by the law to be played by these entities. However, the representatives of the employees of the bidder and of the target company have the right to be informed as soon as the takeover bid has been named public.

2.11 What documentation is needed?

Generally, share deals imply the execution of a written Share Purchase Agreement regulating the terms and conditions of the transaction, which may follow a more simple or complex structure depending on the type of M&A transaction concerned. It is also common for the parties to execute other documents such as confidentiality agreements, non-binding and final offers, transitional services agreements governing the seller's provision of services to the target company for a limited period after closing or shareholder's agreements, financing agreements and additional security packages if external debt providers are involved in the transaction. Share deals concerning public takeover procedures also imply the execution of a different and/or additional set of documentation that must be prepared in accordance with the specific rules provided for in the PSC such as the announcement of the decision to launch the bid, the prospectus and other additional documentation.

Other M&A structures, such as mergers, involve specific procedures and imply the preparation of mandatory documentation such as the merger project, the statutory auditor's report or the necessary registration of the merger project with the Commercial Registry Office or the approval of the merger project by the shareholders of each relevant company.

Finally, the necessary documentation in an asset deal varies greatly depending on the asset concerned and the applicable legal regime.

2.12 Are there any special disclosure requirements?

In general, there are no specific disclosure requirements for M&A transactions. Notwithstanding, there are certain exceptions such as mandatory disclosure duties concerning the acquisition of qualified holdings in public companies as well as in companies operating in certain regulated sectors.

2.13 What are the key costs?

In M&A transactions, the key costs generally derive from the expenses associated with the parties' teams and advisers and possible fiscal and tax costs linked to a specific transaction.

2.14 What consents are needed?

Often in regulated sectors, certain mandatory filings must be made with the competent authorities, which vary according to the type of transaction concerned and the types of companies involved. In the various types of M&A transactions, we would consider the following:

(i) in share deals regarding a target which is a limited liability company by *quotas* ("*sociedades por quotas*"), the assignment of quotas is subject to the consent of the company (to be granted by its shareholders). In addition, it is quite common for this type of company to include in their articles of association a pre-emption right of the other shareholders, in relation to the transfer of *quotas* to third parties;

(ii) in share deals regarding a target which is a limited liability company by *shares* ("*sociedade anónima*"), the general principle is that shares shall be freely transferable. However, although the articles of association (and shareholders agreements) may not exclude the transferability of shares, they may establish some limits (such as pre-emptive rights, the consent of the company, etc.). Such limits shall be assessed on a case-by-case basis; and

(iii) in merger processes, the consent of certain shareholders might be needed if the merger:
   (a) increases the obligations and liabilities of some or all the shareholders;
   (b) affects the special rights of some shareholders; or
   (c) changes the proportion of the shareholdings in the company (to the extent that such change results from compensatory payments to shareholders and a fair value is attributed to the shares concerned).

In addition, other consents may be needed in certain transactions; for instance, from regulators, financing entities or suppliers (derived, in particular from change of control provisions).

2.15 What levels of approval or acceptance are needed?

The levels of approval or acceptance needed also depend mostly on the type of transaction concerned and the types of companies involved.

We consider the following common types of approvals and acceptance in M&A transactions: (i) the entering into a typical share deal by a limited liability company by *quotas* ("*sociedades* *por quotas*") is generally subject to the approval of such companies' shareholders; (ii) the entering into a typical share deal by a limited liability company by *shares* ("*sociedades anónimas*") is generally subject to the approval of such companies' board of directors; and (iii) mergers are subject to the approval of the shareholders of the relevant companies concerned, regardless of their type. For public takeover, the main consents required are the resolution of the competent board or person launching the bid, authorisation by the Portuguese Securities Market Commission ("**CMVM**") and, in some cases, other mandatory consents by regulated authorities.

2.16 When does cash consideration need to be committed and available?

In general, parties are free to establish the terms regarding the timings referring to the cash consideration.

There may be specific rules in certain types of M&A transactions, such as in public takeovers, in which, prior to the registration of the offer, the offeror must deposit the cash consideration (assuming cash is offered in such public takeover) with a credit institution or provide a bank guarantee.

3 Friendly or Hostile

3.1 Is there a choice?

Portuguese law does not distinguish between a friendly or hostile acquisition or takeover, as there is no legal concept of a hostile takeover in the PSC. However, it is quite common for such distinction to be made based on the response of the target company's board of directors and/or of the relevant shareholders to the relevant takeover bid.

Furthermore, hostile bids are allowed and are common. In fact, the public takeovers announced by Sonae and by Banco Comercial Português, S.A. which were the two major public takeovers announced in recent years, were both hostile.

3.2 Are there rules about an approach to the target?

In general M&A transactions, there are no specific rules regarding the approach to the target.

In public takeovers, and although the legislation tries to protect at all times the principles of fairness and equality of information, there are no specific rules regarding how to approach the target, besides the mandatory information that must be included in the preliminary announcement to the CMVM, to the target and to the relevant stock exchange managing entities.

3.3 How relevant is the target board?

In private M&A transactions, the relevance of the target board will depend on the type of company or transaction concerned, as well as the relationship between the target's shareholders and the target's board. In public M&A transactions and takeover operations, the board of directors of the target company is subject to a principle of neutrality and/or passivity, which undermines its relevance in terms of their support being essential to a successful bid, as the board has a duty to refrain from taking any action to hinder the success of a bid or any possible competitors.

However, the launch of a takeover bid results in an obligation to the board of the target company to elaborate the target's report (to be published) concerning specific information regarding the terms, conditions and potential impacts of the proposed bid, in which it can give its opinion in favour of, or against, the bid. Normally, the tone of the report will determine whether the submitted bid may be considered hostile or friendly as mentioned in question 3.1 above. In conclusion, a negative or positive opinion can have a certain influence on the result of the bid.

3.4 Does the choice affect process?

This is not applicable. See question 3.1.

4 Information

4.1 What information is available to a buyer?

In general, there is no obligation for the target company to provide information to a potential buyer on a typical M&A transaction (which then leads to the discussion regarding the due diligence process). However, buyers may rely on certain public available information as Portuguese companies must make numerous filings to the competent commercial registry offices which are publicly available online, such as: (i) the articles of association and its amendments, namely share capital increases and reductions, mergers and demergers; (ii) annual financial statements and management reports; (iii) appointments of directors and statutory auditors; and (iv) the transfer, unification, pledge, seizure and redemption of quotas of private limited companies. Also, any person or entity may request a permanent certificate from a Portuguese company at any time, which will allow such person or entity to view all registration in force and the underlying documents.

4.2 Is negotiation confidential and is access restricted?

M&A transactions are generally confidential, and it is quite common for the parties to enter into non-disclosure agreements prior to the transaction. In public takeovers, however, the offeror must submit a preliminary announcement to the CMVM, to the target company and to the relevant stock exchange managing entities (in which the target company is listed). Such preliminary announcement must include, amongst others, the following information: (i) the identification of the offeror and of the target company; (ii) the identification of the securities subject to the offer; (iii) the consideration of the offer; (iv) the financial intermediary (if already appointed); (v) the percentage of voting rights of the target company held by the offeror (and offeror's related entities); (vi) a summary of the offeror's intents regarding the business activity of the target; (vii) the offeror's position regarding the limitation of the target powers; and (viii) the maximum or minimum limit of securities to be acquired and the conditions applicable to the takeover (when applicable).

Also, further to the preliminary report, the offeror must also submit a launching announcement containing the basic elements of the offer.

4.3 When is an announcement required and what will become public?

In public takeovers, as soon as the decision to make a bid is made, the bidder is bound to make public its decision through the publication of the preliminary announcement to the CMVM, the target company and to the relevant stock exchange management entities (in which the target company is listed). Such preliminary announcement must include, amongst others, the following information: (i) the identification of the offeror and of the target company; (ii) the identification of the securities subject to the offer; (iii) the consideration of the offer; (iv) the financial intermediary (if already appointed); (v) the percentage of voting rights of the target company held by the offeror (and offeror's related entities); (vi) a summary of the offeror's intents regarding the business activity of the target; (vii) the offeror's position regarding the limitation of the target powers; and (viii) the maximum or minimum limit of securities to be acquired and the conditions applicable to the takeover (when applicable).

4.4 What if the information is wrong or changes?

Depending on the assumptions set out by the bidder on the announcement of the takeover, in case the information of the target company changes or is wrong, the bidder may modify or request the withdrawal of the offer.

5 Stakebuilding

5.1 Can shares be bought outside the offer process?

In principle, "stakebuilding" before the preliminary announcement, in the preparatory phase of the offer, may raise market abuse concerns and should be seen with caution.

The PSC states that, as from the publication of the preliminary announcement and up to the calculation of the offer's result, the offeror (as well as related individuals or entities): (i) must not negotiate, outside the stock exchange, any securities of the same category as those that comprise the offer or the consideration, except if authorised by the CMVM (further to an opinion by the target company); and (ii) must inform the CMVM on a daily basis regarding transactions carried out relating to the securities issued by the target company or the category of the securities comprised in the consideration.

5.2 Can derivatives be bought outside the offer process?

The answer to question 5.1 also applies to derivatives.

5.3 What are the disclosure triggers for shares and derivatives stakebuilding before the offer and during the offer period?

As mentioned in question 5.1, there is a duty to inform the CMVM.

5.4 What are the limitations and consequences?

As mentioned, acquisition of derivatives in the preparatory phase of the offer may raise market abuse concerns. Moreover, acquisition of OTC derivatives may be subject to the authorisation of the CMVM during the offer period.

6 Deal Protection

6.1 Are break fees available?

There are no general restrictions in normal M&A transactions. In the acquisition of privately held companies in Portugal, neither pre-agreed break-up fees (for the seller to compensate the buyer for transaction costs) nor reverse break-up fees (for the buyer to compensate the seller for abandoning the deal) are common. Most widely used provisions establish that each party must bear its own costs and expenses for the transaction's negotiation and consummation. When it comes to transactions in the Portuguese public M&A sector, there is no common practice for break-up fees and the agreement of break-up fees with a bidder may be considered an unlawful favour to the bidder. This is a highly contentious point among legal scholars.

6.2 Can the target agree not to shop the company or its assets?

As a general rule, the board of directors of the target company is allowed to seek other potential competing offers ("white knight") and no-shop provisions are not expressly forbidden. In theory, the target can agree not to shop the company or its assets, as the board of directors must maintain neutrality and not take any actions that are not in the ordinary course of business and may frustrate the bid in any form.

6.3 Can the target agree to issue shares or sell assets?

As a rule, in public takeovers, the board of directors of the target company is subject to a duty of "passivity" or neutrality, hence it is not possible, in principle, to assist a preferred bidder to succeed with the transaction. However, it is possible with the shareholder's approval, to issue shares of the target company. The sale of assets pending the offer raises very complex matters in relation to the determination of the fair consideration in control-taking transactions.

6.4 What commitments are available to tie up a deal?

See questions 6.1 to 6.4. The board of directors of the target company may not, in principle, take actions that prevent competing bidders from presenting competing offers, or take any steps to assist a preferred bidder and frustrate the intervention by a competitor. Such actions may be considered a breach of the board's fiduciary duties and the principle of neutrality and/or passivity, and provisions in this regard may be deemed unlawful. However, the board may approve and recommend the deal to shareholders and agree not to take frustrating action (negative commitment).

7 Bidder Protection

7.1 What deal conditions are permitted and is their invocation restricted?

In the field of public takeovers, voluntary offers may be subject to certain conditions provided that such conditions match the bidder's interests and do not affect the normal functioning of the market. On the other hand, mandatory takeovers cannot be subject to conditions, other than those related to the regulatory approvals. For general M&A transactions, the same principles apply as for the voluntary bids, as there is much flexibility concerning the conditions that might be agreed by the parties since M&A deals are governed by the principle of free will, limited only by the mandatory applicable rules.

7.2 What control does the bidder have over the target during the process?

In general, the bidder has no control over the target company during the entire process. However, the duty of "passivity" imposed on the board of directors of the target company, which mandates that the board must not adopt any measure to frustrate the success of a bid, may give some comfort to the bidder. Regarding voluntary bids, it is a different scenario as it is possible to gain some control over the target company by making the bid conditional upon certain events.

7.3 When does control pass to the bidder?

Generally in M&A transactions, the closing of the transaction, with the appointment of the directors nominated by the buyer, usually entails the change of control, although it is possible to establish monitoring committees or grant specific powers to the buyer in the timeframe between signing and closing, for example. In public takeovers, the control passes to the successful bidder upon the settlement of the offer, unless the bidder decided to move with the offer without the necessary clearance of the competition authority, in cases where the acquisition stays on hold until a final decision.

7.4 How can the bidder get 100% control?

Portuguese Law contains squeeze-out mechanisms that apply both to limited liability companies by quotas and to limited liability companies by shares. The right to squeeze out a minority shareholder may be exercised after a company acquires, directly or indirectly, 90% or more of the share capital of a company. The PCC states that within six months of the date the acquisition is notified to the target, the bidder is entitled to launch the squeeze-out offer for the remaining shares in exchange for consideration in cash, its own shares, quotas or bonds, among others. This offer must be confirmed and justified in a report prepared by an independent statutory auditor and it must be given to the competent commercial registry office and made available to the target's shareholders in the registered office of both companies.

Furthermore, and in other cases where the buyer is not able to acquire the entirety of the share capital of a company, the acquisition of the minority shareholders' stakes can also be made through drag-along rights established in the shareholder's agreement.

Concerning listed companies, the PSC states that any person who, following the launch of a general takeover bid over a listed company, achieves or exceeds 90% of the voting rights corresponding to the share capital up to the determination of the outcome of the bid and 90% of the voting rights covered by the bid may, in the subsequent three months, acquire the remaining shares for a fair consideration in cash.

8 Target Defences

8.1 What can the target do to resist change of control?

Under Portuguese Law, as a general principle, the board of the target company cannot adopt any decision that could prevent the success of the bid. The board may be in breach of their fiduciary duties if it frustrates an offer, preventing shareholders of an opportunity to tender their shares. However, the board is entitled to seek, without any limitation, offers that compete with the takeover bid submitted, in respect of the general principle that the board should pursue opportunities to maximise the value of the company. Regarding public takeovers, Portuguese law also states that the board may not frustrate the offer by taking defensive measures without the approval of ⅔ of the shareholders, especially if such decision does not fall within the scope of the ordinary course of business, unless the bidder does not abide by the same rules (reciprocity).

8.2 Is it a fair fight?

The Portuguese legal framework tends to guarantee equal treatment at all times between a preferred bidder and an unsolicited competing bidder, although granting certain prerogatives to the first bidder.

It is also important to note that the Portuguese legal framework is in general shareholder-centric, so that the bidder presenting the attractive offer increases its chances of succeeding, as the board has no robust tool to prevent it as mentioned above.

9 Other Useful Facts

9.1 What are the major influences on the success of an acquisition?

In M&A transactions, there are several factors that substantially influence the success of an acquisition, namely (i) the strategic motives, (ii) selection criteria (i.e., price and strategic fit), (iii) acquisition experience, (iv) management involved in process, (v) the ability to plan and structure, in advance, different stages of the transaction, (vi) the knowledge of the market and potential competitors of the target company, and (vii) the choice of teams and advisers to execute the transaction, among others.

9.2 What happens if it fails?

The parties are free to establish any consequences for non-compliance with any contractual or pre-contractual obligations, along with the ability to resort to the general terms of Portuguese Civil Law as there are no general legal prescribed rules regarding failure to complete a transaction. Regarding public takeovers, in the event that the attempt to acquire is unsuccessful, it will not be possible to launch a new bid over the target company within a six-month period after the date of the publication of the failure of the offer.

10 Updates

10.1 Please provide a summary of any relevant new law or practices in M&A in your jurisdiction.

Decree-Law no. 19/2019, published on 28 January 2019, which is still under assessment regarding its immediate impact in the Portuguese M&A market, establishes a regime for real estate investment and management companies in the Portuguese legal system. This is intended to correspond to the commonly designated real estate investment trusts ("**REITS**"). With this new framework, real estate funds now have the centre stage as the sole players within the real estate market with publicly traded units.

The implementation in Portugal of EU anti-money laundering and ultimate beneficial owner directives has had an impact on disclosure requirements and formalities. This affects the engagement of counsel, with additional know-your-client ("**KYC**") obligations, and also requires the disclosure of certain ownership/control-related information. While certain players may see this as an additional hurdle in getting a transaction over the line, we believe a greater requirement for transparency and certainty will increase the Portuguese market's credibility for foreign investment and at the same time, enable Portuguese players to be as prepared as any international competitors when it comes to compliance.

Jorge Bleck joined VdA in 2013. Finance, M&A & Real Estate Group Senior Partner and Head of Practice of M&A.
With over 30 years' experience in M&A, Jorge Bleck has advised clients on both sides of the transaction, in hallmark domestic and international transactions, notably mainstream M&A, private equity, joint-ventures and privatisations. He is admitted to the Portuguese Bar Association and is a member of the American Bar Association, Section of Law Firm Management, and a member of the International Bar Association, Section on Business Law and Sub-section of Law Practice Management.

Vieira de Almeida
Rua Dom. Luís I, 28
1200-151 Lisbon
Portugal

Tel: +351 21 311 3597 / +351 21 311 3406
Email: jb@vda.pt
URL: www.vda.pt

Francisco de Almeida Viegas joined VdA in 2017. He is an Associate in the M&A practice where he has been involved in several transactions, and is admitted to the Portuguese Bar Association.

Vieira de Almeida
Rua Dom. Luís I, 28
1200-151 Lisbon
Portugal

Tel: +351 21 311 5264
Email: fav@vda.pt
URL: www.vda.pt

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