

Portugal

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State guarantees

2008 has clearly been very different to other years for law firms' M&A departments. A new fact has arisen to frustrate parties to big investments and important M&A transactions in a variety of economic sectors. In fact, regarding international acquisition bids, many transactions have collapsed even after the issuance of binding offers. This is mainly due to the inability of potential investors to raise funds.

As opposed to previous years, when banks and credit institutions used to compete to be able to finance these kinds of transactions, this year, as a rule, banks have rejected new as well as existing investments in acceptable conditions. The fact is that, just as in a wide range of M&A operations and projects, the crisis has also installed itself in financing. Consequently, another unusual fact has emerged: governments across the world have taken and continue to take extraordinary measures to protect the financial sector and avoid the ubiquitous and well-commentated crisis and the consequent recession.

In order to support that fundamental sector of the economy worldwide, measures have been taken including: (i) guarantees of bank liabilities and debts; (ii) retail deposit guarantees; (iii) special central bank assistance; (iv) bank recapitalisation through equity investments by private investors and governments; and (v) the purchase of troubled financial assets from weakened financial institutions.

Portugal has not been an exception: government assistance to the financial sector took place on the grounds of Law 60-A/2008 and Ministerial Order 1219-A/2008. Among such remarkable measures, the most important was clearly the Portuguese state granting extraordinary personal guarantees to credit institutions with head offices in Portugal (Guarantees). The Guarantees work by ensuring bank commitments under credit facilities and issuing unsubordinated debt with maturity between three months and three years (extendible to five years if the Bank of Portugal so proposes and justifies). The Guarantees, which may be granted or renewed until the end of next year, are restricted. They are not to be granted in

cases such as those in which parties already benefit from other guarantees or transactions governed by jurisdictions that do not comply with internationally accepted standards of transparency.

The application for Guarantees is carefully analysed by the Bank of Portugal, by the Portuguese Treasury Department and by the Institute for the Management of Treasury and Public Credit. The criteria studied include: the purposes and elements of the transaction, evidence that the Guarantee is necessary to ensure the ordinary functioning of the beneficiary and the contribution of the beneficiary to the financing of the Portuguese economy. The latter two criteria must be met in order for the Guarantee to be granted. Of course, the beneficiary's economic and financial situation is to be monitored, as is its behaviour during the course of the Guarantee.

Crisis? What crisis?

With the help of such measures, perseverance, determination and plenty of optimism, 2009 will hopefully be a better year and soon the question will be: crisis? What crisis?

Rita Marques