Chambers

GLOBAL PRACTICE GUIDES

Definitive global law guides offering
comparative analysis from top ranked lawyers

Corporate M&A

Portugal
Cuatrecasas

chambersandpartners.com

2019

PORTUGAL

LAW AND PRACTICE: p.3

Contributed by Cuatrecasas

The 'Law & Practice' sections provide easily accessible information on navigating the legal system when conducting business in the jurisdiction. Leading lawyers explain local law and practice at key transactional stages and for crucial aspects of doing business.

Contributed by Cuatrecasas ***Authors:*** Francisco Santos Costa, João Mattamouros Resende, Manuel Requicha Ferreira

Law and Practice

Contributed by Cuatrecasas

CONTENTS

1. Trends p.4
- 1.1 M&A Market p.4
- 1.2 Key Trends p.4
- 1.3 Key Industries p.4

2. Overview of Regulatory Field p.5
- 2.1 Acquiring a Company p.5
- 2.2 Primary Regulators p.5
- 2.3 Restrictions on Foreign Investments p.5
- 2.4 Antitrust Regulations p.5
- 2.5 Labour Law Regulations p.5
- 2.6 National Security Review p.6

3. Recent Legal Developments p.6
- 3.1 Significant Court Decision or Legal Development p.6
- 3.2 Significant Changes to Takeover Law p.6

4. Stakebuilding p.6
- 4.1 Principal Stakebuilding Strategies p.6
- 4.2 Material Shareholding Disclosure Threshold p.7
- 4.3 Hurdles to Stakebuilding p.7
- 4.4 Dealings in Derivatives p.8
- 4.5 Filing/Reporting Obligations p.8
- 4.6 Transparency p.8

5. Negotiation Phase p.8
- 5.1 Requirement to Disclose a Deal p.8
- 5.2 Market Practice on Timing p.9
- 5.3 Scope of Due Diligence p.9
- 5.4 Standstills or Exclusivity p.9
- 5.5 Definitive Agreements p.9

6. Structuring p.9
- 6.1 Length of Process for Acquisition/Sale p.9
- 6.2 Mandatory Offer Threshold p.9
- 6.3 Consideration p.10
- 6.4 Common Conditions for a Takeover Offer p.10
- 6.5 Minimum Acceptance Conditions p.11
- 6.6 Requirement to Obtain Financing p.11
- 6.7 Types of Deal Security Measures p.11
- 6.8 Additional Governance Rights p.11
- 6.9 Voting by Proxy p.12
- 6.10 Squeeze-out Mechanisms p.12
- 6.11 Irrevocable Commitments p.13

7. Disclosure p.13
- 7.1 Making a Bid Public p.13
- 7.2 Type of Disclosure Required p.13
- 7.3 Producing Financial Statements p.14
- 7.4 Transaction Documents p.14

8. Duties of Directors p.14
- 8.1 Principal Directors' Duties p.14
- 8.2 Business Judgement Rule p.14
- 8.3 Independent Outside Advice p.14
- 8.4 Conflicts of Interest p.14

9. Defensive Measures p.15
- 9.1 Hostile Tender Offers p.15
- 9.2 Directors' Use of Defensive Measures p.15
- 9.3 Common Defensive Measures p.15
- 9.4 Directors' Duties p.16
- 9.5 Directors' Ability to "Just Say No" p.16

10. Litigation p.16
- 10.1 Frequency of Litigation p.16
- 10.2 Stage of Deal p.16

11. Activism p.16
- 11.1 Shareholder Activism p.16
- 11.2 Aims of Activists p.16
- 11.3 Interference with Completion p.16

Contributed by Cuatrecasas ***Authors:*** Francisco Santos Costa, João Mattamouros Resende, Manuel Requicha Ferreira

Cuatrecasas has an M&A team comprising over 200 lawyers with extensive experience of advising companies from Portugal, Spain and other jurisdictions on the widest range of acquisition processes, LBOs, MBOs, MBIs, BIMBOs, venture capital investments, group restructurings, joint ventures and distressed M&A transactions. The lawyers of the M&A team have consolidated and extensive experience of complex deals on the Iberian and international market. More recently, a part of the M&A team in Portugal has specialised in advising on privatisation processes and on the sale and purchase of shares held by the Portuguese state in various sectors, including the energy and infrastructures sector. Its key practice areas are national and international M&A deals; privatisations; distressed M&A; spin-offs, sales and other similar corporate structure changes; transfer of assets and businesses; joint ventures and businesses; private equity; corporate and commercial; and financing operations and granting of guarantees.

Authors

Francisco Santos Costa a partner, has extensive experience of advising clients in cross-border M&A deals (leveraged and non-leveraged) and corporate restructuring mandates in a wide range of sectors. Francisco has recently been involved in transactions in the infrastructure and renewable energy sectors (especially in hydro, hospitals, motorways, wind and solar plants). His clients include major companies in the energy sector, private equity funds and other financial sponsors, infrastructure investment funds and industrial partners. Francisco studied tax at the Instituto Superior de Gestão and regulatory and competition law at the Instituto de Direito

João Mattamouros Resende is a partner who provides legal assistance in M&A, private equity, securities and general corporate law. The main transactions he has been involved with in the last few years include the purchase and sale of companies in the sectors of distribution, technology and software, media, construction and agriculture. He regularly advises clients on the negotiation of outsourcing contracts and IT service agreements. João has a Master's degree in legal and commercial sciences from the School of Law of the Portuguese Catholic University of Lisbon, an LLM degree from Harvard Law School and a Diploma in English commercial law from the College of Law, London.

Manuel Requicha Ferreira is a partner in the banking, finance and capital markets practice whose main projects in recent years include structured and corporate finance, financing operations through a simple or structured debt issue from public or private entities and public offers of distribution or takeovers. A member of the Portuguese Bar Association, he has been involved in the most recent relevant resolutions of Portuguese banks and in the deals involving the consolidation of the Portuguese banking sector. Manuel has a Master's degree in banking and capital markets law from the University of Lisbon.

1. Trends

1.1 M&A Market

2017 was a year of sustained and considerable growth of the M&A market in Portugal, both in terms of number and volume of transactions. Based on its first months, 2018 is expected to be another year of sustained growth, with even more liquidity and accessibility to cheap debt than in the previous year, which are key drivers for growth.

1.2 Key Trends

2017 continued the trend of previous years, which featured several big-volume transactions. In 2018 the number of transactions is expected to remain aligned with previous years, or even grow. An increase in outbound asset sales and divestments in the private equity sector are also expected for 2018. Energy; real estate; tourism and leisure; financial institutions, particularly the insurance industry; IT; and health and pharmaceuticals are likely to remain attractive to foreign investors.

1.3 Key Industries

In 2017 the Portuguese M&A market experienced transactions mainly in the energy and utilities (primarily renewable energies), real estate, infrastructure and finance sectors. It is expected that in 2018 transactions in these sectors shall remain a trend, with a special market appetite for the real estate, energy and financial (sale of assets, namely non-performing loans and real estate) sectors.

2. Overview of Regulatory Field

2.1 Acquiring a Company

Acquisitions and disposals generally take place through entering into a share purchase agreement, if the acquisition's scope is the target company's share capital, or an asset purchase agreement, if the purchaser hopes to acquire part or all of the target company's assets, liabilities or both. It is also possible for an investor to acquire control over a company by subscribing new shares in its share capital through a capital increase. In such a situation, an investor agreement would typically be entered into by the new investor and the former shareholders of the target company.

2.2 Primary Regulators

For the vast majority of private M&A transactions, no government or regulatory approvals are required, aside from the merger control under the terms and conditions established by Law 19/2012, of May 8th (Competition Act). In certain sectors, however, where specific licences, permits or concessions are required for a company to carry out the relevant activities, a transaction may be subject to change of control, transfer authorisations or similar restrictions, which may result in regulatory consents being required to complete the transaction (eg, energy and telecommunications).

Transactions in certain sectors that entail the acquisition or reinforcement of a qualified shareholding (ranging from 10 to 50%) are subject to the approval or non-opposition of the competent regulatory bodies (eg, insurance, banking and media).

M&A deals in respect of public or listed companies are regulated and supervised by the Portuguese Securities Market Commission (CMVM).

2.3 Restrictions on Foreign Investments

Save for exceptional cases, there are no restrictions in Portugal on foreign ownership of companies or assets. However, Decree Law 138/2014, of September 15th sets out the framework to acquire control over strategic assets, guaranteeing the defence and national safety, and the safety of the country's supply of services that are fundamental to the national interest (eg, energy, transport and communications). Acquisitions of control over strategic assets by a person or entity from a non-European Economic Area (EEA) country may be subject to evaluation from the government's member responsible for the area at stake. If the government concludes that the acquisition may be substantially detrimental to national security or to services fundamental to the national interest, the acquisition may be blocked.

2.4 Antitrust Regulations

Concentrations between undertakings in Portugal are subject to merger control under the terms and conditions established in Law 19/2012, of May 8th (Competition Act), which applies to concentrations between undertakings that meet the below thresholds.

Turnover Threshold

Concentrations must be notified to the Portuguese Competition Authority if, in the preceding financial year, the aggregate combined turnover of the undertakings involved in the concentration in Portugal exceeded EUR100 million after deducting the taxes directly related to the turnover. However, this would only apply if the individual turnover achieved in Portugal in the same period by at least two of these undertakings exceeded EUR5 million.

Standard Market Share

Even if the turnover threshold is not reached, notification is mandatory if implementing the concentration results in the acquisition, creation or reinforcement of a market share exceeding 50% of the national market for a particular good or service, or a substantial part of it.

De Minimis Market Share Thresholds

Even if the standard threshold is not met, the creation or reinforcement of a share between 30 and 50% of the national market of a particular good or service will still be subject to mandatory filing if at least two of the participating undertakings achieved, individually in Portugal, a turnover of at least EUR5 million in the previous financial year.

When mergers occur in regulated markets, the Portuguese Competition Act established co-operation mechanisms between the Portuguese Competition Authority and sector regulators during the merger review procedure, including the duty to request an opinion from the appropriate regulator before adopting a final decision.

2.5 Labour Law Regulations

In general, it should be noted that employment relationships in Portugal are highly regulated and in most situations the parties to an employment relationship cannot establish differently from what is established by law or an applicable collective bargaining agreement. Also, under Portuguese employment law, employment contracts are not easily terminated by the employer, who may only terminate the contract in the following main situations:

- during the trial period;
- dismissal for cause (equivalent to a serious breach of contract and following a disciplinary action);
- dismissal for objective reasons (collective dismissal/individual redundancy) based on economical or structural grounds; or
- end of term.

The acquirer should take into consideration that the Labour Code implemented the Acquired Rights Directive, which regulates employees' acquired rights in the event of a transfer of a business or undertaking. As a general rule, a transferee will take over the contracts of employment on the transfer of a business and assume the position of the transferor, unless the employee was transferred elsewhere (eg, to a different location or department) before the transfer of the business occurred. This regime is mandatory and operates automatically without the need for consent of any of the parties and all employment conditions and acquired rights of the employees must be maintained by the acquirer.

Before the transfer takes place, the transferor and transferee comply with information and consultation obligations towards the employees, or their representatives, regardless of the number of employees involved, namely information on the date and reasons of the transfer; terms of the contract between transferor and transferee; legal, economic and social consequences of the transfer; and any specific employment measures to be implemented as a result of the transfer. The transfer may only occur seven business days after these obligations are complied with.

In some situations, there will also be an obligation to provide the same information to the labour authorities.

Recent changes to this legal regime have established the right of employees to oppose the transfer of their employment relations and to terminate their employment with cause after the transfer provided that the legally established grounds to do so are applicable.

For a period of two years after the transfer, the transferee is jointly liable with the transferor for any obligations vis-à-vis the employees that arose prior to the date of the transfer.

Any dismissals or redundancies prior to or after the transfer that are made in connection with the transfer itself are unlawful. Failure to comply with the obligation in relation to the automatic transfer of employees is classified as a very serious labour law infraction, which is punishable with fines, and will entitle the employees to bring proceedings to be reinstated or to receive compensation for unlawful dismissal.

2.6 National Security Review

There are no provisions for national security review of acquisitions in Portugal except as otherwise mentioned in **2.3 Restrictions on Foreign Investments**.

3. Recent Legal Developments

3.1 Significant Court Decision or Legal Development

The most important ruling on M&A transactions in the Portuguese jurisdiction was the Portuguese Supreme Court of Justice's decision of 1 March 2016 on warranty clauses agreed upon in share purchase agreements.

According to the decision, the parties to the agreement are free to allocate the risk for breach of the seller's warranties to the seller pursuant to the principle of contractual freedom set out in Article 405 of the Portuguese Civil Code, which, in the absence of such warranties, would fall on the buyer. This means that the seller would be automatically liable to the buyer for any non-conformity between the qualities and features warranted and the actual qualities and features of the target company without the need to fulfil the civil liability requirements (unlawfulness and fault).

Warranties are therefore a sharing and allocation of risk mechanism that aim to mitigate the information imbalances between the seller and the buyer in share or asset deals. The Supreme Court of Justice underscored that a warranty breach is not deemed as a breach of contract and thus will not trigger a duty to compensate the non-defaulting party but otherwise a specific performance obligation of a pecuniary nature under which the seller shall compensate the buyer for the difference between the target's economic value warranted and its real value as subsequently assessed.

3.2 Significant Changes to Takeover Law

There have been no relevant changes in the last twelve months to takeover legislation. The only relevant changes were in terms of disclosure obligations following the entry into force of the Market Abuse Regulation. However, relevant changes are expected in the coming months. The CMVM is expected to submit to public consultation the proposed changes to legislation during the course of 2018.

4. Stakebuilding

4.1 Principal Stakebuilding Strategies

Stakebuilding in the market prior to launching a takeover is not customary, although it has been conducted in certain takeovers. The acquisition of such stakes in the market (particularly when they are more significant, ie, close to qualified shareholdings) can raise some market noise considering the rules on inside information. However, it is generally accepted that stakebuilding by the bidder prior to a takeover does not fall within the prohibition of trading based on inside information.

Stakebuilding strategy often depends on the shareholder structure of the company. Portuguese listed companies have, in the majority of the cases, concentrated shareholder structures, which thus requires the acquisition of significant stakes from existing shareholders in order for the stakebuilding strategy to create the necessary ramp for the launching of the takeover. However, it should be highlighted that if the relevant thresholds for the duty to launch a takeover bid are surpassed (ie, one third and 50% of the voting rights), the acquirer will have an immediate duty to launch a tender offer with stringent rules on minimum consideration, terms of the takeover and process. For that reason, stakebuilding strategies of shareholdings that surpass the mandatory tender offer thresholds usually entail the execution of share purchase agreements subject to a set of conditions precedent also related to the mandatory tender offer that will be launched immediately after the execution of the share purchase agreement. Additional precaution needs to be taken when the minimum consideration is equal to the price paid to the existing shareholders, in which case a presumption of unfair consideration can apply and the CMVM can potentially appoint an independent auditor to determine the minimum consideration.

In other cases, where there is no controlling shareholder and a less concentrated shareholder structure, stakebuilding strategies are often structured by way of equity derivatives, although, currently, such derivatives (even if only cash settled) are subject to market disclosure under, amongst others, the rules on the disclosure of economic long positions. Other stakebuilding strategies can consist of the execution of option agreements that entitle the bidder to acquire additional stakes in the listed company prior to or after launching the takeover bid.

Another possible stakebuilding strategy is to obtain irrevocable undertakings from existing shareholders. However, this is not customary given the uncertainty as to the consequences of the execution of such irrevocable undertakings, particularly in terms of aggregation of voting rights and consequently the mandatory tender offer thresholds.

4.2 Material Shareholding Disclosure Threshold

Under the Portuguese Securities Code (PSC), when any entity reaches or exceeds 2%, 5%, 10%, 15%, 20%, 25%, one third, 50%, two thirds or 90% of the voting rights corresponding to share capital of a Portuguese listed company or reduces below any of the referred thresholds, it needs, within four trading days, to communicate that fact to the CMVM and the listed company.

The calculation of the relevant voting rights held in the listed company is made in accordance with Article 20 of the PSC, which includes several situations of aggregation of voting rights aside from the normal direct and indirect holdings.

The communication regarding qualified shareholdings must also include:

- the identification of the chain of entities to whom the shareholding can be attributed pursuant to Article 20 of the PSC;
- the percentage of voting rights that are attributable to each of such entities;
- the percentage of share capital;
- the number of shares acquired, sold and now held;
- the discrimination of the shareholding by the category of shares;
- the place of execution of the transaction (eg, Euronext Lisbon); and
- the fact that triggered the duty to make the communication (eg, acquisition of shares or shareholders' agreement).

There are additional rules on disclosure of shareholdings following the preliminary announcement of the takeover. The bidder is obliged to make a daily communication to the CMVM of any market transactions over the securities object of the takeover bid or offered as consideration on such takeover bid. Additionally, and in respect of out-of market acquisition of securities object of the takeover bid, a prior authorisation of the CMVM and prior non-binding opinion of the target company are required.

4.3 Hurdles to Stakebuilding

The above-mentioned thresholds are mandatory, but that does not prevent the company from introducing more demanding rules regarding the reporting thresholds, namely in its bylaws, apart from the legal ones. However, it is not a common practice and, in fact, it is not known that any company has established such rules.

The other main hurdles for stakebuilding in Portuguese listed companies are the voting cap rules and competing rules that can (i) prevent a shareholder from exercising voting rights (either held directly or indirectly) above a certain threshold or (ii) prevent a shareholder (that has a competing activity with the target company) from acquiring stakes above a certain percentage of voting rights without authorisation from the shareholders' general meeting of the company. The first hurdle, although being indirect (because it does not prevent the acquisition itself, only the exercise of voting rights), is very effective, particularly considering the narrow scope of the breakthrough enshrined in the PSC. The second hurdle is a major limitation to the stakebuilding and can result, if there is no authorisation, in an amortisation of the shares of the competing shareholder that surpassed the relevant threshold without the authorisation of the shareholders' general meeting.

4.4 Dealings in Derivatives

Dealings in derivatives are not specifically prohibited or limited under Portuguese law and the country's case law has been sustaining a very broad understanding in relation to the admissibility of derivatives, allowing, amongst others, for derivatives with speculative purposes.

However, there is specific legislation imposing disclosure and filing rules in respect of derivatives.

4.5 Filing/Reporting Obligations

Under CMVM Regulation No 5/2008, as amended, any entity reaching or exceeding an economic long position of 2%, 5%, 10%, 15%, 20%, 25%, one third, 40%, 45%, 50%, 55%, 60%, two thirds, 70%, 75%, 80%, 85% or 90% of the share capital of a Portuguese listed company or reducing its position below any of the thresholds shall, within four trading days after the occurrence of the fact, communicate such fact to the CMVM and the listed company.

The agreements and financial instruments that have as an underlying asset an index or a basket of shares are only relevant for this purpose if a certain share of a listed company represents more than 20% of the overall value of the basket or the index.

The communication of an economic long position must include, aside from the information already required for the communication of qualified shareholdings (in case such a position integrates the holding of shares in accordance with Article 20 of the PSC), (i) the principal characteristics of the agreement and financial instrument; (ii) the number of shares, percentage of share capital and percentage of voting rights object of the agreement and financial instrument; and (iii) the termination/maturity date.

4.6 Transparency

The preliminary announcement of a takeover bid must contain, amongst other elements, the objectives of the offer, which will require the bidder to specify, inter alia:

- if the objective is the acquisition of control or only a strategic stake;
- if the target is to be merged with the bidder following the takeover bid;
- if the target is to go private or be the object of a squeeze-out;
- if the shares are to be delisted; or
- if part of the business is to be altered, merged or transferred with other businesses of the bidder.

The prospectus of the takeover bid will require additional information from the bidder, in particular, and apart from that referred to above in relation to the preliminary announcement, namely the intentions of the bidder regarding the continuity or changes to the business of the target company (eg, closure of branches, activity and sale of businesses), the intentions and objectives in respect of the maintenance and conditions of the employees' jobs, and information related to the future negotiation of the securities or shareholders' agreements with a significant influence on the target company.

5. Negotiation Phase

5.1 Requirement to Disclose a Deal

If the target company is a listed company and there is an intention to acquire its control by means of a takeover bid, there is a duty of secrecy binding on the bidder, the target company, its shareholders and the members of their corporate bodies or their advisers in respect of the preparation of the offer and up until the publication.

Once the decision to launch the takeover bid is taken, the bidder must (i) send the preliminary announcement to the CMVM, the target company and to the stock exchange management entities where the securities of the target company are listed or where the securities offered as consideration are listed and (ii) make a public disclosure of the announcement.

Additionally, and if it is the listed company entering into an agreement with another company in order to acquire it or acquire its business, or make a potential merger, there are specific rules on the disclosure of such information to the extent it is price sensitive information. In particular, Article 248 No 1 of the PSC determines that listed companies must disclose to the market all the information that is directly related to them or to their securities that has a precise nature, has not been publicly disclosed and that, if disclosed, would be capable of influencing, in a sensitive manner, the price of such securities or underlying financial instruments or derivatives related therewith ("price-sensitive information") and any change to the price-sensitive information publicly disclosed by the listed company.

However, it is possible for the listed company to defer the disclosure of price-sensitive information provided that the following requirements are met:

- the immediate disclosure of the information is capable of affecting the legitimate interests of the listed company;
- the deferral of the disclosure will not induce the public in error; and
- the listed company assures the confidentiality of the information.

One of the circumstances that is considered legally to affect the legitimate interests of the listed company is the existence of an ongoing negotiation process or elements related with

the same, provided that the disclosure of the information may affect the results or the normal course of the negotiation process.

5.2 Market Practice on Timing

Market practice on the timing of disclosure does not differ from legal requirements, because the rules are mandatory.

5.3 Scope of Due Diligence

Legal due diligence is of the utmost importance in order to assess the potential risks of any transaction and may affect the transaction's valuation, timing or structure. The scope of a transaction should be tailored to the envisaged transaction and may depend on a variety of factors, namely the target assets or business, (self)imposed deadlines or budget. Due diligence may be carried out with full or limited-scope reviews or with a highlight on certain matters that are critical to the envisaged transaction.

Occasionally, particularly in the context of competitive bidding processes, potential buyers are entitled to rely on vendor due diligence reports, which identify potential irregularities, reducing and focusing the scope of the review that the buyer's advisers conduct to predefined key matters (confirmatory reports). Materiality thresholds are also common practice to reduce and focus the scope of the review when time is of the essence and/or an overwhelming amount of information to analyse is available. Ultimately, the scope of review will have an impact on the drafting and negotiating of the sale and purchase agreement, namely on the extension of representations and warranties, guarantees and conditions demanded by the buyer.

5.4 Standstills or Exclusivity

Depending on the scale and complexity of the transaction, standstill and exclusivity provisions are often demanded by potential buyers in M&A transactions, especially concerning high-exposure and competitive deals. Standstills and exclusivity provisions are usually capped but may be extended if both parties so agree.

5.5 Definitive Agreements

Tender offers, although permissible, usually are not documented in a definitive agreement. The absence of a definitive agreement does not exempt the parties of potential liability when the conduct grossly breaches the counterparty's reasonable expectations.

6. Structuring

6.1 Length of Process for Acquisition/Sale

In private M&A deals, the duration of the acquisition process is not subject to any specific deadline and is largely dependent upon key factors such as complexity of the transaction, nature of the target company (listed/non-listed), depth of the due diligence, bidders' experience and gap periods. Such gap periods refer to the length of time between signing and closing in all transactions whereby the parties cannot perform both actions alongside. Gap periods create an unpredictability factor in relation to the overall duration of the transaction and are often caused by:

- merger filing, where the transaction meets the thresholds set forth in the Competition Act;
- waivers from financing banks related to potential change of control covenants;
- other authorisations and consents triggered by the transaction (eg, governmental and supervisory or regulatory bodies' approval or non-opposition in respect of companies carrying out their activities in regulated sectors);
- consent from contractual counterparties in core agreements such as lenders and landlords who may be entitled to block the assignment of such agreements or to terminate the same in the case of change of control; and/or
- the need to perform certain actions (eg, restructuring of the target company and carve-out of assets ahead of closing, completion of due diligence or buyer's need to obtain finance).

Less complex private M&A deals where no gap periods exist can generally be executed in a straightforward way (ie, between two and four weeks).

Conversely, the takeover bid process is completely different and heavily regulated. The process starts with the market disclosure of the preliminary announcement. Following the announcement, the bidder needs to submit within 20 business days (or 60 business days if it is an exchange offer) the application for registration of the takeover bid with the CMVM. The application needs to be supplemented with several pieces of documentation, which include the draft of prospectus, all regulatory authorisations (ie, competition, banking and media) and all relevant corporate authorisations, including, when the elimination of voting caps is at stake, a resolution approving such elimination. The CMVM analyses all relevant documentation for the purposes of the registration and, in the case of mandatory tender offers, it also opines on the fairness and justification of the minimum consideration. The offer period itself starts after the registration of the takeover bid and can last between two and ten weeks. There are specific rules on the review of the consideration and terms of the offer, and on the launch of a competing bid.

6.2 Mandatory Offer Threshold

The offeror must launch a mandatory takeover bid where it holds, directly or indirectly according to the rules on computation of voting rights, a shareholding representing or exceeding more than a third or half of the voting rights. For

the determination of the indirect holding of the referred to voting rights, the situations mentioned in Article 20 of the PSC are relevant, including:

- shares held by third parties in their own name, but on behalf of the participant;
- shares held by subsidiaries and parent companies (except companies that manage portfolios or funds independently, in which case the voting rights of its parent companies shall not be aggregated);
- shares held by third parties that have entered into a voting agreement with the participant, except when the participant is bound to follow the third party's instructions;
- shares held by any board members of the participant (including members of any supervisory body of the participant);
- shares that the participant may acquire pursuant to an agreement with the owner of such shares or to a financial instrument (i) that grants an unconditional right or an option right to acquire, by virtue of a binding agreement, the shares with voting rights issued by an issuer whose shares are admitted to trading in a regulated market or (ii) that has physical settlement and is not covered by (i) but has a similar economic effect;
- shares held as security, managed by, or deposited with the participant if the participant is entitled to exercise voting rights;
- when the participant was granted discretionary powers to exercise voting rights;
- shares held by third parties who have entered into an agreement with the participant with the purpose of acquiring control of the company, or preventing any changes to its control or otherwise being an instrument of concerted exercise of influence over the company (including any agreements related to the transferability of shares unless evidence to the contrary is produced before the CMVM); and
- voting rights aggregated to any individual or entity as foreseen in any of the above rules by application of any of the other rules.

The mandatory takeover bid must be launched (immediately after the above thresholds are exceeded) for the acquisition of all the shares (and other securities that grant the right to its subscription or acquisition). The minimum consideration is the highest of (i) the highest price paid by the bidder or a related party for the acquisition of the shares of the company during the six months prior to the publication of the preliminary announcement of the takeover bid or (ii) the average weighted market price of the shares during the same period. However, the CMVM can decide that the consideration calculated according to these criteria is not a fair consideration and determine that the consideration is calculated by an independent auditor indicated by the CMVM.

There are some exceptions to this duty.

- Inexistence of control: the bidder, exceeding the limit of one third, may prove before the CMVM that it does not have control of the target company nor is in a group relationship with it.
- Takeover bid: exceeding the relevant threshold results from a general takeover bid over all the shares or other securities issued by the target company, without any restriction relating to the quantity or maximum percentage of securities to be acquired and in compliance with the requirements set out for the consideration for the mandatory offer.
- Financial restructuring: exceeding the relevant threshold results from the execution of a financial restructuring plan in accordance with the relevant statutory provisions.
- Merger: exceeding the relevant threshold results from the merger of the listed company with another company provided that the resolution of the general meeting of the listed company expressly specifies that the operation would result in the duty to launch a tender offer.

The entity bound by the duty to launch the offer can request the CMVM to suspend the duty to launch the mandatory takeover bid if it assumes the obligation to reduce its shareholding in the listed company to a percentage below the relevant thresholds that trigger the mandatory takeover bid within 120 days having reached or exceeded the relevant threshold.

6.3 Consideration

Cash is by far the most common form of consideration in M&A transactions involving privately held companies, as well as listed companies.

However, and in the case of listed companies, there are specific rules on securities consideration in the context of a takeover bid. If the takeover bid is a voluntary takeover, the shares and securities in general can be offered as consideration provided that they have adequate liquidity and are easy to evaluate. Differently, on mandatory tender offers, consideration consisting of shares or other securities needs (i) to be of the same type as those that are the object of the bid and (ii) admitted, or be of the same class of recognised liquid securities, admitted to trading on a regulated market. If the bidder or any entity in a situation of aggregation of voting rights pursuant to Article 20 of the PSC acquires in cash shares of the target company during the six months prior to the preliminary announcement and whilst the tender offer is pending, the bidder will need to offer a cash alternative.

6.4 Common Conditions for a Takeover Offer

Takeover bid conditions must correspond to a legitimate interest of the offeror and cannot affect the normal functioning of the market. Conditions that depend on the offeror are prohibited.

The "acceptance conditions" are considered valid (eg, the effectiveness of the takeover bid is subject to the acquisition of a minimum percentage of voting rights), as well as the conditions regarding the elimination of voting caps or restriction to the transfer of shares, the conditions regarding the non-sale of certain assets (crown jewels) of the target company or the approval of regulatory authorities (eg, competition authority). These conditions are only effective if contained in the preliminary announcement.

In addition, Portuguese doctrine has understood that offer conditions are not allowed for mandatory offers, except if they refer to legal conditions, such as administrative authorisations required for the launch of the offer (eg, competition authority).

By contrast, for the other type of offers, Portuguese law allows offer conditions, provided that the conditions correspond to the offeror's legitimate interest and do not affect the normal functioning of the market, and that the verification of the condition does not depend on the offeror. In fact, if the condition could depend on the offeror's behaviour or conduct, that situation could lead to a potential situation of inside-information abuse by the offeror.

6.5 Minimum Acceptance Conditions

Minimum acceptance conditions are very common in voluntary takeovers, which usually coincide with half of the voting rights (that corresponds to the second threshold of the mandatory tender offer) or with two thirds or 75% of the voting rights where the by-laws provide for certain qualified majorities, including those related to the elimination of voting rights or any other relevant changes to the by-laws (ie, authorisation for competing entities).

No minimum acceptance levels are allowed for mandatory offers.

6.6 Requirement to Obtain Financing

In private M&A transactions, acquisitions are often financed through equity, debt, or a combination of both, depending on the nature of the buyer and size of the transaction. Nowadays, due to the large amounts of cheap money available, bank finance is by far the most common source of funding, although alternative sources are increasingly being used (high-yield financing and bonds issuance). Albeit legally admissible, given the uncertainty regarding whether the buyer is capable of obtaining finance to fund the payment of the transaction's consideration between signing and closing, sellers are often reluctant to accept such a condition precedent.

Conversely, takeover bids cannot be subject to any condition related to the financing of the consideration. In fact, and in the context of the registration of the takeover and for the offer period to begin, the bidder must deposit the cash consideration with a credit institution or present a bank guarantee regarding payment of the same.

6.7 Types of Deal Security Measures

Agreed break-up fees (seller to compensate the buyer for transaction costs) or reverse break-up fees (buyer to compensate the seller for walking out of the deal) are increasingly used in private M&A deals. Most widely used covenants set out that either party must bear its own costs and expenses incurred during the transaction's negotiation process. Post-closing covenants to address transition issues, including restrictive covenants such as non-compete and non-soliciting, are usually agreed upon by the parties in more complex deals (subject always to compliance with relevant competition and labour laws). These obligations are usually limited in time and geographically. The share purchase agreement will typically include a penalty on the seller in the case of breach of a restrictive covenant.

Conversely, the use of break-up fees is not common in takeover bids, given the lack of certainty on their legal validity (if given by the target itself) and their impact in terms of aggregation of voting rights (if given by existing shareholders). Non-solicitation provisions, even if they have a fiduciary out, are also not used due to the risks of invalidity of such undertakings in light of the passivity rule (see **9.2 Directors' Use of Defensive Measures**). Finally, force-the-vote provisions are not common, given, again, their doubtful legal admissibility in light of the passivity rule and also because shareholders can request the summoning of a shareholders' meeting to force the vote to the extent they have at least 2% of the share capital of the listed company.

6.8 Additional Governance Rights

In private M&A transactions that do not entail the acquisition of 100% of the target's shares, the buyer may seek additional protection measures from the remaining shareholders by entering into a shareholders' agreement. These may govern a broad range of matters, such as governance issues (appointment of board members and other corporate bodies), transfer of participations (eg, tag-along and drag-along rights, pre-emption rights, call-and-put options) and reserved matters that can only be approved with reinforced majorities (minority shareholders' protection rights).

According to Portuguese law, shareholders' agreements are only binding among the parties and therefore cannot be enforced against the company or third parties. Such agreements are subject to the following restrictions:

- they cannot include provisions aiming at restricting the actions of the members of the board of directors or the audit board;

- no shareholder may undertake to vote always in accordance with the company's or its board of directors or audit board's instructions or proposals; and
- no shareholder may exercise its voting rights in exchange for special advantages or benefits.

6.9 Voting by Proxy
According to Portuguese law, shareholders may vote by proxy through a letter addressed to the chairman of the shareholders' general meeting.

6.10 Squeeze-out Mechanisms
Portuguese law provides a specific squeeze-out procedure applicable to private M&A deals, under which the acquisition by a company of at least 90% of another company's share capital would grant the buyer the right to acquire the remaining target's capital stock and therefore to squeeze out the minority shareholders.

For such purpose, the buyer shall notify the target that it has completed the acquisition of at least 90% of the target's capital stock within 30 days upon completing the acquisition.

Within the following six months, the buyer may submit an offer to the target's remaining minority shareholders, for a consideration in cash or in buyer's capital stock or bonds. The consideration must be grounded in a report issued by an independent chartered accountant, which will then be deposited in the commercial registry office and in both companies' registered offices.

The acquisition becomes effective with the registration of the takeover bid with the relevant commercial registry office and the publication of such registration, which can only be made after a deposit, by the acquirer, of the consideration offered for the acquisition of the target's remaining capital stock.

Minority shareholders are granted a reciprocal right to demand the shareholder who acquired at least 90% of the target's capital stock to purchase their shares in a case where the shareholder did not make the offer to squeeze out the minority shareholders described above.

Conversely, listed companies have a specific legal framework regarding the squeeze-out procedure, which differs substantially from the regime referred to above.

The squeeze-out right applies following a general public takeover bid (either voluntary or mandatory) subject to (i) the offeror holding at least 90% of the voting rights of the target (directly or indirectly, pursuant to Article 20 of the PSC, which establishes the rules on the aggregation of voting rights) and (ii) the acceptance level of the takeover bid of at least 90% of the voting rights to which the takeover bid was addressed.

If these requirements are met, the offeror is entitled, during the three months following the assessment of the results of the takeover bid, to acquire the remainder shares held by other shareholders through the payment of a fair consideration in cash subject to the rules on the minimum consideration payable in mandatory takeover bids. There is a specific legal presumption that the consideration of the squeeze-out is fair when, as a result of the acceptance of a public general voluntary takeover bid, the offeror has acquired, against such consideration, at least 90% of the shares corresponding to the share capital with voting rights of the target. The offeror must publish the preliminary announcement and send it to the CMVM for registration immediately after taking the decision of exercising the squeeze-out right.

The acquisition of the shares is considered effective with the publication by the offeror of the registration of the squeeze-out with the CMVM and determines that the company shall cease being a public company and that its shares are automatically delisted. After the squeeze-out procedure is concluded, the shares cannot be relisted for a year.

Article 196 of the PSC establishes the rules on the sell-out right of minority shareholders of listed/public companies.

The sell-out right is subject to the same legal requirements as the squeeze-out right. Basically, the sell-out right of the minority shareholders mirrors the squeeze-out right of the controlling shareholder/offeror. The minority shareholders are entitled to exercise their sell-out right during the three months following the assessment of the results of the takeover bid and, to that purpose, must send a written notice to the controlling shareholder, who should then present to the minority shareholder, within eight days following the receipt of the notice, an offer for the acquisition of its shares. If such offer is not presented by the controlling shareholder or is not considered adequate by the minority shareholder, the latter can decide to exercise its sell-out right through a declaration to the CMVM with a certificate that attests the blocking/freeze of the shares to be sold and an indication of the fair consideration that should be paid according to the rules referred to above for the squeeze-out of listed companies.

The CMVM will verify whether the requirements of the sell-out right are met and, should that be the case, it will notify the controlling shareholder of the existence of the right and the sale will be effective as of the date of such notice.

As to the short-form procedures, Article 116 of the Portuguese Companies' Code provides that a company holding, either directly or indirectly, 90% or more of another company's capital stock may incorporate the other company through a simplified merger procedure, whereby some legal provisions generally applying to mergers would be excluded.

Short-form mergers can be implemented without any prior shareholders' resolution, provided that all documents related to the merger have been made available to the shareholders in both companies' registered offices in due time and that no shareholders holding, individually or jointly, at least 5% of the company's capital stock have required a shareholders' general meeting to convene and resolve on the merger within 15 days upon the announcement that the merger project was registered.

Shareholders holding 10% or less of the merged company capital stock and who voted against the merger at a shareholders' meeting convened as described above would be allowed to withdraw from the company.

6.11 Irrevocable Commitments

As referred to above, it is not customary for the bidder to obtain irrevocable undertakings/commitments given the uncertainty as to the consequences of the execution of such irrevocable undertakings, particularly in terms of aggregation of voting rights and consequently the mandatory tender offer thresholds.

The few times they were used, the irrevocable commitments were only obtained after the preliminary announcement was made and they did not give an opt-out right in the case of a higher competing tender offer.

7. Disclosure

7.1 Making a Bid Public

As referred to above, once the decision to launch the takeover bid is taken, the bidder must (i) send the preliminary announcement to the CMVM, the target company and to the stock exchange management entities where the securities of the target company are listed or where the securities offered as consideration are listed, and (ii) make a public disclosure of the announcement.

The preliminary announcement needs to include:

- the corporate name and head office of the offeror;
- the corporate name and head office of the target company;
- the securities that are the object of the offer;
- the consideration offered;
- the name of the financial intermediary responsible for the financial assistance to the offer, in case the same has already been appointed;
- the percentage of voting rights of the target company held by the offeror and by persons/entities with whom he or she is in a situation of aggregation of voting rights pursuant to Article 20 of the Portuguese Securities Code;
- a summary of the main purposes of the offeror, namely as to the continuity or modification of the corporate activity of the target company and of the offeror, to the extent it is affected by the offer, and, on the same terms, of the companies that are in a group or control relation with the target company or the offeror; and
- the legal framework applicable to the offeror in relation to the passivity rule and the breakthrough rule.

Following the disclosure of the preliminary announcement, the offeror needs to:

- launch the offer with conditions that are not less favourable than those referred to in the preliminary announcement;
- apply for registration of the offer with the CMVM; and
- inform the representatives of the employees or, if there is none, the employees of the content of the offer documents, as soon as these are made public.

7.2 Type of Disclosure Required

Apart from the preliminary announcement, and as referred to above, the offeror is required to prepare and disclose a tender-offer prospectus, which shall include the following:

- A description of the offer (eg, theamount and nature of the offer; the amount, nature and class of securities that are the object of the offer; the consideration and the justification of its fairness; a guarantee for the consideration; the terms of the offer, in particular the conditions of the offer and its assumptions; a financial intermediary and its role; the purposes of the offer; plans for the target company; the financing of the offer; declarations of acceptance; and the result of the offer).
- Information regarding the offeror, shareholdings and shareholders' agreements (eg,identification of the offeror, shareholdings of the offeror in the target company, shareholders' agreements regarding the target company).
- Other information that the offeror considers relevant.

The prospectus also needs to include the information referred to above in relation to the plans regarding the target company and the offeror must disclose its intentions as to:

- the maintenance or wind-up of the corporate activity of the target company and the offeror when the same is affected by the offer and, on the same terms, of the companies that are in a control or group relation with the offeror or the listed company;
- the maintenance and employment conditions of the employees and the managers of the companies referred to in the first point above, namely potential repercussions on the places where the corporate activity is carried out, as well as to the HR policy and financial strategy of such companies; and
- the maintenance of the qualification of the target company as a public company and as a listed company.

If the offer is an exchange offer, there will be a need to include all the information that is legally required in an offer to subscribe or acquire securities (ie, shares) with full information on the type of securities and the issuer.

In respect of mergers, the directors of the merged company must draft a joint merger plan that shall include information regarding the business combination and must be approved by the respective shareholders' general meeting.

7.3 Producing Financial Statements

As a rule, and in relation to takeover offers, the bidders are not obliged to produce pro forma financial information in the disclosure documents, save if the offer is an exchange offer, in which case the relevant financial information from the issuer will be required. However, pro forma financial information is needed in the case of significant gross change, ie, a variation of more than 25% relative to one or more indicators of the size of the issuer's business, in the situation of an issuer due to a particular transaction, with the exception of those situations where merger accounting is required.

7.4 Transaction Documents

Whether disclosure of any of the transaction documents in full is needed depends on the type of documents. There is no generic obligation to disclose the documentation in full but all information that is price-sensitive needs to be disclosed and a summary of the relevant agreements that are price-sensitive can be requested by the CMVM.

There is a specific rule in relation to shareholders' agreements of listed companies that need to be communicated to the CMVM, which determines what parts, if not all, of the shareholders' agreement needs to be disclosed to the public, taking into account its relevance for the control of the target company.

8. Duties of Directors

8.1 Principal Directors' Duties

Directors are bound to fiduciary duties, including general duties of care and loyalty. Pursuant to the duty of care, a director must meet the standard of a diligent and responsible business person, and have (i) the availability and willingness to carry out the company's management, (ii) the proper technical capacity and skills for the performance of the relevant functions, and (iii) an understanding of the company's business.

Subject to a duty of loyalty, directors must act in the best interests of the company. For this reason, directors must also take into account the interests of the stakeholders who are relevant for the sustainability of the company, in particular employees, customers and creditors.

In respect of the duty of loyalty, directors are bound by a non-competition obligation principle, meaning that they (i) must always act without the intent of obtaining benefits for themselves or third parties, (ii) may not take advantage of corporate opportunities and (iii) are not allowed to trade with the company, except in specific, legally established, situations.

8.2 Business Judgement Rule

Pursuant to the Portuguese Companies Code, a director is liable for the damages caused to the company as a result of his or her actions or omissions in disregard of legal or contractual duties. This liability may be excluded if the behaviour of the director was proven to be without gross negligence or wilful misconduct, or if the director demonstrates that the actions or omissions were carried out in a duly informed way, free from any personal interest and in accordance with business reasonability criteria.

If legal or contractual duties are not breached by the director, the merit of certain decisions is not judged by the courts on a reasonability criteria, since a multitude of reasonable decisions may be taken when faced with a particular reality. For this reason, directors shall only be liable if the act or omission in question is considered irrational.

Since the law establishes a presumption of guilt, when legal or contractual duties are breached by a director, Portuguese courts do not make any assessment of the merit of the director's decision, it being up to the director to prove the absence of fault, the rationality of the act or omission under scrutiny.

8.3 Independent Outside Advice

When faced with situations that cannot be exclusively solved by internal resources (namely M&A transactions), the board of directors of companies often resort to external consultants for legal, tax, financial and strategic advice. These external consultants are engaged in almost every stage of a deal, from searching for a target and devising an acquisition strategy and criteria with investment banks and strategic consultants to conducting the negotiation, due diligence and acquisition with the legal advisers.

8.4 Conflicts of Interest

Conflicts of interest have been subject to judicial and regulatory scrutiny.

In addition, certain provisions in Portuguese law specifically regulate potential conflicts of interest between the company and its directors. For instance, limited liability companies may not (i) grant loans or any kind of credit to its directors, (ii) issue payments, (iii) provide guarantees on their behalf or (iv) offer them compensation advances superior to one month's salary.

Additionally, any agreements executed between the company and its directors (even if indirectly) are null and void if not previously authorised by the board of directors and ratified by the supervisory body. It is also noteworthy that the interested director may not vote on the resolution of the board of directors authorising the transaction between himself and the company. However, the law is not clear on whether the interested director may attend, without voting, the board of directors meeting during which such resolution is to be discussed and voted upon, risking the possibility of influencing the resolution.

If the company has only one director, Portuguese courts interpret the law in a way that the authorisation granted by the company must be granted by means of a resolution of the general meeting and not the board of directors.

9. Defensive Measures

9.1 Hostile Tender Offers

There are no legal restrictions to hostile tender offers. However, in contrast with the tendency in Europe, hostile tender offers are not very common in Portugal. On the one hand, the concentrated shareholder structure of the listed companies makes it difficult, or almost impossible, for a takeover bid to be successful without the support of the existing controlling or majority shareholders. On the other hand, the existence of voting caps or statutory limitations for the acquisition of stakes by competing entities creates considerable hurdles for a hostile change of control. Such facts lead to a very low percentage of successful hostile tender offers.

9.2 Directors' Use of Defensive Measures

The PSC establishes ex ante limitations on the directors' conduct during a tender offer ("passivity rule").

Under such rule, the board of directors of the target company shall refrain from entering into any transactions or performing any actions that can materially affect the patrimonial situation of the target company and that do not include themselves in the ordinary management of the target company, and that can affect in a significant manner the objectives of the offeror; for example, the issue of new shares (or other securities that grant the right to its acquisition or subscription) and the sale of important assets of the target company (eg, crown jewels) are considered transactions that can materially affect the patrimonial situation of the company. The limitation includes the execution of the decisions already taken but not executed, without prejudice of the execution of obligations constituted prior to the acknowledgement of the launch of the takeover bid.

The board of directors of the target company may overcome these limitations with the authorisation of a shareholders' general meeting. The board is also entitled to seek a white knight (ie, a competing bid).

The limitations referred to above are only applicable to reactive defensive measures, not to preventive defensive measures, in particular golden shares and voting caps.

Finally, it is also important to mention that the board of the target company must issue, within eight days following the receipt of the drafts of the prospectus and announcement of launch, a report on the conditions and opportunity of the takeover. Directors that have any relationship or are related to the bidder cannot vote on the resolution of the board of directors that approves the report.

9.3 Common Defensive Measures

Given the existence of the passivity rule referred to above, it is not common for the board of directors to adopt defensive measures when there is a takeover pending.

In cases where the board wants to implement defensive measures, the first action is to approve the board report with an unfavourable opinion on the acceptance of the offer and hire an investment bank to establish the unfairness of the price offered by the bidder. Secondly, the board initiates a process to seek for a white knight, having, for that purpose, the assistance of the investment bank hired to advise the board during the takeover bid. It is possible for the target company to make available to the potential competing bidder information on the target company in order for it to assess the launching of a competing offer and the price to be offered. Such information will also need to be made available to the initial bidder. Thirdly, the board of directors can propose to the shareholders' general meeting a buy-back programme of shares, spin-off of business sectors of the target company, extraordinary dividends or issuance of new shares. In recent years, the board of directors tried to react to the launch of a takeover through the beginning of a merger process with another entity but the CMVM considered such action inadmissible in light of the passivity rule and the rules on competing offers.

Nonetheless, it is common for the board of directors to propose preventative defensive measures, particularly those that try to avoid the existence of a controlling shareholder, allowing for control to be split amongst the several qualified shareholders. Voting caps, authorisation of the shareholders' general meeting and super-qualified majorities for certain matters adopted by the shareholders' general meeting or the board of directors are the most common preventative defensive measures that the board of directors propose to strategic shareholders.

9.4 Directors' Duties

Apart from the rules referred to above, and as result of the passivity rule, the directors are obliged to act in good faith and in the interest of the company, and to seek specific consent from the shareholders in order to take actions that may result in the frustration of the bid. Directors cannot adopt measures aimed at frustrating the bid without the approval of the shareholders.

9.5 Directors' Ability to "Just Say No"

As referred to above, the directors can express their views on an offer in the report of the board of directors on the terms and conditions of the offer. They are also entitled to search for a white knight.

10. Litigation

10.1 Frequency of Litigation

Litigation in connection with M&A deals is usually avoided and any disputes arising therefrom are settled privately between the parties to guarantee the stability of the deal.

Most commonly, parties use ad hoc or institutionalised arbitration to resolve their disputes.

10.2 Stage of Deal

Disputes mostly arise post-closing of the transaction, when breach or inaccuracy of representations and warranties given are detected. Breaches of post-closing undertakings such as (i) price adjustment mechanisms, (ii) gross-up provisions, (iii) indemnity payments and/or (vi) non-competition and non-solicitation covenants are the most common cases that may trigger litigation.

Cuatrecasas
Praça Marquês de Pombal, nº 2
1250-160 Lisboa
Portugal

Tel: +351 21 355 38 00
Fax: +351 21 353 23 62
Email: cuatrecasasportugal@cuatrecasas.com
Web: www.cuatrecasas.com

CUATRECASAS

11. Activism

11.1 Shareholder Activism

Given that Portuguese listed companies often have concentrated shareholding structures, shareholders' activism is not an important force in Portugal. In addition, there are no incentives — legal or statutory — for minority shareholders (with reduced stakes) to intervene and participate in the decisions of listed companies. The implementation of the new directive of shareholders' rights will give more incentives for the participation of minority shareholders.

11.2 Aims of Activists

It is rare to see activists incentivising listed companies to enter into M&A transactions, spin-offs or major divestures. Shareholder activism is more focused on share price and target company valuations, particularly in the context of takeovers, going private, squeeze-outs or delistings. In these cases, it is also common for hedge funds to take stakes in listed companies in order to participate actively in such processes and obtain higher return and price per share.

11.3 Interference with Completion

As referred to previously, activists, in particular hedge funds, tend to interfere often in takeovers, going private, squeeze-outs, delistings and similar processes.