The Private Equity Review

Eighth Edition

Editor
Stephen L Ritchie

The Law Reviews

THE PRIVATE EQUITY REVIEW

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CONTENTS

PREFACE

The eighth edition of *The Private Equity Review* follows an extremely active 2018. While the number of global private equity deals completed declined from 2017, the total value of such deals was the highest since 2007, and the third-highest of all time. Deal activity was weighted towards the upper end of the market, and included several large take-private transactions. Fundraising activity was also strong, as institutional investors remained extremely interested in private equity as an asset class because of its strong performance relative to public markets. As a result, private equity funds have significant amounts of available capital, leading to very competitive transactions being completed at increasing purchase price multiples. This has caused private equity firms to become even more creative as they seek opportunities in less competitive markets or in industries where they have unique expertise. Given all of this, we expect private equity will continue to play an important role in global financial markets, not only in North America and western Europe, but also in developing and emerging markets in Asia, South America, the Middle East and Africa. In addition, we expect the trend of incumbent private equity firms and new players expanding into new and less established geographical markets to continue.

While there are potential headwinds – including trade tensions, a slowing Chinese economy, Brexit and an eventual end to one of the longest-running recoveries in US history – on the horizon for 2019 and beyond, we are confident that private equity will continue to play an important role in the global economy, and is likely to further expand its reach and influence.

Private equity professionals need practical and informed guidance from local practitioners about how to raise money and close deals in multiple jurisdictions. This review has been prepared with this need in mind. It contains contributions from leading private equity practitioners in 25 different countries, with observations and advice on private equity deal-making and fundraising in their respective jurisdictions.

As private equity has grown, it has also faced increasing regulatory scrutiny throughout the world. Adding to this complexity, regulation of private equity is not uniform from country to country. As a result, the following chapters also include a brief discussion of these various regulatory regimes.

I want to thank everyone who contributed their time and labour to making this eighth edition of *The Private Equity Review* possible. Each of these contributors is a leader in their respective markets, so I appreciate that they have used their valuable and scarce time to share their expertise.

Stephen L Ritchie
Kirkland & Ellis LLP
Chicago, Illinois
April 2019

Part II

Investing

Chapter 16

PORTUGAL

Mariana Norton dos Reis[1]

I OVERVIEW

i Deal activity

According to the 2017 European Private Equity Activity Report,[2] approximately €71.7 billion of equity was invested in European companies, with €51.2 billion relating to buyout investment. Growth investment, which is typically a minority investment in mature companies that are seeking primary capital to expand and improve operations or enter new markets to accelerate the growth of business, reached amounts close to €11.5 billion, meaning that seed, start-up and later-stage financing (venture capital) are still a reduced fraction of the total private equity investment made in the European market. In terms of geographical investment flows, the largest part of capital circulated inside the European territory, with €49.6 billion capital investment made domestically within European countries and €18.2 billion made in cross-border investments within Europe. The most targeted sectors were consumer goods and services, information and communication technology, and business products and services, with a combined percentage of approximately 64.9 per cent of all private equity investment made in Europe.

This conjuncture was reflected in Portugal, whose economic recovery positively affected its private equity market while maintaining similar distributions of investment by stage and sector.[3] Following the growth trend of previous years, assets under management (sum of equity, financing, liquidity, options on derivatives and other private equity assets) reached €4.8 billion by the end of 2017, with an increase of €145.4 million in comparison with the previous year. This positive development was due to an increase in the amounts invested in other private equity assets, and occurred despite a slight decrease in the investment in equity and other investments in national targets (supplementary capital contributions, accessory contributions and shareholder loans, bonds and other debt securities). Equity only accounted for 26.7 per cent of the total amount invested in the national private equity sector, while other investments appear as the major target in 2017, amounting to up to 51 per cent (€2.4 billion). Of these other investments, accessory contributions, shareholder loans and other loans take on the largest role, despite a decrease of the latter in 2017. Furthermore, amounts invested in non-domestic targets decreased by 11.4 per cent for equity and by 5.6 per cent for other investments in 2017.

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1 Mariana Norton dos Reis is a partner at Cuatrecasas.

2 2017 European Private Equity Activity report published by Invest Europe and available at www.investeurope.eu/research/activity-data/annual-activity-statistics.

3 http://www.cmvm.pt/pt/EstatisticasEstudosEPublicacoes/Publicacoes/CapitaldeRisco/Documents/Relat%C3%B3rio+Capital+de+Risco+2017.pdf.

Currently, there are 46 private equity companies and 114 private equity funds operating in the Portuguese private equity sector.[4] Investments of these private equity funds are spread out over 538 targets and investment units in 18 private equity funds, totalling €4.5 billion. Investments of the private equity companies are spread out over 63 private equity companies and investment units in 42 private equity funds, totalling €243 million. This shows that investment via private equity funds, comprising 94.9 per cent of the total investment in private equity assets in Portugal, is staggeringly more significant than via direct investment through private equity companies.

There is a significant concentration of the Portuguese market, with nine private equity funds representing around 64.5 per cent of total assets under management, with management being carried out by six operators, three of which manage 54.4 per cent of the global fund value. This concentration is also apparent from the fact that nine out of a total of 792 equity participations represent approximately 31.5 per cent of all assets under management registered in Portugal, and the 43 participations with a minimum value of €5 million represent 59.2 per cent of the total managed participations. There are no equity participations exceeding €100 million.

As for the targets that private equity agents generally envisage, holding companies that manage non-financial corporations that act as vehicles for investments in other companies are quite popular, as they allow end investments not to be disclosed. The sectors that captured the largest amounts of private equity investment in 2017 were the real estate and processing industry sectors, which jointly represent 19.3 per cent of the total investment in private equity in Portugal. Accommodation and food service activities also represent an important private equity investment stake in Portugal, following the growth trend verified in the sectors closely linked to tourism.

In respect of the stages of investment, private equity comprises 80.3 per cent of the total investment, with the largest branch of this stage of investment being the turnaround (which represented 33.8 per cent of the total, but with a slight decrease (36 per cent) in comparison with 2016) followed by the expansion stage (21.5 per cent). This decrease in the turnaround was partially compensated by the growth of both the expansion and the replacement capital stages, which rose from an aggregate proportion of 24.2 per cent to 25.9 per cent. Despite evidencing a downturn in the number of participations, the percentage of investment captured by venture capital has not varied greatly. At this point, and contrary to the expectations occasioned by the multiple measures implemented by the Portuguese state, the start-up stage holds at 9 per cent of the total amounts investment, as against 10.4 per cent in 2016.

Private equity investments differ in terms of management approaches between hands-on (technical supervision and management involvement) and hands-off (restricted to the allocation of funds). This distinction is also related to the level of control that the investor intends to exercise. By the end of 2017, 63.5 per cent of all investments concerned shareholdings under 30 per cent of the total share capital of the targets.

Concerning the duration of investments, nearly 39.1 per cent of private equity investment had a term of less than four years and 8.8 per cent was kept for more than 10 years.

4 http://web3.cmvm.pt/english/sdi/capitalrisco/index.cfm.

ii Operation of the market

Management incentive arrangements

Management incentives may be structured as compensation schemes linked to predetermined performance thresholds, equity-linked participation programmes, granting managers the option to acquire shares at a discount or vesting mechanisms where shares are gradually 'unlocked' and offered to managers at a discount or even free of charge. Furthermore, exit bonuses are standard market practice for almost any private equity entity in Portugal. From a strategic point of view, equity incentives are a reliable source of interest alignment between the management and the company, constricting both parties to equal goals and targets.

Since management incentive arrangements are designed to intersect interests of both the management and the investors, general prohibitions on the transferability of equity or the incentive itself are used to ensure that it is exclusively held for the benefit of management. This kind of mechanism is complemented by the fact that, in the event of change of management, the interest may be transferred back to the company, either to the inbound management or to a 'storage vehicle'. For this purpose, 'good-leaver' and 'bad-leaver' provisions are used to adjust the vested equity accordingly.

A regular compensation package may be structured through '2 and 20 clauses', where the carried interest corresponds to an entitlement of the fund managers to 20 per cent of the profits and 2 per cent of the fund's committed capital as an annual management fee. Ratchet arrangements are mechanisms designed to align the amount of equity held by owner managers with the performance of the company after the initial investment. However, ratchet arrangements are not regulated under Portuguese law, and the question of whether the gains obtained from such arrangements are taxed as labour remuneration (and consequently subject to personal income tax and social security) or as capital gains is currently still under discussion.

II LEGAL FRAMEWORK

i Acquisition of control and minority interests

Portuguese law sets no restrictions – neither legal nor regulatory in nature – on the ownership of companies and assets by foreign entities or individuals. However, a framework for the acquisition of control over strategic assets was created by Decree-Law No. 138/2014 of 15 September 2014, aiming to ensure national defence and safety, as well as the guarantee the country's supply of national-interest structural services, such as energy, transport and communications. Takeovers of assets in any of these areas, which are deemed to be strategic, by a non-EEA country's nationals, either individual or legal, may require a prior assessment by the cabinet member overseeing the relevant sector. Should the government ultimately determine that the acquisition might harm national interest, by threatening either the country's security or its provision of fundamental services, the transaction might be prevented from occurring.

Under the provisions of the Portuguese Companies Code, whenever a simple interest relationship is established (i.e., a company holds an interest equal to or greater than 10 per cent in another company) the acquirer company must notify the acquired company, in writing, of all acquisitions and disinvestments in the latter's equity.

In the case of a company that establishes a relationship of control in another company, which is presumed after the acquisition of a majority stake, if the acquirer has more than half of the voting rights or if it has the possibility of appointing more than half of the members of the board of directors or of the supervisory board, the dependent company may not purchase shares of the former company.

Pursuant to the Portuguese Companies Code, if a company acquires 100 per cent of the share capital of another company, a general shareholders' meeting must be convened by the board of directors of the dominant company within six months, to decide whether to dissolve the dependent company, transfer the shares of the dependent company or maintain the existing situation.

If a company acquires, directly or indirectly (by means of a company in the same group, or through a dependent company) an interest greater than 90 per cent in another company, the acquiring company must notify the latter of this fact within 30 days of the moment that this amount of interest was achieved. A 'squeeze-out' mechanism is available within six months of the notification, whereby the dominant company may secure the remaining equity from the other shareholders. Similarly, if the dominant company does not squeeze out the remaining shareholders, any minority shareholder may, at any time, demand in writing that the majority shareholder purchases the remaining shares from it, within a time limit of not less than 30 days. In the absence of said purchase, or it being considered unsatisfactory, the minority shareholder may request a judicial purchase from a court of law.

Particularly relevant to private equity investors that do not acquire large interests in their targets, the Portuguese Company Codes ensures, through multiple provisions, that minority shareholders are protected from certain abuses.

First, in public limited liability companies (known as SA companies), although the general shareholders' meeting must be convened according to the law or when any of the boards (board of directors, audit commission, executive management council, audit committee, general and supervisory council) deems it necessary, it will also be convened when one or more shareholders with an interest superior to 5 per cent requires it. As for private limited liability companies (known as Lda companies), all shareholders may request the managers to convene a general shareholders' meeting or include items in the agenda, and no shareholder may be restricted from participating in the general shareholders' meeting, even if it is prevented from exercising its voting rights.

For a public or private limited liability company to decide on matters such as changes to the company's by-laws, mergers, demergers, transformations or dissolution, a qualified majority is required.

Regarding information rights, public and private limited liability companies operate under different frameworks. Any shareholder of a public limited liability company that holds an interest equal to or greater than 1 per cent of the share capital may, on the basis of justified grounds, consult management reports, accounts, supervisory boards and certified public accountants' reports for the previous three years; convening notices, minutes and attendance lists of the general or special shareholders' meetings or bondholders' meetings for the previous three years; the global remuneration amounts paid to members of the company bodies for the previous three years; the global remuneration amounts paid to the highest-paid employees; and share registry documents. In private limited liability companies, managers must provide true, complete and clear information on the company's management and ensure that inspection of books and documents can be made by any shareholder that so requests it. Although this information right may be further developed in the company's by-laws, its effective exercise may not be prevented or unjustifiably limited in the by-laws.

To prevent abuses by majority shareholders, resolutions approving the non-distribution of profit with the intent to pressure minority shareholders into relinquishing their shares; the increase of share capital with the intention of rendering minority shareholders unable to partake in such an increase; or the change of company headquarters may be annulled if the court finds that the resolution was intended to harm the interests of the company or some of its shareholders.

On the other hand, like majority shareholders, minority shareholders are also subject to the provisions of the Portuguese Companies Code, which may prevent improper conduct such as the abuse of judicial opposition to corporate resolutions with the intent of forcing the company to carry out a transaction that specifically benefits the objector, or even the withholding of votes in favour of a proposed change of the by-laws that is essential to preserving the corporate interests, when those votes are essential for the approval of the relevant resolution.

ii Fiduciary duties and liabilities

Pursuant to the Portuguese Companies Code, directors are subject to fiduciary duties, namely the general duties of care and of loyalty. The duty of care is defined as the standard of a diligent and responsible business person and requires directors to have the availability and willingness to carry out the company's management, the proper technical capacity and skills for the performance of the relevant functions and an understanding of the company's business, appropriate for the due performance of the role.

Directors are also bound by a duty of loyalty according to which they must exclusively act in the best interests of the company and of the stakeholders who are relevant for its sustainability, in particular employees, customers and creditors. In addition, the duty of loyalty also comprises three fundamental principles, namely: (1) a non-competition obligation towards the company; (2) a prohibition on taking advantage of corporate opportunities; and (3) a prohibition on trading with the company, except in specific, legally established, situations.

Furthermore, rules set out in the Portuguese Company's Code establish that directors must avoid any activity that can result in a conflict of interest with the company unless express consent has been granted by the general meeting of the shareholders and may not vote on resolutions of the board of directors if they are conflicted in any way (for example, if they are involved in a management buyout). Directors may only enter into agreements with the company in the situations strictly set out in law, may never use the company's assets for their own benefit or the unlawful benefit of third parties and are bound by a duty of confidentiality in respect of information related to the company that is not available to the public.

The duties directors are bound to may be further expanded by means of management agreements and in the by-laws of the company.

Managing entities of private equity funds are subject to specific provisions, established in Law No. 18/2015.[5] The managing entity, in the exercise of its functions, acts on behalf of the investors, independently and in their exclusive interest, with the obligation to perform all acts necessary for a diligent and responsible administration of the private equity fund,

5 Law No. 18/2015 of 4 March 2015, as amended by Decree-Law No. 56/2018 of 9 July 2018, transposed Directives No. 2011/61/EU and No. 2013/14/EU of the European Parliament and of the Council and executed Regulation Nos. 345/2013 and 346/2013 of the European Parliament and of the Council, developing the legal framework applicable to private equity investment activities.

according to high levels of integrity, diligence and professional ability. In the performance of its duties, a managing entity shall safeguard the legitimate interests of the investors, refrain from entering into arrangements that may lead to a conflict of interests with investors and set up an organisational structure and internal procedures proportional to the size and complexity of their activity. Apart from being bound to the duties of care and loyalty set out above, directors of managing entities must satisfy demanding fit-and-proper criteria established by the Portuguese Securities Market Commission (CMVM).

In accordance with general principles governing civil liability, any director that wilfully or negligently infringes another person's right, or a legal provision designed to protect the interests of others, is obliged to indemnify the aggrieved party for the damage arising from the infringement. Damage caused to the company, shareholders or third parties may arise from an action or omission in breach of the legal or contractual duties of a director. In respect of damage caused to the company, Portuguese law lays down a rule of fault-based liability, albeit with a presumption of guilt, rather than one of strict liability. Therefore, directors are liable for the damage caused to the company, unless they prove that they did not act with fault. Directors are also liable for damage directly caused to shareholders and third parties to the extent that the aggrieved parties provide evidence of unlawful or negligent conduct on the part of the relevant director that resulted in the damage; furthermore, the director's liability is joint and several with the other directors. Furthermore, directors can be held responsible for damage to creditors of the company, and the applicable rules in this case do not differ significantly from those regarding damage caused to shareholders and third parties, with the single difference that the aggrieved party bears the burden of proving that the non-payment of the claims is due to the insufficiency of assets of the company and that the insufficiency arises from the director's fault and the breach of the legal provisions designed to protect creditors of the company. The insufficiency of assets alone is not enough to establish the directors' liability.

One or more shareholders holding a minimum share quota of 5 per cent of the company (2 per cent in listed companies) may, in the name and on behalf of the company, file a lawsuit against a director with the intention of receiving compensation for the damage suffered, without prejudice to other lawsuits for compensation in respect of individual damage caused to that same shareholder.

III YEAR IN REVIEW

i Recent deal activity

Even though the amount of assets under management registered an increase of €145.4 million in comparison to 2016, reaching a total of €4.8 billion by the end of 2017, the value of local private equity investment suffered a decrease of 1.1 per cent in 2017, mainly because of the decrease in investments made by private equity funds. This dichotomy between the number and the value of deals made shows that the Portuguese market is quite irregular.

In spite of this, various deals were recently completed by private equity funds or companies.

In early 2018, the gym chain Fitness Hut was sold to the British fund Bridges Ventures through the sale of the 50 per cent interest held by private equity holding Edge Capital.

The American fund Blackstone sold three shopping centres located on the outskirts of Lisbon (Forum Montijo, Forum Sintra and Sintra Retail Park), which were acquired by the Auchan group for a reported value of €450 million. Later in 2018, Blackstone also sold Fórum Almada to Merlin Properties, for €406.7 million.

The Portuguese fund ECS Capital divested itself of Inapal Plásticos, a company whose expertise lies in the manufacture and supply of lightweight composite components for the automotive and truck industries, which had been in its portfolio since 2010.

Alantra Private Equity and Magnum Industrial Partners each acquired a 44 per cent holding in ROQ, one of the world's leading manufacturers of machinery and equipment for the textile printing and packaging industries, with the remaining 12 per cent stake retained by the company's management team.

Moreover, in the telecoms sector, a consortium comprising Morgan Stanley Infrastructure Partners and Horizon Equity Partners has acquired from Altice a 75 per cent interest in its towers business, Towers of Portugal, which has almost three thousand telecoms property sites in Portugal.

ii Financing

Whenever private equity transactions are not carried out with resort to the equity raised by the private equity entity itself, which is the norm, private equity investors traditionally seek domestic bank financing. Despite recent signs of economic recovery, Portuguese banks are still showing risk aversion to large investment transactions, largely because liquidity has not yet reached the necessary levels for national banks to feel comfortable undertaking large-scale financing risks. For that reason, foreign banks are absorbing a considerable portion of the investment financing being resorted to in Portugal.

Debt financing structures include senior term facilities, senior revolving facilities and mezzanine facilities, which usually require robust security packages, including pledges over shares, receivables and bank balances, and even mortgages over immovable assets.

Another hurdle private equity entities face when resorting to leveraged acquisitions is the prohibition against financial assistance (financing or securing the acquisition of a public limited liability company's own shares). However, there are mechanisms to mitigate the effects of this prohibition, namely the financing of the repayment of shareholder loans or supplementary capital contributions by the target, the granting of pledges over the target's shares by its shareholders or the tranching of facility agreements to segregate amounts that may be secured by the target company (for example, in respect of working capital requirements) from those that may not (namely those raised for the acquisition of the target's shares).

iii Key terms of recent control transactions

Private equity transactions each have their own characteristics, their terms depending on a number of factors, including, but not limited to, the quality and quantity of information disclosed by the seller, the timeline of the transaction taking place and whether due diligence is carried out beforehand.

To mitigate risk, a contractual framework of representations and warranties is usually negotiated between the buyer and seller (more or less robust depending on the profile of the parties, the assurance provided during the due diligence process and the negotiation phase of the transaction) that, if breached, may lead to a number of consequences, typically an indemnity in respect of a claim for damages subject to *de minimis*, thresholds and caps. Contingencies identified in the due diligence process are either addressed as a price reduction or a specific indemnity. In most recent transactions, parties have resorted to warranty and indemnity insurance to cover the purchaser against a breach of the representations and warranties, subject to certain limitations, and typically excluding the contingencies known by the purchaser and certain uninsurable matters.

Risk can also be mitigated by means of purchase price definition or adjustment clauses. The most common mechanisms for defining the purchase price are the locked-box mechanism and a purchase price adjustment based on completion accounts, which are essentially distinguished by the date of transfer of economic risk. With the locked-box system, the valuation of an invested company is based on a historical set of reference accounts (the locked-box accounts), usually dated before the closing of the transaction. This mechanism is particularly favourable to the seller since there will be no subsequent purchase price adjustment and it results in a swifter, simpler and more cost-friendly deal, since both parties will know the amounts each party has to receive or concede at a specific moment of the transaction. The locked-box system may have variables, namely by setting an interest in favour of the seller to compensate it for the earnings until closing. Under the completion accounts clause, the definition of the final price is deferred until the moment of the closing of the transaction, with the investor disbursing the purchase price in accordance with the real level of assets and liabilities of the target at closing. The parameters according to which the adjustments of the final value of the purchase price are calculated are usually contractually established in the share sale and purchase agreement.

Conditions precedent are also frequent and standard market practice in almost any private equity transaction, their terms and scope depending on, among other factors, the sector and industry of the target and the need to obtain any regulatory authorisations or third-party waivers or approvals.

As a general standard, the fulfilment of conditions precedent may include both effort and cooperative obligations. The former determine the amount of effort expected and required of the buyer to satisfy the conditions precedent. The level typically agreed regarding the accomplishment of conditions precedent related to merger control or regulatory authorisations is that of 'commercially reasonable efforts'. On the other hand, cooperative obligations set both parties' mutual duties to cooperate in the attainment of the conditions precedent (e.g., reciprocally providing sensitive information and reviewing filings to regulatory authorities). 'Hell-or-high-water' clauses, imposing upon buyers the obligation to do all that is necessary (as required by the relevant regulatory authorities) to satisfy the conditions precedent, are not common, because of their potential to harm the buyer or the target.

Considering the difficulties in ensuring the investor's willingness to obtain financing for the transaction between the signing and closing, there is usually some reluctance on the part of the seller to include related conditions precedent. Should a special purpose company be incorporated by the buyer to acquire the target shares upon the closing, it is common for the seller to ask for an equity commitment letter to be provided. This letter is only to be effective when the transaction's conditions precedent, as set out in the sale and purchase agreement, are fulfilled.

While the legal system in place in Portugal is grounded in civil law, the importance of major common law jurisdictions such as the United Kingdom and the United States in international business has significantly shaped the framework for cross-border deals. Even though Portuguese law governs the overwhelming bulk of transactions involving Portuguese companies, it is within the parties' powers to freely choose a different legal system to govern the transaction documents. This is more common when one of the parties is a foreign investor.

Accordingly, as long as Portuguese law's mandatory rules (such as governing provisions on the transfer of shares, assignment of credits and obligation, among others) are abided by, parties to contracts of either a civil or commercial nature have the right to determine the governing law as provided for in the Rome I Regulation,[6] which is in force in Portugal.

iv Exits

In 2017, disinvestments were in large part made through write-off operations and third-party sales, which amounted to 37.3 per cent of the total disinvestment in private equity assets.

Following the trend of previous years, no disinvestment was made through an initial public offering.

IV REGULATORY DEVELOPMENTS

Pursuant to the Portuguese Securities Code and Law No. 18/2015 (the Legal Framework for Private Equity), prudential and market conduct supervision of private equity entities in Portugal is carried out by the CMVM.[7] As regulator, the CMVM has legislative competencies and sets out the rules on, but not limited to, asset and debt valuation, accounting organisation, duties of information and fit-and-proper requirements of the members of the corporate bodies and holders of qualified shareholdings of and in private equity entities.[8]

With the introduction of the Legal Framework for Private Equity, private equity entities may be subject to one of two legal regimes, depending on the value of their assets under management. If the asset value under management of a private equity entity is greater than €100 million (in respect of portfolios containing assets acquired with recourse to leverage) or €500 million (in respect of portfolios not containing assets acquired with recourse to leverage and in respect of which there are no redemption rights for an initial five-year period), private equity entities are considered to be above a relevant, legally established threshold, and are subject to a more demanding legal framework than entities that do not have assets under management that cross any of these two thresholds. Private equity entities that fall under the more demanding framework are subject to, among other things, the following rights and obligations: (1) the prior authorisation of the regulator for their incorporation; (2) the EU passporting system for banks and financial services applicable to the private equity fund participation units concerned; (3) disclosure to the regulator of outsourcing of management and other services; and (4) a requirement for the implementation and maintenance of conflict-of-interest policies to avoid, identify and manage potential conflicts.

In 2018, Decree-Law No. 56/2018 of 9 July 2018 amended the Legal Framework for Private Equity. Among other changes, Decree-Law No. 56/2018 removed the 10-year time limit on the qualification of private equity investments, allowing private equity companies and funds to manage their portfolio in a more flexible way; introduced further clarification of the calculation methodology to be followed to determine the legal framework applicable

6 Regulation (EC) No. 593/2008) of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations.

7 Regarding the supervision of managing entities of private equity investment undertakings, the Portuguese Securities Market Commission may cooperate with the Portuguese Central Bank and with the European Securities Market Authority.

8 CMVM Regulation No. 3/2015 and CMVM Regulation No. 12/2005.

to private equity entities; and extended the scope of private equity investments aimed at promoting social entrepreneurship to include entities other than companies, such as associations and foundations.

V OUTLOOK

Following the developments of private equity investment registered in Europe, the total amount of assets under management in the private equity sector maintained the growth trend of previous years. Some signs of the economic crisis remain evident in the unwillingness of domestic and foreign players to invest.

However, although turnaround and distressed transactions still represent the majority of private equity deals in Portugal, there has been a visible decrease in these types of transactions, replaced by a trend for growth investment and management buyouts. This rebalancing of distressed private equity, undertaken by more speculative participants, through more conservative transactions, indicates that the market has matured and traditional investors are becoming more confident in the domestic business fabric.

Other factors, such as new private equity firms becoming active in the domestic market, political and regulatory stability, low interest rates, an increase in financial fund willingness to invest in certain transactions, and several positive macroeconomic forecasts, all augur well for the development of the private equity sector in the coming years.

Appendix 1

ABOUT THE AUTHORS

MARIANA NORTON DOS REIS

Cuatrecasas

Mariana Norton dos Reis has been a partner at Cuatrecasas in the corporate M&A group since 2010. She worked at the Madrid office from 2004 to 2017 and is currently based in the Lisbon office, where she started her career in 1998.

Her practice, both in Portuguese and Spanish law, is focused on cross-border M&A, joint ventures, private equity transactions and restructurings, and she has extensive experience in renewable energy and infrastructure, advising sponsors, developers and financing entities on creating joint ventures, and acquiring, selling and developing projects.

She regularly acts for private equity investors on their investments and divestments, and represents strategic investors in connection with cross-border acquisitions and sales of privately owned companies and assets. She has recently completed a number of major transactions in the infrastructure, energy, retail, real estate and financial industry sectors in Spain and Portugal.

On an international level, she has extensive experience in advising on M&A transactions for multinational companies in Europe, Latin America and the United States.

In March 2015, *Expansión*, a Spanish business and finance newspaper, named her one of the most active lawyers in M&A in Spain based on the number of deals closed in 2014. In 2017 and 2018, *Iberian Lawyer* included Mariana in its InspiraLAw list of top 50 women in the legal sector and, in 2013, Mariana received the same publication's '40 under Forty Award'.

Mariana obtained her Bachelor of Laws, from the University of Lisbon School of Law (1997) and her Master of Laws (LLM) in advanced corporate law and securities from Columbia Law School, New York (1998). She was also named a Harlan Fiske Stone Scholar of Columbia Law School, NY (1998) and received a scholarship from the Luso-American Development Foundation.

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