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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 in 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.

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1. Trends

1.1 M&A Market

Final numbers show an increase of the M&A market in Portugal in 2018 in terms of value, underpinned by the property, technology, financial, insurance, and tourism sectors, although deal volumes decreased modestly. A key feature of the transactional market is that it was no longer pushed by deals in troubled or bankrupt companies (distressed M&A) but by targets operating in cyclical sectors, which have benefited the most from the sustained economic growth. Other factors behind the sustained growth in M&A have been the full liberalisation of the economy and abundant liquidity driven by central banks' accommodative monetary policies.

In terms of major deals that took place throughout 2018, the takeover bid launched by the Chinese state-controlled company China Three Gorges over EDP and EDP Renováveis was a highlight, the outcome of which is still uncertain, plus a sizable number of property portfolios sold by the major banks within the context of the divestment of non-core assets.

The main challenge to the M&A sector is by far the purchasers' ability to obtain finance from financial institutions and other debt sponsors, due to the reluctance of the principal banks operating in Portugal to finance these transactions. Hence, the number of inbound acquisitions made by foreigner investors has by far outnumbered those completed by domestic players. Yet, the scarce opportunities available for larger institutional investors operating on a global scale (eg, private equity, infrastructure funds) in light of their minimum ticket investments, has kept most of these players away from the market.

As one would expect, Spanish investors contributed with the bulk of acquisitions in 2018, due to the current robustness of the Spanish economy. This trend should continue throughout 2019.

It is expected that 2019 will be a robust year for M&A activity in Portugal, provided that there is no substantial deceleration in the growth of Portugal's most important economic peers (Spain, United Kingdom, France, United States and Germany). Also, the general elections taking place in the autumn of 2019 will hopefully provide a stable government, which would contribute to a favourable environment to foster corporate acquisitions.

1.2 Key Trends

As mentioned at **1.1 M&A Market**, above, the property, tourism, technology, financial and insurance sectors were in the spotlight in 2018. If the economic predictions of the Government are accurate, the economic growth should spur an increase in deal volumes due to the positive correlation between economic growth and M&A transactions.

Although 2018 was not a strong year for private equity, with a reported reduction in the volume of deal, private equity deals are expected to pick up steam throughout 2019. This is due to a number of new players who recently in Portugal incorporated target investments in middle-sized domestic companies with strong growth prospects, as well as because of the increasing number of larger private equity firms that already completed successful transactions in Portugal and are targeting new investment opportunities (eg, Anchorage Capital, Lone Star and Bain Capital).

1.3 Key Industries

It is expected that in 2019 M&A transactions across the property, technology, financial, insurance and tourism sectors will continue to be boosted by a strong demand from overseas investors, underpinned by a combination of historically low interest rates and consolidation activities across some of the areas highlighted. An increase in M&A activity in the infrastructure and energy sectors is also anticipated with the potential divestment by Altice of its core fibre-optic network and the continuous sale of greenfield (solar) and brownfield (solar and wind) renewable energy small and middle-sized projects, which could attract widespread attention from overseas infrastructure and renewable energy funds.

2. Overview of Regulatory Field

2.1 Acquiring a Company

Acquisitions and disposals generally take place by:

- entering into a share purchase agreement, if the purchaser's aim is to acquire 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. Here, the new investor and former shareholders of the target company would usually enter into an investor agreement.

2.2 Primary Regulators

For the vast majority of private M&A transactions, no government or regulatory approvals are required, apart from the merger control under the terms and conditions established by Law 19/2012 (the 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, insurance and telecommunications).

Transactions in certain sectors that entail the acquisition or reinforcement of a qualified shareholding (ranging from 10%-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 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 national interests (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 in question. If the Government concludes that the acquisition may be substantially detrimental to national security or to services fundamental to the national interest, the transaction may be blocked.

2.4 Antitrust Regulations

Concentrations between undertakings in Portugal are subject to merger control under the terms and conditions established in the Competition Act, which applies to concentrations between undertakings that meet the thresholds below:

- *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 particular goods or services, 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.

The Competition Act also provides that two or more concentrations (each, individually, not subject to mandatory filing) carried out within a two-year period between the same natural or legal entities will be considered a single concentration, subject to mandatory prior notification, if the combined concentrations meet the jurisdictional turnover threshold.

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, the employer does not easily terminate employment contracts, and may only do so in the following circumstances:

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

The acquirer should take into consideration that the Labour Code implements the Acquired Rights Directive, which regulates employees' acquired rights in the event of a transfer of a business or undertaking. As a 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 took place. This regime is mandatory and operates automatically without the need for the consent of any of the parties and all employment conditions and the acquirer must maintain the acquired rights of the employees.

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 take place seven working days after these obligations have been fulfilled.

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, 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 at **2.3 Restrictions on Foreign Investments**, above.

3. Recent Legal Developments

3.1 Significant Court Decisions or Legal Developments

Following the publication of Law No 89/2017, the Government issued Ordinance No 233/2018, regulating the Legal System of the Portuguese Ultimate Beneficiaries, a database storing updated information on the ultimate beneficial owners, ie, natural persons owning or controlling, directly or indirectly, stakes above 25% in entities subject to the Portuguese Legal Framework on Money Laundering and Terrorist Financing.

This disclosure obligation is to be fulfilled through the completion and submission of an electronic form. It provides information on the legal person itself, the members of the governing body, the beneficial owners and the person performing this declaration, and is another milestone in Portugal's transparency policies. These policies have been adopted in Portugal to prevent tax evasion and the use of the financial system for money laundering and terrorism financing, following the prohibition of the issue of bearer securities and mandatory conversion of existing ones into nominative securities, in effect since 2017.

Another legal development of relevance is the significant changes brought by Decree Law No 56/2018 to the legal framework applicable to private equity in Portugal. Among the changes, the removal of the ten-year time limit for private equity (PE) investments should be highlighted. This enables PE funds and companies to manage their portfolios in a more flexible way and to only divest when the proper market conditions are met. Moreover, the regulations being more stringent for PE companies above certain thresholds (ie, having leveraged assets under management above EUR100 million or unleveraged assets above EUR500 million), the calculation methodology for this assessment has been further detailed and the scope of PE investments to promote social entrepreneurship has broadened. It now also includes non-profit entities such as associations and foundations.

3.2 Significant Changes to Takeover Law

There have been no relevant changes to takeover legislation in the last twelve months. The only relevant changes were in terms of disclosure obligations following the entry into force of the Market Abuse Regulation and of CMVM Regulation No 7/2018. The purpose of this regulation was, on one hand, to accommodate the amendments introduced to the Portuguese Securities Code by Decree Law No 22/2016, which partially transposed Directive No 2013/50/EU of the European Parliament and of the Council of 22 October (the Transparency Directive) and, on the other hand, to adapt the Portuguese legal framework to the Market Abuse Regulation. In addition, the obligation to report long economic positions on derivative transactions, previously provided for in CMVM Regulation No 5/2008, has now been revoked.

Moreover, it should be noted that Regulation No 7/2018 regulated the quarterly financial information and the managers' transactions in more detail. Regarding the managers transactions, the Regulation broadly refers to the Market Abuse Regulation regarding their communication, but it has repealed the duty to communicate to the issuer, on a half-yearly basis, all transactions carried out in the semester by managers and closely related persons, that are included in the half-yearly and annual reports.

Further to the Market Abuse Regulation, the Regulation reviews the lists of managers and closely related persons that are drawn up and maintained by the issuer. Accordingly, the list must contain in particular the following:

- full name;
- tax identification number;
- position in the company;
- in the case of closely related persons, an indication of the manager with whom the relationship exists; and
- any and all updates to the above information, including the update date.

Finally, it should be noted that the Regulation imposes a duty to store the information contained in the list for a period of five years from the date on which the relevant subjects have been removed from the list.

More changes (see **11.1 Shareholder Activism**, below) are expected in the coming months, considering that the term for the public consultation for transposing the new directive of shareholders' rights has elapsed and it is expected that this will enter into force during 2019.

A final note on the understandings issued by the CMVM in the context of the takeover by China Three Gorges of EDP and EDP Renováveis, which have been very important in clarifying the application of certain provisions of takeover law.

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 instances. The acquisition of such stakes in the market (particularly when they are more significant, ie, close to qualified shareholdings) can raise some market noise because of 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 require the acquisition of significant stakes from existing shareholders 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. These conditions will be related to the mandatory tender offer, which will be launched immediately after the execution of the share purchase agreement. Additional precautions need to be taken when the minimum consideration is equal to the price paid to existing shareholders, in which case a presumption of unfair consideration may 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. Currently, these derivatives (even if only cash-settled) are subject to fewer market disclosure rules, taking into account the revocation of the rules on the disclosure of economic long positions. Other stakebuilding strategies may consist of the execution of option agreements entitling 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 to communicate that fact to the CMVM and the listed company within four working days.

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 apart 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).

The CMVM Regulation No 7/2018 now specifies that the renewal of the qualified shareholding notice will only become due whenever there is a change in the terms of the aggregation of voting rights, and that the change relates to a percentage of voting rights necessary to maintain the relevant threshold of the qualifying holding previously reported.

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 a takeover bid. Additionally, in respect of an out-of market acquisition of securities, prior authorisation of the CMVM and the prior non-binding opinion of the target company are required.

4.3 Hurdles to Stakebuilding

The thresholds mentioned previously 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:

- prevent a shareholder from exercising voting rights (either held directly or indirectly) above a certain threshold; or
- prevent a shareholder (who 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 sustained a very broad understanding in relation to the admissibility of derivatives, allowing, amongst others, for derivatives with speculative purposes.

However, there is specific legislation (currently, less than in the past) imposing disclosure and filing rules regarding derivatives.

4.5 Filing/Reporting Obligations

CMVM Regulation No 7/2018 has revoked the obligation to report long economic positions on derivative transactions, previously provided for in CMVM Regulation No 5/2008, Articles 2A and 2B.

4.6 Transparency

The preliminary announcement of a takeover bid must contain, amongst others, the objectives of the offer, requiring the bidder to specify, inter alia, whether:

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

Note that CMVM is very demanding regarding the content of the preliminary announcement and often requests offerors to further specify and amend the initial document that is disclosed to the market.

The prospectus of the takeover bid will require additional information from the bidder – in particular, and apart from that referred to previously regarding the preliminary announcement – his or her intentions for the future 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 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 until publication.

Once the decision to launch the takeover bid is taken, the bidder must:

- send the preliminary announcement to the CMVM, the target company and the stock exchange management entities where the securities of the target company are listed or where the securities offered as consideration are listed; and
- make a public disclosure of the announcement.

Additionally, and if it is the listed company entering into an agreement with another company to acquire it or acquire its business, or make a potential merger, there are specific rules on the disclosure of information to the extent it is price sensitive.

In particular, the PSC, Article 248 No 1 determines that listed companies must disclose to the market all 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 securities or underlying financial instruments or derivatives related to it (ie, 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 on-going negotiation process or elements related to it, provided that the disclosure of the information could affect 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 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 from 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 the complexity of the transaction, the nature of the target company (listed/non-listed), the 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 where the parties cannot perform both actions in parallel. 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 them in the case of change of control; and/or
- the need to perform certain actions (eg, restructuring of the target company and a 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, within two to four weeks).

In 2018, the CMVM issued an understanding, in the context of the EDP and EDP Renováveis takeover bid, sustaining that a competing offer can be registered before the initial offer is registered and be concluded before the initial offer, to the extent that it can obtain all the necessary authorisation to move forward with the offer. This said, it is now possible for a competing offeror with fewer restrictions (eg, competition law; administrative restrictions) to move quicker and pass the initial offer, winning the bid for the target company.

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 voting rights. For the determination of the indirect holding of the voting rights, the situations mentioned in the PSC, Article 20 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 must 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:
  - (a) 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
  - (b) that has physical settlement and is not covered by (a), 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;
- the point at which 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 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 the average weighted market price of the shares during the same period. However, the CMVM may decide that the consideration calculated according to these criteria is not fair and it may determine that an independent auditor indicated by the CMVM should calculate the consideration.

There are some exceptions to this duty, as follows:

- Lack 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.
- A 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.
- A merger: exceeding the relevant threshold resulting 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. This must take place within 120 days of 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 may be offered as consideration, provided that they have adequate liquidity and are easy to evaluate. Yet, on mandatory tender offers, consideration consisting of shares or other securities needs:

- to be of the same type as those that are the object of the bid; and
- admitted to trading on a regulated market or be of the same class of recognised liquid securities.

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 the offeror's legitimate interest and cannot affect the normal functioning of the market. Conditions that depend on the offeror are prohibited.

Consequently, the so-called 'acceptance conditions' (eg, the effectiveness of the takeover bid is subject to the acquisition of a minimum percentage of voting rights by the offeror), are considered valid. 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) are also considered valid. These conditions are only effective if they are expressly mentioned in the preliminary announcement.

Recently, the CMVM issued an understanding in which it considered valid the condition of submitting the launching a mandatory tender offer over a subsidiary to the successful conclusion of a voluntary takeover bid over the parent, although underlining that the two takeovers have to be launched at the same time and not sequentially which partially limits the envisaged effect of the condition.

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 bylaws provide for certain qualified majorities, including those related to the elimination of voting rights or any other relevant changes to the bylaws (ie, authorisation for competing entities).

No minimum acceptance levels are permitted 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 issue). 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 financing. 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.

6.7 Types of Deal Security Measures

Agreed break-up fees (the seller to compensate the buyer for transaction costs) or reverse break-up fees (the buyer to compensate the seller for walking out of the deal) are used increasingly 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 commonly agreed 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 geography. 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 supply a fiduciary exit, are also not used due to the risks of invalidity in light of the passivity rule (see **9.2 Directors' Use of Defensive Measures**, below). Finally, force-the-vote provisions are not common, given their doubtful legal admissibility in view of the passivity rule and also because shareholders can request the summoning of a shareholders' meeting to force the vote to the extent that 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 entity'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, eg, governance issues (the appointment of board members and other corporate bodies), the 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 between the parties and therefore cannot be enforced against the company or third parties. These 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 this purpose, the buyer must notify the target company that it has completed the acquisition of at least 90% of its capital stock within 30 days of completing the acquisition.

The buyer may submit an offer to the target company's remaining minority shareholders within the following six months, for 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 the registration, which can only be made after a deposit by the acquirer of the consideration offered for 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 earlier. Conversely, listed companies have a specific legal framework regarding the squeeze-out procedure, which differs substantially from the regime referred to previously.

The squeeze-out right applies following a general public takeover bid (either voluntary or mandatory) subject to:

- the offeror holding at least 90% of the voting rights of the target company (directly or indirectly, pursuant to Article 20 of the PSC, which establishes the rules on the aggregation of voting rights); and
- the acceptance level of the takeover bid of at least 90% of the voting rights the takeover bid 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 when the offeror publishes the registration of the squeeze-out with the CMVM and determines that the company ceases to be a public company and that its shares are automatically delisted. After the squeeze-out procedure is concluded, the shares cannot be relisted for twelve months.

The PSC, Article 196 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. Essentially, 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 an offer for the acquisition of his or her shares to the minority shareholder, within eight days following the receipt of the notice. If the offer is not presented by the controlling shareholder or is not considered adequate by the minority shareholder, the latter can decide to exercise his or her sell-out right through a declaration to the CMVM with a certificate that attests the blocking/freezing of the shares to be sold. It will also provide an indication of the fair consideration that should be paid according to the rules referred to earlier 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 the notice.

As to the short-form procedures, the PSC, Article 116 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 the registered offices of both companies in due time; and
- no shareholders' holding, individually or jointly, of at least 5% of the company's capital stock, has 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 vote against a merger at a shareholders' meeting convened as described above, would be allowed to withdraw from the company.

6.11 Irrevocable Commitments

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

The few times they were used, 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

Once the decision to launch the takeover bid is taken, the bidder must:

- send the preliminary announcement to the CMVM, to 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
- 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 this position has already been filled;
- 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 the PSC, Article 20;
- a summary of the main purposes of the offeror, ie, 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 relation with or that, even if there is no group relation, are controlled by or control 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 employees' representatives – or, if there are none, the employees themselves – 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, the offeror is required to prepare and disclose a tender-offer prospectus, which must include the following:

- a description of the offer, eg, the amount 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, the offeror's identity, the

offeror's shareholdings in the target company and shareholders' agreements regarding the target company; and
- any other information that the offeror considers relevant.

The prospectus also needs to include the information in relation to the plans regarding the target company. The offeror must disclose his or her intentions as to:

- the maintenance or wind-up of the corporate activity of the target company and the offeror when the he or she is affected by the offer and, on the same terms, of the companies that are in a group relation with or that, even if there is no group relation, are controlled by or control 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 the 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.

Regarding mergers, the directors of the merged company must draft a joint merger plan that includes 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 if a significant gross change, ie, a variation of more than 25% relative to one or more indicators of the size of the issuer's business, occurs 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 document. 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 businessperson, and 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.

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 must always act without the intent of obtaining benefits for themselves or third parties, may not take advantage of corporate opportunities, and 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 damages caused to the company as a result of his or her actions or omissions in disregarding legal or contractual duties. The director may not be liable if his or her behaviour is proven to be without gross negligence or wilful misconduct, or if he or she 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 the director does not breach legal or contractual duties, the courts do not judge the merit of certain decisions on reasonability criteria, since a multitude of reasonable decisions may be taken when faced with a particular reality. Thus, directors are only liable if the act or omission in question is considered irrational.

Since the law establishes a presumption of guilt, when a director breaches legal or contractual duties, Portuguese courts do not make any assessment of the merit of the director's decision. The onus is on 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 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:

- grant loans or any kind of credit to its directors;
- issue payments;
- provide guarantees on their behalf; or
- offer them compensation advances superior to one month's salary.

Also, 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. Note that the interested director may not vote on the resolution of the board of directors authorising the transaction with the company. However, the law is not clear on whether the interested director may attend the board of directors meeting during which the resolution is to be discussed and voted upon, without voting, 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 Europe, hostile tender offers are not 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. Yet, 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. This leads 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 (the passivity rule). Under this rule, the target company's board of directors must refrain from entering into any transactions or performing any actions that could materially affect the patrimonial situation of the target company and that do not include them in the ordinary management of the target company. They must also avoid transactions or actions that could affect the objectives of the offeror in a significant manner, eg, the issue of new shares (or other securities that grant the right to its acquisition or subscription) or the sale of important assets of the target company (eg, crown jewels). The limitation includes the execution of decisions already taken but not executed, without prejudice, regarding 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 are only applicable to reactive defensive measures, not to preventive defensive measures, in particular golden shares and voting caps.

The CMVM recently issued a new understanding regarding the applicability of the passivity rule. It considered that, in cases where the offeror is subject to the passivity rule but not its controlling shareholder (as a result of the shareholder not being a listed company, the share capital is owned by one shareholder, thus it cannot be subject to a takeover bid), the reciprocity rule of the passivity rule should be assessed by reference to the ultimate controlling shareholder. Consequently, if the shareholder is not subject to the passivity rule, the passivity rule will not apply to the target company. Notwithstanding, the CMVM considered that the bona fide behaviour rule would always apply.

In these cases, and if there is a competing bid and the respective offeror is subject to the passivity rule, the target company will become subject to the passivity rule, provided that the competing offeror's controlling shareholders are also subject to the rules.

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

9.3 Common Defensive Measures
Given the existence of the passivity rule, 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's report with an unfavourable opinion as to the acceptance of the offer and to hire an investment bank to establish the unfairness of the price offered by the bidder.

Second, the board initiates a process to find 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 for it to assess the launching of a competing offer and the price to be offered. This information will also need to be made available to the initial bidder.

Third, the board of directors can propose to the shareholders' general meeting a buy-back programme of shares, a spin-off of business sectors of the target company, extraordinary dividends or the issue 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 the 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 preventive defensive measures, particularly those that try to avoid the existence of a controlling shareholder, allowing for control to be split among the several qualified shareholders. The most common preventive defensive measures that a board of directors proposes to strategic shareholders are 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.

9.4 Directors' Duties
Apart from the rules already referred to, and as result of the passivity rule, the directors are obliged to act in good faith and in the interest of the company. They must also seek specific consent from the shareholders to take actions that may result in the frustration of a bid. Directors cannot adopt measures aimed at frustrating a 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 board of directors' report 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 therefore rare. Any disputes arising from M&A transactions are generally 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 price adjustment mechanisms, gross-up provisions, indemnity payments and/or non-competition and non-solicitation covenants are the most common cases that may trigger litigation.

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 that will enter into force during 2019 (see **3.2 Significant Changes to Takeover Law**, above) will give more incentives for the participation of minority shareholders.

However, the main innovations are not related to takeover law or connected with the granting of new or more effective rights to minority shareholders. In fact, the most relevant amendments are related to the shareholders' right to information and with the proceedings for the exercise of the shareholders' rights.

However, note that in accordance with the preliminary draft of transposition, the listed companies must have an internal procedure approved by the board of directors or

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by the executive board of directors, with a previous binding opinion issued by the supervisory body, in order to verify, periodically, if the related party transactions are concluded in their current activity and on normal market terms. The related parties shall not take part in that assessment.

The related party transactions that are not concluded in their current activity and on normal market terms must be approved by the board of directors or, if applicable, by the executive board of directors, with a previous opinion issued by the supervisory board. Under the preliminary draft of transposition, the shareholders do not have the right to vote on material transactions with related parties that have been approved by the administrative or supervisory body of the company.

Therefore, it is unlikely that, in practice, the implementation of the new directive of shareholders' rights, considering the preliminary draft of transposition, will be of significant or material importance.

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 to participate actively in such processes and obtain a higher return and price per share.

11.3 Interference with Completion

As referred to in **11.2 Aims of Activists**, above, activists, in particular hedge funds, tend to interfere often in takeovers, going private, squeeze-outs, delistings and similar processes.