

PRIVATE EQUITY & VENTURE CAPITAL

ANNUAL REVIEW 2016



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DECEMBER 2016 • ANNUAL REVIEW

Financier Worldwide canvasses the opinions of leading professionals around the world on the latest trends in private equity & venture capital.

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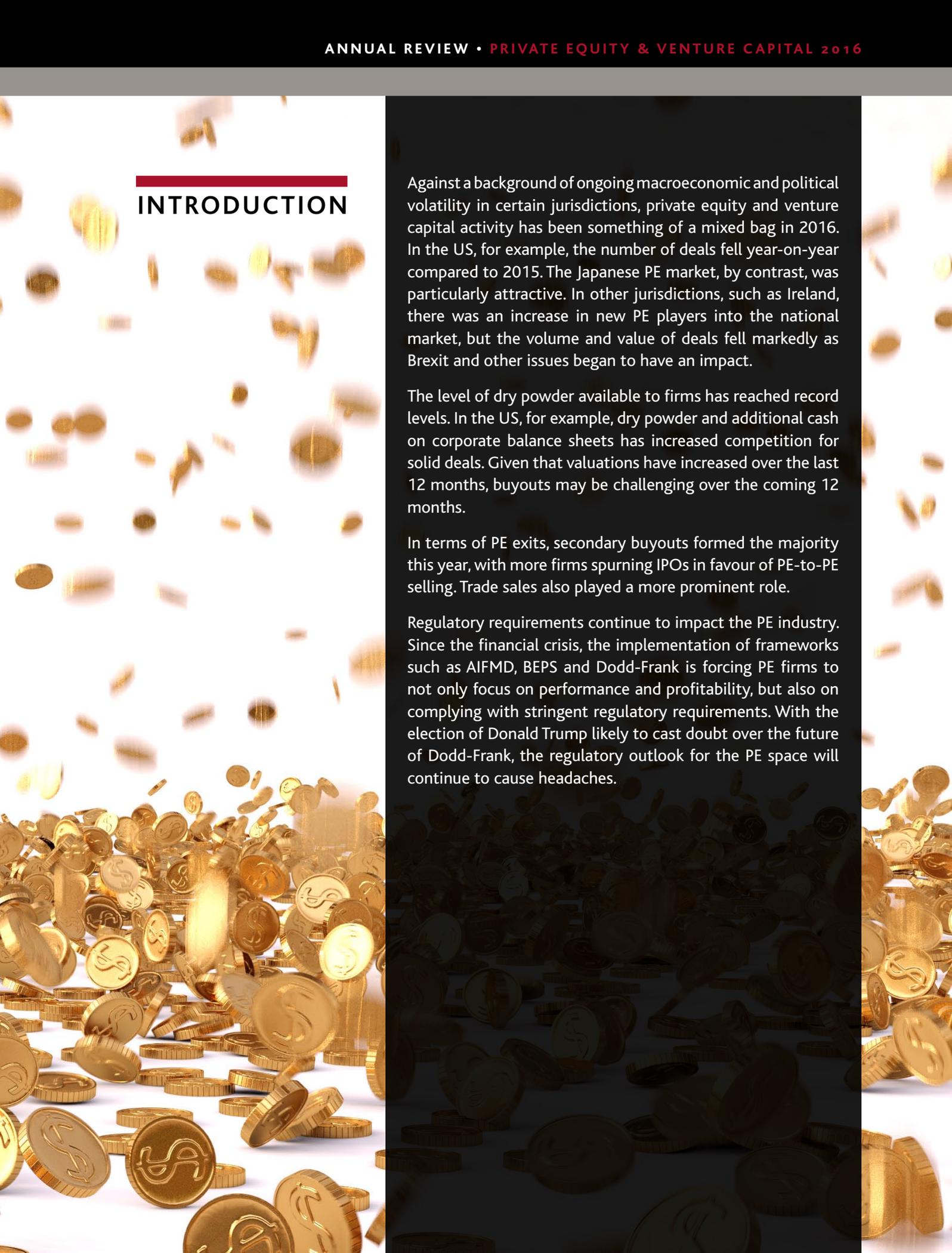
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INTRODUCTION

Against a background of ongoing macroeconomic and political volatility in certain jurisdictions, private equity and venture capital activity has been something of a mixed bag in 2016. In the US, for example, the number of deals fell year-on-year compared to 2015. The Japanese PE market, by contrast, was particularly attractive. In other jurisdictions, such as Ireland, there was an increase in new PE players into the national market, but the volume and value of deals fell markedly as Brexit and other issues began to have an impact.

The level of dry powder available to firms has reached record levels. In the US, for example, dry powder and additional cash on corporate balance sheets has increased competition for solid deals. Given that valuations have increased over the last 12 months, buyouts may be challenging over the coming 12 months.

In terms of PE exits, secondary buyouts formed the majority this year, with more firms spurning IPOs in favour of PE-to-PE selling. Trade sales also played a more prominent role.

Regulatory requirements continue to impact the PE industry. Since the financial crisis, the implementation of frameworks such as AIFMD, BEPS and Dodd-Frank is forcing PE firms to not only focus on performance and profitability, but also on complying with stringent regulatory requirements. With the election of Donald Trump likely to cast doubt over the future of Dodd-Frank, the regulatory outlook for the PE space will continue to cause headaches.



PORTUGAL

RICARDO ANDRADE AMARO

MORAIS LEITÃO, GALVÃO TELES, SOARES DA SILVA & ASSOCIADOS

Q HOW WOULD YOU CHARACTERISE PRIVATE EQUITY DEALMAKING IN PORTUGAL OVER THE LAST 12-18 MONTHS? WHAT KINDS OF TRANSACTION VALUES ARE APPARENT AND IS THERE STRONG COMPETITION FOR DEALS?

AMARO: Private equity (PE) dealmaking in Portugal in 2016 has been marked by the interest of international fund managers in infrastructure assets, particularly in the energy sector. Such interest has resulted in several high-profile deals being struck. However, transaction values are generally not disclosed. Also, venture capital activity appears to be gaining pace in the country with several 'seed investment rounds' being made by national and international funds in Portuguese based start-ups. This reflects the flourishing entrepreneurial environment in Portugal's capital city, Lisbon.

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Q TO WHAT EXTENT ARE BANKS EAGER TO PROVIDE FINANCING FOR LEVERAGED BUYOUTS? ARE 'NON-TRADITIONAL' LENDERS ALSO VISIBLE IN THE MARKET?

AMARO: Leveraged buyouts remain scarce in the Portuguese market, due to the low transaction values, on average, of asset purchases by PE players. For larger deals, however, there have been cases of PE fund managers using 'financial assistance compliant' structures to use bank finance in the transactions in order to minimise funds called from limited partners (LPs). Due to market and idiosyncratic factors, Portuguese banks are not showing a lot of risk appetite, nor are they displaying the necessary liquidity to perform the transactions, but there are other, better capitalised international banks – with or without significant operations in Portugal – stepping in to fully underwrite or syndicate these deals.

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Q COULD YOU OUTLINE THE MOST SIGNIFICANT LEGAL AND REGULATORY DEVELOPMENTS FACING THE PRIVATE EQUITY INDUSTRY? IN YOUR OPINION, HOW WILL THEY SHAPE THE ASSET CLASS IN THE LONG TERM?

AMARO: 2016 has been a year of assimilation of the important legal and regulatory changes faced by the PE industry in 2015, when the Alternative Investment Funds Directive (AIFMD) was transposed into the Portuguese jurisdiction. Following such a change in legislation, large PE fund managers and the Portuguese Securities Market Commission are adapting to the changes and new regulatory requirements brought by the transposition of the AIFMD. The transposition of the AIFMD notwithstanding, no relevant changes to the legislation and regulation of PE have occurred in Portugal.

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Q HOW ARE PRIVATE EQUITY FIRMS ACTIVELY REDUCING RISK AND IMPROVING RETURNS ACROSS THEIR PORTFOLIO?

AMARO: Common methods used by PE firms in Portugal to maximise returns for their funds include placing fund manager board members or senior staff in portfolio companies' management bodies, optimising portfolio companies' capital structures, investing through quasi-equity or subordinated debt instruments, granting stock options or other incentives – usually based on the achievement of certain financial thresholds – to incumbent management in portfolio companies and having a carried interest remuneration structure for the PE firm, in order to align incentives of general partners (GPs) and LPs alike.

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“Banks’ investment as LPs in ‘turnaround’ or ‘distressed funds’ are expected to be more severely penalised in the near future by the banking regulator.”

Q HOW ARE PRIVATE EQUITY EXITS PLAYING OUT IN PORTUGAL? IS THERE AN EMPHASIS TOWARD TRADE SALES, IPOS OR SECONDARY BUYOUTS, FOR EXAMPLE?

AMARO: PE exits in Portugal mainly consist of trade sales to industrial players. Secondary buyouts are also common. Due to the nature of the PE market in Portugal – with a relevant component of bank sponsored turnaround funds with underlying assets that have volatile operational and financial performance – not all exits realise gains for the private equity investors. No IPO exit from a PE transaction has occurred in Portugal in 2016.

Q COULD YOU PROVIDE AN INSIGHT INTO THE MAJOR ISSUES SHAPING THE RELATIONSHIP BETWEEN GENERAL PARTNERS (GPS) AND LIMITED PARTNERS (LPS)?

AMARO: The growing sophistication of LPs and the demand for heightened governance standards are the main trends shaping the relationship between GPs and LPs, as the latter demand more oversight and scrutiny of transactions, which has the potential to cause conflicts of interest. The likely emergence of state-owned entities as significant LPs of PE funds in the next year, due to public tenders which are being launched to attribute European funds to capitalise Portuguese companies, will also shape the dynamic of the GP-LP relationship. These state owned entities shall, for the most part, be passive investors, but certainly will impose demanding standards on accountability, conflicts of interest and remuneration.



Q LOOKING AHEAD, WHAT
ARE YOUR PREDICTIONS
FOR PRIVATE EQUITY
FUNDRAISING IN THE
COMING MONTHS?

AMARO: Portugal still faces macroeconomic headwinds, which continue to result in anaemic growth for the country – although there are positive signs for year-end 2016 and the beginning of 2017. This, coupled with a shortage of investment, leads us to expect that there will not be significant capital deployment needs from PE funds. In addition, banks' investment as LPs in 'turnaround' or 'distressed funds' are expected to be more severely penalised in the near future by the banking regulator, in terms of risk-adjusted capital. Thus, the viability of raising new PE funds in this area is also compromised. On the other hand, the emergence of new funds resulting in public tenders launched by state-owned entities to capitalise companies, is expected to produce a spurt of new small and medium PE or venture capital funds. This capital, raised in such public tenders, will be directed to start-up and growth capital, and thus, in 2017 we may see a wave of investment in venture capital and medium stage PE deals, with increasing levels of investment and sophistication.

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Ricardo Andrade Amaro is a partner with great experience in corporate and commercial law, securities law, as well as in energy law. He has, *inter alia*, acted as legal adviser in the setting up of the first private equity fund in Portugal exclusively dedicated to the recovery of companies (turnaround fund), which is currently the largest Portuguese private equity fund. In the area of corporate and commercial law, he has acted as legal adviser in several mergers, restructuring, acquisitions and sales of companies, on behalf of domestic and foreign clients.



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