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The International Comparative Legal Guide to:

Private Equity 2018

4th Edition

A practical cross-border insight into private equity

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EDITORIAL

Welcome to the fourth edition of *The International Comparative Legal Guide to: Private Equity*.

This guide provides the international practitioner and in-house counsel with a comprehensive worldwide legal analysis of the laws and regulations of private equity.

It is divided into two main sections:

Four general chapters. These chapters are designed to provide readers with an overview of key private equity issues, particularly from the perspective of a multi-jurisdictional transaction.

Country question and answer chapters. These provide a broad overview of common issues in private equity laws and regulations in 34 jurisdictions.

All chapters are written by leading private equity lawyers and industry specialists and we are extremely grateful for their excellent contributions.

Special thanks are reserved for the contributing editors Richard Youle and Lorenzo Corte of Skadden, Arps, Slate, Meagher & Flom LLP for their invaluable assistance.

Global Legal Group hopes that you find this guide practical and interesting.

The *International Comparative Legal Guide* series is also available online at www.iclg.com.

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1 Overview

1.1 What are the most common types of private equity transactions in your jurisdiction? What is the current state of the market for these transactions? Have you seen any changes in the types of private equity transactions being implemented in the last two to three years?

Private equity in Portugal has experienced significant growth despite the financial crisis and sovereign debt crisis, which have loomed in the country over the last few years. According to the latest data available, value under management by private equity players has been steadily rising since 2003, reaching €4.5 billion by the end of 2016.

Turnaround or distressed transactions have been the most relevant types of private equity deals in Portugal in the last few years, followed by growth capital investment. Nevertheless, management buyouts and seed and early stage investing have witnessed meaningful growth during the year of 2016.

Other recent trends in the Portuguese market include: the award of European structural and investment funds to capitalise SMEs and the emergence of in-house venture capital units in large Portuguese corporations, which do early and mid-stage investments in seed and start-up companies.

Finally, bolt-on or add-on acquisitions by private equity portfolio companies, not commonly seen in Portugal, are gaining relevance as of late.

1.2 What are the most significant factors or developments encouraging or inhibiting private equity transactions in your jurisdiction?

The search for yield by investors, as the ECB continues its accommodative monetary policy, still plays an important role in the demand for private equity transactions (notably those concerning infrastructure assets).

Also on the demand side, the Portuguese economic recovery is causing private equity fund raising to resume, after a lull in the past few years.

Finally, as mentioned in the previous question, the launching of public tenders by State-owned entities to capitalise companies, such as tenders to award European Union funds to entities organised as private equity fund managers have also provided a boost to the private equity and venture capital market.

2 Structuring Matters

2.1 What are the most common acquisition structures adopted for private equity transactions in your jurisdiction? Have new structures increasingly developed (e.g. minority investments)?

The typical private equity transaction in Portugal is made through a private equity fund. Pursuant to this structure, the fund participants or LPs (as well as the managing entity, which retains some "skin in the game") subscribe and pay-up units in the fund, after the latter is registered before the relevant regulatory authority in Portugal (the Portuguese Securities Market Commission – "CMVM").

The aforementioned investment vehicles then either: (i) acquire equity participations directly or through a wholly owned "BidCo" or subscribe newly issued shares by the target company (in a typical buyout, growth or venture capital deal); or (ii) acquire debt instruments or securities (notably senior bank loans) and convert such instruments into equity, thereby gaining control of the target (in distressed or turnaround transactions).

If the private equity investor does not ultimately come to hold the entirety of the company's equity, a shareholder agreement is generally entered into with the surviving shareholders.

2.2 What are the main drivers for these acquisition structures?

The main drivers for these structures relate to incentive alignment and tax reasons.

Investment using private equity funds is an efficient way for various institutional investors to pool money into alternative asset classes which potentially offer higher yields than public equities or bonds, while avoiding operational risks and regulatory hurdles which would arise from investing directly in non-listed companies. In private equity funds, the managing entity retains a residual equity participation in the fund to signal that it is committed to act in the best interests of the LPs. The carried interest remuneration structure (detailed below) also helps align incentives.

Tax-wise, private equity funds incorporated in Portugal are exempt from corporate income tax and any gains made are directly attributed to its LPs, at a favourable rate.

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2.3 How is the equity commonly structured in private equity transactions in your jurisdiction (including institutional, management and carried interests)?

As explained above, equity in private equity transactions is supplied via private equity funds.

Remuneration of such equity is typically made through a simple waterfall and carried interest payment structure, whereby any distributions made by the fund would be done in the following order: (i) all unit holders recoup their nominal investment; (ii) the LPs are paid a minimum hurdle rate; and (iii) any amounts left shall be distributed 80–85% to the LPs and 15–20% to the GP/managing entity.

Entry into force of the provisions transposing the AIFM Directive (i.e. Law no. 18/2015) may have a significant impact on the above-mentioned equity remuneration structure for management and officers of large private equity funds (i.e. which have over €500 million of assets under management, if not leveraged, or €100 million of assets under management, if leveraged). Notably, requirements that: (i) at least 40% of the variable remuneration of fund manager's officers is deferred over a period of at least three to five years; and (ii) at least 50% of any variable remuneration must consist in units of the fund, have the potential to have an impact on many of the existing remuneration arrangements set out in Portugal.

2.4 What are the main drivers for these equity structures?

These equity structures are used primarily for inducing risk sharing between investors and management, thus aligning their incentives.

2.5 In relation to management equity, what are the typical vesting and compulsory acquisition provisions?

Stock option plans or "phantom stock" option plans are increasingly being used in venture capital transactions in Portugal. Vesting of the schemes is usually associated with the achievement of certain operating figures (e.g. the company having an EBITDA over a certain figure).

Good leaver/bad leaver provisions are also common, and a bad leaver will often trigger call/put options for investors/managers' equity participation in the target company in order to dissolve the "partnership" established between the manager and the private equity investor.

2.6 If a private equity investor is taking a minority position, are there different structuring considerations?

The acquisition structure is essentially the same regardless of whether the position being acquired is a majority or minority position. Nevertheless, the terms and conditions of the investment differ. For instance, minority private equity investors will have (contractual) rights to designate directors, veto rights and drag-along or rights for their participations to be mandatorily acquired by the majority shareholders.

3 Governance Matters

3.1 What are the typical governance arrangements for private equity portfolio companies? Are such arrangements required to be made publicly available in your jurisdiction?

Private equity investors will commonly have one or more representatives on the board of directors of portfolio companies to serve as non-executive directors. Another typical feature of governance structures of (the larger) portfolio companies is the set-up of a remuneration committee and/or related party transactions committee used for the private equity investor to monitor the company.

These governance arrangements are typically regulated in a shareholder agreement. Such agreements, unless they relate to public (i.e. which shares are exchanged in a regulated market) or financial companies, need not be made public and will almost surely contain confidentiality provisions.

3.2 Do private equity investors and/or their director nominees typically enjoy significant veto rights over major corporate actions (such as acquisitions and disposals, litigation, indebtedness, changing the nature of the business, business plans and strategy, etc.)? If a private equity investor takes a minority position, what veto rights would they typically enjoy?

Yes. Usually shareholder agreements entered into between private equity investors and management/surviving shareholders/ partnering shareholders will have "restricted board matters" (via supermajorities or share classes) involving material aspects of the business regarding which the private equity investor enjoys a veto right.

Veto rights enjoyed by private equity investors in portfolio companies typically include fundamental corporate matters such as amendments to articles of association, mergers, demergers, approval of annual accounts and distributions.

3.3 Are there any limitations on the effectiveness of veto arrangements: (i) at the shareholder level; and (ii) at the director nominee level? If so, how are these typically addressed?

No limitations usually exist. Restricted board matters are almost without exception transposed into the company's by-laws, making them enforceable towards third parties.

Similarly, on matters where shareholders have the last say (which would depend on the type of company in question), the shareholders' agreement and by-laws create a set of restricted matters (again supermajorities or share classes) for shareholders' resolutions as well, granting a veto right to the private equity investor.

3.4 Are there any duties owed by a private equity investor to minority shareholders such as management shareholders (or *vice versa*)? If so, how are these typically addressed?

No special statutory duties exist regarding private equity investors in relation to minority shareholders or otherwise.

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It is, however, worth noting that Portuguese law provides for several special rights of minority shareholders, such as the right to appoint directors from a separate list (if such mechanism is included in the by-laws) or the right to annul resolutions approved by the majority shareholders, if proved to be to their detriment (e.g. on self-dealing transactions). In addition, the law provides for "opt-out" rights for minority shareholders in case of (i) mergers and demergers (when minority shareholders vote against such transactions), and (ii) in case there is a majority shareholder holding more than 90% of the share capital in the company.

3.5 Are there any limitations or restrictions on the contents or enforceability of shareholder agreements (including (i) governing law and jurisdiction, and (ii) non-compete and non-solicit provisions)?

Under Portuguese law, it is generally understood that the provisions of shareholder agreements are binding only upon the parties and, thus, are not enforceable towards third parties, nor towards the company itself.

Other restrictions set out in the law regarding the contents of shareholder agreements include: (i) no provisions may be included restricting the actions of members of the company's management or audit bodies; (ii) no shareholder may commit to always vote in accordance with the instructions or proposals given/made by the company or its management or audit bodies; and (iii) no shareholder may exercise or not exercise its voting right in exchange for "special advantages" (i.e. prohibition of vote selling).

Regarding: (i) governing law and jurisdiction of shareholder agreements, no particular restrictions exist (although any shareholder agreements regarding Portuguese companies should respect the restrictions set out in the previous paragraph as well as other mandatory Portuguese law provisions); and (ii) non-compete provisions, these should be weighed against mandatory labour and competition law provisions to assess their validity.

3.6 Are there any legal restrictions or other requirements that a private equity investor should be aware of in appointing its nominees to boards of portfolio companies? What are the key potential risks and liabilities for (i) directors nominated by private equity investors to portfolio company boards, and (ii) private equity investors that nominate directors to boards of portfolio companies under corporate law and also more generally under other applicable laws (see section 10 below)?

Directors appointed by private equity investors should be aware that, under Portuguese law, they owe fiduciary duties (care and loyalty) to all shareholders of the portfolio company, and may not cater only to the interests of the private equity investor.

On the other hand, private equity investors, if they exercise a significant influence in the company to allow it to be qualified as a *de facto* board member, may be held liable should the company be declared insolvent, if it is proven that the insolvency was the result of culpable action by the investor.

3.7 How do directors nominated by private equity investors deal with actual and potential conflicts of interest arising from (i) their relationship with the party nominating them, and (ii) positions as directors of other portfolio companies?

At fund level, conflicts of interest are typically addressed through an Advisory Council, which attributions typically entail issuing opinions on certain transactions undertaken by the fund, notably related-party transactions, and other conflicts of interest.

At portfolio company level, a related-party transaction committee is often set up to deal with vertical (company-fund) and horizontal (portfolio company-portfolio company) conflicts of interest.

More generally, statutory corporate law provisions contain mandatory provisions whereby shareholders and board members are impeded to vote in the relevant meetings if they are deemed to be in a conflict of interest.

4 Transaction Terms: General

4.1 What are the major issues impacting the timetable for transactions in your jurisdiction, including competition and other regulatory approval requirements, disclosure obligations and financing issues?

Timetable constraints and other formalities for transactions in Portugal generally involve the following:

a) waivers from financing banks, in direct or, sometimes, indirect changes of control;
b) securing financing for the transaction;
c) in asset deals (e.g. transfer of business via agreement or prior statutory demerger), formalities related to employment matters, notably town hall meetings and opinions from employees representative structures;
d) in large deals, waivers from competition authorities; and
e) deals in some regulated sectors (especially banks, insurance companies and other financial institutions) require prior approval from the respective regulatory authorities.

Following the implementation of the AIFM Directive in Portugal, Law no. 16/2015, of February 24, has imposed disclosure requirements for managing entities of alternative investment funds (which include private equity funds) when acquiring private companies. Pursuant to the newly approved rules, private equity fund managers must now disclose to CMVM: (i) the acquisition or divestment of a significant shareholding in the company; (ii) acquisition of control over the company; and (iii) if acquiring a position of control in a company, intentions regarding the future activity of the company and the probable repercussions in the company's headcount.

4.2 Have there been any discernible trends in transaction terms over recent years?

In recent years, "locked-box" price adjustment mechanisms have become more common in transactions.

In addition, warranties and indemnities insurance policies are slowly being introduced in the Portuguese market, notably where private equity sellers are involved.

5 Transaction Terms: Public Acquisitions

5.1 What particular features and/or challenges apply to private equity investors involved in public-to-private transactions (and their financing) and how are these commonly dealt with?

Only one private equity type public-to-private transaction has ever been recorded in Portugal (i.e. the acquisition of Brisa, a highway

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toll operator, in 2012, by a joint venture formed by a Portuguese family office holding company and a European infrastructure fund).

Since there is but one example of this type of transaction in Portugal, it is not possible to assess patterns or trends.

5.2 Are break-up fees available in your jurisdiction in relation to public acquisitions? If not, what other arrangements are available, e.g. to cover aborted deal costs? If so, are such arrangements frequently agreed and what is the general range of such break-up fees?

Please see the answer to question 5.1 above.

6 Transaction Terms: Private Acquisitions

6.1 What consideration structures are typically preferred by private equity investors (i) on the sell-side, and (ii) on the buy-side, in your jurisdiction?

Common variations to the price payable by private equity investors in Portugal to shareholders of portfolio companies include: (i) deduction of the amount corresponding to non-current net debt; (ii) when relevant, accrual of net working capital; and (iii) sometimes, when shareholders who are also part of the management team are expected to stay on board, earn-outs in accordance with commonly used financial indicators (e.g. EBITDA).

"Locked-box" consideration structures are also, albeit to a lesser extent, being used.

6.2 What is the typical package of warranties/indemnities offered by a private equity seller and its management team to a buyer?

Standard representations and warranties involving mostly the underlying assets of the portfolio companies (as opposed to management) are offered. Especially in more "buyer friendly" deals, specific indemnities (notably tax indemnities) are also included.

6.3 What is the typical scope of other covenants, undertakings and indemnities provided by a private equity seller and its management team to a buyer?

Covenants and other undertakings usually include non-compete provisions. Asset-specific covenants are also provided, when applicable.

6.4 Is warranty and indemnity insurance used to "bridge the gap" where only limited warranties are given by the private equity seller and is it common for this to be offered by private equity sellers as part of the sales process? If so, what are the typical (i) excesses / policy limits, and (ii) carve-outs / exclusions from such warranty and indemnity insurance policies?

Warranty and indemnity insurance was scarcely used but is now more common in transactions involving private equity sellers.

6.5 What limitations will typically apply to the liability of a private equity seller and management team under warranties, covenants, indemnities and undertakings?

Caps and baskets are the most usual limitations to liability in private equity exit transactions. Specific disclosures against warranties (typically included in disclosure letters) are also commonly used.

6.6 Do (i) private equity sellers provide security (e.g. escrow accounts) for any warranties / liabilities, and (ii) private equity buyers insist on any security for warranties / liabilities (including any obtained from the management team)?

Private equity sellers, especially ones backed by funds reaching maturity, shy away from providing securities for breach of representations and warranties.

Private equity buyers, on the other hand, are keen on having escrow accounts credited with a percentage of the purchase price, as a security for breach of representations and warranties and other obligations by the sellers.

6.7 How do private equity buyers typically provide comfort as to the availability of (i) debt finance, and (ii) equity finance? What rights of enforcement do sellers typically obtain if commitments to, or obtained by, an SPV are not complied with (e.g. equity underwrite of debt funding, right to specific performance of obligations under an equity commitment letter, damages, etc.)?

Corporate guarantees/comfort letters are common. To a limited extent, bank guarantees are also provided.

In case of non-performance of funding obligations, the seller's typical remedy is to claim for damages.

6.8 Are reverse break fees prevalent in private equity transactions to limit private equity buyers' exposure? If so, what terms are typical?

Reverse break fees are not common.

7 Transaction Terms: IPOs

7.1 What particular features and/or challenges should a private equity seller be aware of in considering an IPO exit?

No IPO exit from a private equity investment has ever been made in Portugal.

7.2 What customary lock-ups would be imposed on private equity sellers on an IPO exit?

As mentioned above, there is no factual basis to answer the question as no IPO exit from a private equity investment has ever been made.

7.3 Do private equity sellers generally pursue a dual-track exit process? If so, (i) how late in the process are private equity sellers continuing to run the dual-track, and (ii) were more dual-track deals ultimately realised through a sale or IPO?

We are not aware of any dual-track process for the sale of a private equity portfolio company ever being initiated in Portugal.

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8 Financing

8.1 Please outline the most common sources of debt finance used to fund private equity transactions in your jurisdiction and provide an overview of the current state of the finance market in your jurisdiction for such debt (particularly the market for high yield bonds).

Due to the fact that the average value of private equity transactions in Portugal is small, deals involving private equity investors are made almost exclusively through the funds' equity, raised from its participants. Debt financing of transactions is thus rare and even more so the issuance of high yield bonds.

When it does occur (in larger transactions), debt financing of private equity transactions is usually made through senior secured loan facilities (usually composed of an acquisition facility and a revolving facility).

8.2 Are there any relevant legal requirements or restrictions impacting the nature or structure of the debt financing (or any particular type of debt financing) of private equity transactions?

Notwithstanding the above-mentioned response, it is worth noting that financial assistance (i.e. contracting loans or providing securities for the acquisition of the company's own shares) is restricted under Portuguese law, thus limiting the possibility of pursuing leveraged buyouts.

9 Tax Matters

9.1 What are the key tax considerations for private equity investors and transactions in your jurisdiction? Are off-shore structures common?

Private equity funds are considered neutral vehicles, for tax purposes, and as such are exempt from corporate income tax. Income derived by the unit holders in the private equity funds, on the other hand, is subject to a 10% withholding tax (whether personal or corporate income tax), provided the unit holder is a non-resident entity (without permanent establishment in Portugal), or an individual resident in Portugal (that derives this income out of a business activity).

If the unit holder in the private equity fund (i.e. when the beneficiary of such income) is an entity exempted from tax on capital gains (resident or non-resident) or if they are an entity with no permanent establishment in Portugal to which the income is attributable, the derived income may be exempted from tax in Portugal.

Neither the 10% or the exemption rule are applicable when: (i) the beneficiary is an entity resident in a blacklisted jurisdiction; and (ii) when the beneficiaries are non-resident entities held, directly or indirectly (more than 25%), by resident entities. The general withholding tax is 35% in the case of blacklisted entities; in other cases, there is 25% CIT withholding tax.

Offshore structures are not common owing mostly to the disadvantageous tax repercussions of setting up transactions in blacklisted entities (see paragraph above). Nevertheless, international fund managers usually invest through Luxembourg vehicles (typically then incorporating a Portuguese BidCo to execute the transaction).

Private equity companies (*sociedades de capital de risco*) also benefit from a tax allowance of a sum corresponding to the limit of the sum of the tax base of the five preceding years, as long as such deduction is used to invest in companies with high growth potential. On the other hand, dividends payable by private equity companies to its shareholders do not receive any special treatment (i.e. 28% final rate for individuals and the current corporate income tax rates for companies).

Capital gains derived by the sale of units in the private equity funds are subject to 10% corporate and personal income tax if the resident entity derives the income out of a business activity and, regarding the non-resident entity, if it is not exempted under the general exemption on capital gains obtained by non-residents.

Alas, the treatment of income derived from carried interest and other variable private equity managers' compensation is not clear from tax legislation. As such, due to the fact that, from a tax perspective, treatment of such income is not clear, there have been several calls to, as in many other jurisdictions, clearly state that variable management compensation is taxed as capital gains.

9.2 What are the key tax considerations for management teams that are selling and/or rolling-over part of their investment into a new acquisition structure?

A tax neutrality regime on the corporate reorganisations is also available, allowing for cases of merger, de-merger, and/or asset contribution, in order that no step up in value is realised, but at the same time preserving the original date of acquisition of the participations.

Additionally, there are two key tax considerations: the participation exemption regime and the tax treatment of dividends distributed by a Portuguese company.

The Portuguese Participation Exemption regime currently in force foresees that dividends distributed by a company resident in Portugal (and not subject to the tax transparency regime) to its corporate shareholder are tax exempt, provided some requirements are met, such as a continuous 12-month holding period of at least 10% of the shares or voting rights.

Under the out-bound regime, to benefit from the 0% withholding tax rate on the dividends paid by a company in Portugal, besides the fact that the beneficiary of the income has to be subject in its residence State to a CIT nominal tax rate of at least 12.6%, it has to hold, directly or indirectly, at least a 10% stake in the company resident in Portugal uninterruptedly held in the 12 months prior to the distribution of dividends.

9.3 What are the key tax-efficient arrangements that are typically considered by management teams in private equity portfolio companies (such as growth shares, deferred / vesting arrangements, "entrepreneurs' relief" or "employee shareholder status" in the UK)?

Due to the high tax burden on employment income in Portugal, there has been a recent phenomenon of the implementation of Employment Reward Plans, such as phantom "Stock Option Plans". Through these plans, taxation is deferred until the exercisable moment of the option. It has been determined that tax should be paid on the difference between the price paid (if any) and the market value upon the exercisable moment as this qualifies as employment income. An interesting note is that the "vesting" concept, as it is commonly referred to, is not expressly foreseen on any Portuguese Tax Code or legislation, which may lead to tax litigation with the Portuguese Tax Authorities.

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9.4 Have there been any significant changes in tax legislation or the practices of tax authorities (including in relation to tax rulings or clearances) impacting private equity investors, management teams or private equity transactions and are any anticipated?

We are not aware of any recent change in tax legislation or in the practice of the tax authorities regarding issues that may specifically impact private equity investors, since the focus has been on creating an optimal context of investment, with a substantial effort on implementing an investment-friendly environment.

10 Legal and Regulatory Matters

10.1 What are the key laws and regulations affecting private equity investors and transactions in your jurisdiction, including those that impact private equity transactions differently to other types of transaction?

Currently, the main provisions regulating private equity investment in Portugal are Law no. 16/2015 and Law no. 18/2015, mentioned earlier, which were enacted following the regulatory overhaul of the alternative investment fund sector by the AIFM Directive.

10.2 Have there been any significant legal and/or regulatory developments over recent years impacting private equity investors or transactions and are any anticipated?

Law no. 16/2015 and Law no. 18/2015 provided several major changes to the regulation of private equity in Portugal. Highlights include:

a) Investment compartments – the management regulations of private equity or venture capital funds may now establish that the fund may be divided into several investment compartments, named "subfunds".

b) Management may change certain aspects of the management regulations (e.g. details of the manager; and reduction in management fees) in private equity funds without the consent of unit holders.

c) Own funds requirements – private equity and venture capital companies must have their own funds corresponding to 0.02% of the amount of the net value of assets under management exceeding €250 million.

However, the main innovation put in place by the enactment of Law no. 18/2015 is imposing a more demanding regulatory framework to management entities of collective undertakings which have assets under management with a value exceeding: (i) €100 million, when the respective portfolios include assets acquired with leverage; or (ii) €500 million, when the respective portfolios do not include assets acquired through leverage and regarding which there are no reimbursement rights which may be exercised during a five-year period counting from the date of initial investment.

Such funds are now subject to, *inter alia*, the following obligations:

a) their incorporation is subject to the prior authorisation of CMVM;

b) risk management should be functionally and hierarchically separated from the operating units, including the portfolio management function;

c) measures should be taken to identify situations of possible conflicts of interest as well as to prevent, manage and monitor conflicts of interest;

d) CMVM shall be informed of the intention to delegate services to third parties for carrying out functions in the name of the above-mentioned managing entities;

e) managing entities shall employ an appropriate liquidity management system; and

f) applicability of "EU passport rules" (i.e. the ability to market units of private equity funds in other EU countries or third countries).

Also worth noting is the new crowdfunding legislation, which provides a framework for the creation of equity crowdfunding platforms in Portugal, which is becoming increasingly relevant for venture capital investment in the Portuguese market.

10.3 How detailed is the legal due diligence (including compliance) conducted by private equity investors prior to any acquisitions (e.g. typical timeframes, materiality, scope etc.)? Do private equity investors engage outside counsel / professionals to conduct all legal / compliance due diligence or is any conducted in-house?

Private equity investors usually undertake legal due diligence before investing in a company. Timeframes for conducting due diligence range from one to three months and will typically have materiality thresholds for litigation and material agreements under review. Often, insurance, competition and tax matters will be excluded from due diligence (sometimes because other advisors will be engaged to perform the review in such matters).

Due diligence is typically conducted by outside counsel.

10.4 Has anti-bribery or anti-corruption legislation impacted private equity investment and/or investors' approach to private equity transactions (e.g. diligence, contractual protection, etc.)?

Law no. 83/2017, of August 18 (which partially transposes the 5th Money Laundering Directive to the Portuguese jurisdiction), establishes several obligations on, among others, "know your customer" and due diligence procedures and disclosure of monetary flows for purposes of preventing money laundering transactions and the financing of terrorism. These obligations are applicable to private equity fund managers (as well as to banks and other financial institutions).

The aforementioned reporting duties have an impact on due diligence procedures taken during fund structuring, as the private equity investor shall, for instance, be obliged to know what is the controlling structure of its clients (the fund LPs) and who is the ultimate beneficial owner of such LPs. Consequently, the major private equity players in Portugal have instated official "know your customer" procedures in an effort to not fall foul of the law's provisions.

10.5 Are there any circumstances in which: (i) a private equity investor may be held liable for the liabilities of the underlying portfolio companies (including due to breach of applicable laws by the portfolio companies); and (ii) one portfolio company may be held liable for the liabilities of another portfolio company?

Private equity funds enjoy full limited liability and asset partitioning in relation to its portfolio companies and participants, respectively. In this sense, the fund may not be liable for debts and other liabilities of the portfolio companies, unless it has provided guarantees for the benefit of such companies.

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As for private equity companies, if the latter holds 100% of the share capital of a portfolio company incorporated in Portugal, mandatory corporate law provisions assume a "co-mingling of assets" of sorts and state that they are jointly and severally liable before the creditors of said portfolio companies (following a 30-day delay in performance of the obligation in question).

In the case of portfolio companies being liable before one another, assuming that they are both directly held by the same private equity investor (i.e. horizontal group relationship) no subsidiary liability may arise.

11 Other Useful Facts

11.1 What other factors commonly give rise to concerns for private equity investors in your jurisdiction or should such investors otherwise be aware of in considering an investment in your jurisdiction?

Portugal has been establishing itself to both inside and outside investors as a "business"- and "transaction"-friendly jurisdiction. This also reflects in the private equity sector.

Alas, some challenges remain, notably in what concerns timings for resolution of disputes in the state courts (which is why transaction agreements usually contain arbitration clauses).

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Independent and internationally recognised as a leading law firm in Portugal, Morais Leitão, Galvão Teles, Soares da Silva & Associados' (MLGTS) reputation is based on the excellence of its legal services, the professionalism and the innovative solutions of our team. With more than 180 lawyers at a client's disposal, MLGTS has three offices in Portugal.

As a result of our network of associations with local firms and the creation of the MLGTS Legal Circle, MLGTS also operates through offices in Angola, Macau (China) and Mozambique.

MLGTS offers specialised services in the main areas of law, having been involved in many of the largest and most important deals in Portugal, as well as in high-value cross-border transactions and disputes. Its client list includes some of the largest Portuguese and international companies and business groups as well as public and private entities, giving the firm deep insight into the national and international business environment from a legal perspective.

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