The Foreign Investment Regulation Review

Ninth Edition

Editors
Calvin Goldman QC, Michael Koch and Alex Potter

The LawReviews

THE FOREIGN INVESTMENT REGULATION REVIEW

NINTH EDITION

Editors
Calvin Goldman QC, Michael Koch and Alex Potter

THE LAWREVIEWS

PUBLISHER
Clare Bolton

HEAD OF BUSINESS DEVELOPMENT
Nick Barette

TEAM LEADERS
Joel Woods, Jack Bagnall

BUSINESS DEVELOPMENT MANAGERS
Rebecca Mogridge, Katie Hodgetts, Joey Kwok

RESEARCH LEAD
Kieran Hansen

EDITORIAL COORDINATOR
Leke Williams

PRODUCTION AND OPERATIONS DIRECTOR
Adam Myers

PRODUCTION EDITOR
Felicia Rosas

SUBEDITOR
Orla Cura

CHIEF EXECUTIVE OFFICER
Nick Brailey

Published in the United Kingdom
by Law Business Research Ltd, London
Meridian House, 34–35 Farringdon Street, London, EC4A 4HL, UK

www.TheLawReviews.co.uk

ISBN 978-1-83862-779-9

Printed in Great Britain by
Encompass Print Solutions, Derbyshire
Tel: 0844 2480 112

ACKNOWLEDGEMENTS

The publisher acknowledges and thanks the following for their assistance throughout the preparation of this book:

BOYANOV & CO

COVINGTON & BURLING (PTY) LTD

FRESHFIELDS BRUCKHAUS DERINGER

GOODMANS LLP

HOGAN LOVELLS

MATHESON

SHARDUL AMARCHAND MANGALDAS & CO

SZA SCHILLING ZUTT & ANSCHÜTZ
RECHTSANWALTSGESELLSCHAFT MBH

TADMOR LEVY & CO

THE LAW OFFICE OF CALVIN GOLDMAN, QC

URÍA MENÉNDEZ – PROENÇA DE CARVALHO

CONTENTS

PREFACE

This ninth edition of *The Foreign Investment Regulation Review* provides a comprehensive guide to laws, regulations, policies and practices governing foreign investment in key international jurisdictions. It includes contributions from leading experts around the world from some of the most widely recognised law firms in their respective jurisdictions. This year, in keeping with the considerable increase in prominence of foreign investment review, we are delighted to include new chapters on Austria, Belgium, India, Israel, Japan and the Netherlands, along with several new contributors for countries covered in previous editions. We have also revised the format to focus on the aspects of foreign investment rules that are most critical for dealmakers.

Unprecedented challenges have arisen in 2020–2021 not only to the health and well-being of persons around the globe, but also to globalisation itself and, with it, the flow of capital. Whereas foreign investment has for a number of years been attracting increased attention, this trend has accelerated throughout the past 18 months. Prior to the covid-19 pandemic, the global economy was continuing its trend towards further integration, even with indications of emerging protectionism, and the number of cross-border and international transactions was increasing, while national governments continued to intervene in foreign investment based on a broadening set of criteria. Foreign investment reviews of cross-border mergers could not help but be affected by shifts in economic relations between countries, which in turn were driven by evolving geopolitical considerations. These included structural developments such as Brexit, now in its early post-implementation stages, as well as increased tensions over trade and related policies, as we have seen between the United States and China. These increased tensions have heightened concerns over national interest considerations such as the export of jobs, essential supply chains and industrial policies, as well as heightened national security concerns over cybersecurity, new technologies, communications and other strategic areas.

These and other developments discussed below have led, in the case of certain merger reviews, to increased tensions between normative competition and antitrust considerations, on the one hand, and national- and public-interest considerations on the other hand, the latter sometimes weighing heavily against the former. An example of the kind of differing regulatory decisions between the competition authorities and the Ministerial decision making in relation to concurrent foreign investment reviews occurred when BHP Billiton, the global leader in mining based in Australia, which has already engaged in previous significant mining investments in Canada, proposed to acquire the Potash Corporation of Saskatchewan, at an amount of approximately US$40 billion. Both Australia and Canada are members of the Five Eyes with respect to national security matters. That regulatory review process became a highly publicised matter of public interest through much of 2010. In the end, while the Canadian

Competition Bureau cleared the proposed merger, the federal Minister of Industry, following his review under the Investment Canada Act and consultation with his Cabinet colleagues, issued an interim negative decision, in November 2010, on national interest grounds that were never really articulated. Rather than trying to then make further submissions, BHPB decided to withdraw the proposed acquisition. Some commentators at that time suggested that the reasons for the Ministerial position had more to do with the pending elections at the provincial level in Saskatchewan and at the federal level than any significant national interest issue (Potash Corp had a long standing perception among people in Saskatchewan as a historical corporate leader in that province).

A similar split in such regulatory decision making subsequently occurred in November 2013 in relation to the proposed acquisition of Grain Corp of Australia by Archer Daniels Midland Company of the United States. That also was cleared by the competition authority (the Australian Competition and Consumer Commission) following its competition review; however, following subsequent concerns raised by the Foreign Investment Review Board, the Treasurer of Australia, one of the most senior Cabinet members, decided to block the proposed acquisition. Farmer concerns and distribution networks were apparently factors in that decision. Again, some commentators suggested real-world political considerations had some bearing on that negative decision.

As a result of cases such as these and other evolving considerations discussed below, more cross-border mergers have been scrutinised more intensely, with the process delayed or in some cases thwarted, by foreign investment reviews that are increasingly broader in scope.

Since the pandemic has taken hold, the underlying considerations that had been driving trends in the review of foreign investment moved to the front of national agendas, with the result that these trends have both been accelerating and increasing in scope. Concerns about the benefits of globalisation have been on the rise in an environment where nations have found themselves competing for supplies of critical medicines, equipment and personal protective equipment necessary to meet the public health emergency. This has led to a broadening of the types of businesses the takeover of which might be viewed as raising strategic, public interest or national security considerations. The increased focus on the stream of capital flowing from state-owned enterprises (SOEs) that had already driven greater scrutiny of proposed investments took on heightened importance, particularly in economic sectors viewed as being critical to the pandemic response, such as public health and supply chains. As the impacts of the worldwide economic shutdown on the valuation of domestic businesses began to be felt, concerns around opportunistic hollowing-out of domestic sectors rose to the forefront of considerations of such matters as lowering financial thresholds that trigger foreign investment reviews.

This has all taken place in the context of efforts to overhaul the regulatory landscape that were already under way in the United States and Europe. In the United States, which saw the introduction of a mandatory notification regime and expansion of the review authority of the Committee on Foreign Investment in the United States (CFIUS) following the enactment of the Foreign Investment Risk Review Modernization Act (known as FIRRMA) in August 2018, greater resources are now being allocated to monitoring and enforcement activities. This is making the voluntary filing calculus even more complex as there is no statute of limitations on CFIUS's jurisdiction if it has not cleared a transaction. As the policy focus has shifted to supply chain security across the globe, CFIUS is being used in conjunction with other US government authorities to wean critical US supply chains off their reliance on Chinese inputs; for example, by either blocking or subjecting to review even ordinary course transactions with blacklisted Chinese companies. Heightened CFIUS interest and commentary pertaining to certain China-related transactions, such as occurred in relation to TikTok, is a reflection of some of these evolving developments.

In turn, there is greater focus on foreign investment in Europe, where the European Union's foreign investment screening regulation, which became fully operational in October 2020, gives the European Commission a new central advisory role in coordinating increased scrutiny by Member States and obliges Member States to notify other Member States and the European Commission of foreign investments that they are screening under their national regimes. Furthermore, Member States have themselves introduced new foreign investment regimes (e.g., the Czech Republic and Denmark), are planning to do so (e.g., the Netherlands and Slovakia) or have further updated or tightened their existing foreign investment laws (e.g., Germany by introducing a variety of new sectors that it considers to be sensitive such as artificial intelligence, robotics and nanotechnology). Currently, 18 EU countries have an FDI screening mechanism in place and a senior EU trade official has confirmed that dozens of foreign-investment vetting requests have been notified to the European Commission through the new EU screening mechanism since it came into force.

The United Kingdom has now aligned itself more closely with other countries by significantly strengthening its powers to intervene in deals that may threaten national security. The National Security and Investment Act 2021 marks a step change in the UK government's power to screen, impose conditions on and block deals that pose unacceptable risks. Once the new regime comes into force on 4 January 2022, it will require mandatory notification of investments in 17 strategically sensitive sectors that cross certain share or voting rights thresholds – a significant change in light of the UK's (continuing) voluntary merger filing regime. Transactions in all other sectors will be susceptible to 'call in' by the government should there be concerns.

The United States and Europe are not alone in elevating concerns over foreign investment during the pandemic and in response to increasing concerns over China's global influence. In Canada, during 2020–2021, timelines for national security reviews were temporarily extended and investments by SOEs as well as in Canadian businesses related to public health or the supply of critical goods and services were subjected to heightened scrutiny in response to the pandemic. The Canadian government has issued more detailed guidelines for the review of foreign investments, among other things, to include national security concerns relating to the potential of the investment to enable access to sensitive personal data that could be leveraged to harm Canadian national security through its exploitation, including personal data concerning government officials, such as members of the military or intelligence community. In Australia, on 1 January 2021, the Foreign Investment Reform Act came into effect, ushering in sweeping changes to that country's foreign investment review law. The temporary A$0 monetary screening thresholds for all investments that had been introduced in response to covid-19 were removed; however, this threshold was continued through provisions for the mandatory review of investments in sensitive national security businesses. New Australian regulations list businesses in critical infrastructure, telecommunications, military goods or defence or intelligence technology, the provision of service to defence or intelligence forces, the storage or access to classified security information and the storage, collection, or maintenance of personal information of defence and intelligence personnel. The symmetry between the Canadian guidelines and the Australian regulations should not be considered coincidental. Both countries are members of the Five Eyes together with the United States, the United Kingdom and New Zealand. The

Australian Treasurer has also been given new, stronger enforcement and review powers under the legislation, including a new 'last resort' power, under which the Treasurer may review previously approved transactions where national security risks have emerged after approval by the Foreign Investment Review Board.

In addition to these significant developments, differences in foreign investment regimes (including in the timing, procedure and thresholds for and substance of reviews) and the mandates of multiple agencies (often overlapping and sometimes conflicting) continue to contribute to the relatively uncertain and at times unpredictable foreign investment environment. This gives rise to greater risk of inconsistent decisions in multi-jurisdictional cases, with the potential for a significant 'chilling' effect on investment decisions and economic activity. Foreign investment regimes are increasingly challenged by the need to strike the right balance between maintaining the flexibility required to reach an appropriate decision in any given case and creating rules that are sufficiently clear and predictable to ensure that the home jurisdiction offers the benefits of an attractive investment climate notwithstanding extraordinary circumstances.

The recently increasing breadth, scope and timelines for proposed acquisitions by SOEs and other proposed acquisitions giving rise to national security considerations have raised a potentially challenging issue in the context of proposed acquisitions of failing firms. There is a widely held view that, as a result of the disruptive economic effects of the covid-19 pandemic, there may be a sizeable number of distressed industries and failing firms in sectors that have been most significantly impacted by the pandemic. The number of failing firm cases is likely to increase the longer the pandemic continues to substantially affect the timeline for economic recovery from the effects of the pandemic.

In this exceptional environment, there may be failing firm cases where the proposed acquirer is an SOE, which in some foreign direct investment reviews includes a corporation that may be influenced directly or indirectly by a foreign government. There may also be proposed acquisitions of failing entities in the public health or supply chain markets, which may be regarded as more sensitive transactions in the context of the pandemic. If these types of proposed acquisitions are subjected to increased scrutiny and longer timelines in foreign investment reviews where the acquiree is a failing firm, and to the extent that there may be a parallel competition review conducted on a considerably more expeditious basis, the proposed acquisition risks not being completed if the acquiree cannot be sustained during that period. That may lead to an anticompetitive acquirer with existing operations in the same jurisdiction becoming the only purchaser in a position to complete the proposed acquisition, thereby avoiding liquidation of the assets and loss of jobs. The same result may follow even where the proposed acquirer is not an SOE or the failing firm is not in an apparently sensitive business because the increasing scope and timelines for foreign investment reviews, coupled with continuing geopolitical tensions, may raise sufficient uncertainty to dissuade a foreign entity from making a proposed acquisition. These developments could have a significant impact on domestic market concentrations going forward.

With respect to the interface of national interest and public interest considerations and the evolving breadth of national security reviews, including, in some cases, as they may relate to or interface with, normative competition reviews, the American Bar Association Antitrust Law Section (ABA ALS) Task Force on National Interest and Competition Law prepared a report that was considered and approved by the Council of the ABA ALS in August 2019. In that report, the Task Force examined a number of cases in selected jurisdictions where these issues have been brought to the forefront. In addition, the ABA ALS Task Force on the Future of Competition Law Standards has delivered a further report in early August 2021 to the Council of the ABA ALS that, among other subjects, has considered recent developments pertaining to national interests and national champions in competition reviews. These evolving considerations in competition reviews cannot be viewed in isolation from the increasing scope of national interest factors in foreign investment reviews.

In the context of these significant developments, we hope this publication will prove to be a valuable guide for parties considering a transaction that may trigger a foreign investment review, which often occurs in parallel with competition reviews. It provides relevant information on, and insights into, the framework of laws and regulations governing foreign investment in each of the 21 featured jurisdictions, including the timing and mechanics of any required foreign investment approvals, and other jurisdiction-specific practices. The focus is on practical and strategic considerations, including the key steps for foreign investors planning a major acquisition or otherwise seeking to do business in a particular jurisdiction. The recent trends and emerging issues described above and their implications are also examined in this publication. Parties would be well advised to thoroughly understand these issues and to engage with regulatory counsel early in the planning process so that deal risk can be properly assessed and managed. Having regard to the changing regulatory environment pertaining to foreign investment reviews and the evolving protectionism as well as geopolitical considerations across a number of jurisdictions, regulatory counsel may recommend approaching the relevant government authorities at a comparatively early stage to engage in constructive discussions and to obtain an initial view from government officials of the proposed transaction.

We are thankful to each of the chapter authors and their firms for the time and expertise they have contributed to this publication, and also thank Law Business Research for its ongoing support in advancing such an important and relevant initiative.

Please note that the views expressed in this book are those of the authors and not those of their firms, any specific clients, or the editors or publisher.

Calvin Goldman QC
The Law Office of Calvin Goldman, QC
Toronto

Michael Koch
Goodmans LLP
Toronto

Alex Potter
Freshfields Bruckhaus Deringer LLP
London

September 2021

Chapter 16

PORTUGAL

Tânia Luísa Faria, Miguel Stokes, Margot Lopes Martins and Inês Drago[1]

I INTRODUCTION

Portugal's legal environment encourages foreign investment. The country has no foreign capital entry restrictions and Portuguese law prohibits any discrimination between investments based on nationality. Currently, Portugal is still ranked first in the trading across borders ranking, an indicator that captures the time and cost for document preparation and compliance with border procedures to export and import goods.[2]

Portugal has a liberal economy, which has led to significant development and diversification of the Portuguese market. Non-EU trade partners maintain their importance (28.6 per cent of total exports in 2020), despite the key role assumed by EU Member States (71.4 per cent in 2020).[3]

According to findings by the World Bank, Portugal is the 34th country in the world for ease of doing business, and 12th within the European Union (ranked above the Netherlands, Belgium and Italy).

According to the World Economic Forum,[4] Portugal has shown a satisfactorily performance level in its path to recovery from the covid-19 economic impacts, particularly in what concerns infrastructure update to accelerate the energy transition and broaden access to electricity and ICT (sixth highest score).

Despite the severe economic impact that the covid-19 pandemic has had globally, the effects of which are still difficult to assess with regard to the Portuguese economy, the Portuguese government has already published its economic recovery plan for the next 10 years, entitled Strategic Vision for Portugal's Economic Recovery Plan 2020–2030 (the Recovery Plan).[5] This programme is essential to reactivate the Portuguese economy and restore it to the upward curve it was on before this external shock, notably by promoting foreign investment and contributing to public finances. For additional information regarding this programme, see Section VII.

1 Tânia Luísa Faria is a counsel, Miguel Stokes is a senior associate, and Margot Lopes Martins and Inês Drago are junior associates at Uría Menéndez – Proença de Carvalho.

2 World Bank Group, 'Doing Business 2020: Reforming to Create Jobs', http://documents1.worldbank.org/curated/en/688761571934946384/pdf/Doing-Business-2020-Comparing-Business-Regulation-in-190-Economies.pdf.

3 Source: Agência para o Investimento e Comércio Externo de Portugal, EPE (AICEP Portugal Global – Trade and Investment Agency), www.portugalglobal.pt.

4 The Global Competitiveness Report 2020, World Economic Forum, https://www.weforum.org/reports/the-global-competitiveness-report-2020/in-full.

5 Visão Estratégica para o Plano de Recuperação Económica de Portugal 2020–2030 (21 July 2020), https://www.portugal.gov.pt/download-ficheiros/ficheiro.aspx?v=2aed9c12-0854-4e93-a607-93080f914f5f.

II FOREIGN INVESTMENT REGIME

i Preliminary note

First, with regard to foreign direct investment (FDI) measures, it is essential to clarify that the Portuguese government has not implemented any restrictions as a result of the covid-19 pandemic and as such the Portuguese FDI legal framework[6] (which has been in force since 2014) has remained unchanged.

In fact, in 25 March 2020, the European Commission (EC) issued new guidance on foreign investment screening in response to the current health and economic crisis, aiming to preserve EU companies and critical assets, notably in areas such as health, medical research, biotechnology and infrastructure essential for security and public order. Following this guidance, some Member States have already announced measures introducing a more restrictive approach to foreign investment reviews in Europe. However, given that the EC guidance does not introduce any new binding laws in relation to foreign investment screening, either at EU or Member State level, the relevant Portuguese governmental authorities have taken no action in this direction nor announced any future measures and they are not expected to do so.

Therefore most foreign investment in Portugal continues to be unregulated. Nevertheless, authorisation is required for investment in sensitive areas, in particular defence and other regulated areas such as banking, media and financial services; however, the majority of requirements apply to both national and foreign investors. Foreign investors in Portugal must also take into consideration EU and national competition rules and other EU policies.

ii Corporate

Legal environment

As a general rule, Portuguese law does not impose any specific restrictions on foreigners or foreign investment in corporate matters.

Notably, regulations on the incorporation of companies, mergers and acquisitions, the day-to-day business activities, duties and liability of shareholders and directors, merger control and antitrust apply irrespective of nationality.

Notwithstanding the above, some differences in the treatment of Portuguese and foreign entities do exist under Portuguese law (although exceptional), such as the approach taken in connection with groups of companies.

Regulation on affiliated companies and groups

The Portuguese framework on corporate groups is based on the central concept of an 'affiliated company', which is deemed to exist upon the occurrence of legally defined types of relationships between companies.

Holding companies are legally authorised to direct the management of their subsidiaries if a company is wholly controlled by another company, or a company agrees to subject its management to the direction of another company (which may or may not be its parent company). Holding companies may also issue binding orders to the board of directors of

6 Decree-Law No. 138/2014 of 15 September.

subsidiaries. The orders may be disadvantageous to the controlled company if they serve the corporate group's interests or those of the holding company (despite the existence of specific limits).

This potential power is nevertheless counterbalanced by the requirement that the holding company comply with several duties in relation to the subsidiary's financial undertakings. The holding company is liable for all obligations of the subsidiary arising before or after the occurrence of the change in control, and the subsidiary may request that the holding company assume responsibility for its annual losses.

It is important to take into consideration that some of the aspects of the legal framework on groups and, in particular, the possibility of issuing binding orders and the liability of the holding company are only applicable if the registered offices of both companies are located in Portugal.[7]

iii Regulated sectors

Banking and other financial institutions

Summary of supervisory system

Under Portuguese law, the provision of banking services is a regulated activity that may only be carried out professionally by authorised credit institutions or financial companies and it remains subject to the supervisory powers of the regulatory authority of the Member State of origin.

Supervision of the Portuguese banking system is governed by the Portuguese Credit Institutions and Financial Companies Legal Framework, approved by Decree-Law 298/92 of 31 December, as amended, and the notices, instructions and circulars issued by the Bank of Portugal. The supervision of credit institutions and, in particular, their prudent supervision, including monitoring activities carried out abroad, is entrusted to the Bank of Portugal under its basic law enacted by Law 5/98 of 31 January, as amended, and Decree-Law 298/92.

Insurance

Summary of supervisory system

Under Portuguese law, insurance services are a regulated activity and may only be carried out professionally by authorised insurance companies and are subject to the supervisory powers of the regulatory authority of the Member State of origin.

Supervision of the Portuguese insurance system is governed pursuant to Decree-Law 94-B/98 of 17 April, as amended, which establishes the legal framework and requirements for taking up and pursuing insurance and reinsurance activities, and the regulations and circulars issued by the Portuguese Insurance and Pension Funds Supervisory Authority (ASF).

7 Nevertheless, the Constitutional Court has already held that the holding company's liability, at least in connection with labour matters, cannot be excluded solely on the basis that its registered office is located abroad. Although these decisions have no general effect (because Portuguese law requires that the Constitutional Court issue at least three decisions on a particular matter to have such an effect), they may trigger a change in the framework.

Energy

Summary of the supervisory system

The supervision of energy production, transport, distribution and trade is regulated by Decree-Law 97/2002 of 12 April, as amended. Article 1 thereof establishes the Energy Sector Regulatory Authority as the domestic regulatory authority for the gas and electricity sectors.

Production, transport, distribution and trade of electricity

The legal framework for the production, transport, distribution and trade of electricity is regulated under Decree-Law 29/2006 of 15 February, as amended, which establishes the general grounds for the organisation and functioning of the national electricity system, and under Decree-Law 172/2006 of 23 August, as amended, which specifically regulates the production, transport, distribution and trade of electricity in Portugal.

Production

Decree-Law 172/2006 establishes that energy production activities under the ordinary regime are free, subject to the granting of a production licence following a request by the licensing entity.

Transport and distribution

Both the transporting and distribution of electricity will be carried out under a public service concession agreement awarded through a public tender, unless the concession is granted directly to a state-controlled entity. The concession is performed under a public service framework based on its classification as a public utility.

Trading

Decree-Law 172/2006 states that trade in electricity is free, subject to a licence granted by the licensing entity. The licence must be requested by a company that is registered in an EU Member State.

Telecommunications

The legal framework governing the telecommunications sector is regulated under Law 5/2004 of 10 February, as amended (the Electronic Communications Law).

Pursuant to the Electronic Communications Law, the provision of electronic communications networks or services requires a general authorisation. Companies that intend to offer networks and services of electronic communications must submit a short description to the regulator, ANACOM, of the network or service they wish to initiate, and give notice of the date on which the activity is expected to commence, further submitting any details necessary for their full identification under terms to be defined by ANACOM. Once that notification is made, undertakings may immediately commence the activity, subject to the limitations resulting from the allocation of rights to use frequencies and numbers.

Television broadcasting

The legal framework for television broadcasting is based on the Television Act,[8] which governs access to and the exercise of television activity. The main regulatory authority for such activity is the Portuguese Regulatory Authority for the Media.

The Television Act establishes that channel licences are granted through a public tender, and lays down restrictions regarding minimum capital requirements and the ownership of capital (in particular regarding political associations and trade unions, among others).

Air transport

Portuguese law does not impose any specific restrictions on foreigners or foreign investments in air transport matters. Most mandatory requirements and procedures are established in Regulation (EC) No. 1008/2008 of the European Parliament and of the Council of 28 September 2008 on common rules for the operation of air services in the Community. For an undertaking to be granted an operating licence by the competent licensing authority (in Portugal, the ANAC, pursuant to Decree-Law 40/2015 of 16 March), EU Member States or nationals of EU Member States must own more than 50 per cent of the undertaking and effectively control it, directly or indirectly, through one or more intermediate undertakings, except as otherwise established in an agreement with a third country to which the European Union is a party.

Restricted activities

In general, foreign and domestic companies are free to invest in any industry. However, there may be specific requirements when performing activities for the public administration sector, such as winning a bid for a concession contract.

Therefore, private firms, except when licensed by a public entity through an administrative contract, are prohibited from directly carrying out the following economic activities:

- *a* collection, treatment and distribution of drinking water and disposal of urban wastewater, both through fixed networks; and solid waste collection and treatment in the case of municipal and multi-municipal systems;
- *b* rail transportation operated for public service;
- *c* operation of seaports; and
- *d* exploitation of natural resources of the subsoil or that may be considered part of the public domain.

Similarly, foreign investment projects must be compatible with specific legal requirements if they could in any way potentially affect public policy, or safety or health matters.

Projects of this nature require an assessment of compliance with statutory requirements and preconditions established under Portuguese law.

Included in this category are activities concerning the production of weapons, munitions and war materials, or those that involve the exercise of public authority. Such activities must comply with legally mandatory conditions and requirements, and thus require specific licences. Access conditions and the pursuit of commerce and industry of goods and military technology are regulated by Law 49/2009 of 5 August, namely the conditions of

8 Law 27/2007 of 30 July, implementing Council Directive 89/552/EEC – 'Television without Frontiers', as amended.

access to trading activities (in addition to the purchase, sale and lease activities of any of its contractual forms, import, export, re-export activities or flows of military goods and technologies, as well as broker-related business) and industry (research, planning, testing, manufacturing, assembly, repair, modification, maintenance and demilitarisation of military goods or technology) of military goods and technologies, as well as military activities themselves, either by enterprises and individuals based in Portugal, or qualified entities in other EU Member States.

Non-European investment in national strategic assets – those in connection with the main infrastructures and assets related to defence and national security, or to the basic energy, transportation and communication services – may have to comply with the Strategic Assets Special Framework.[9]

The Strategic Assets Special Framework sets out some restrictions that specifically apply to entities from outside the European Union and the European Economic Area (Foreign Investors) that intend to acquire direct or indirect control (Control) over assets in specific sectors of the economy: main infrastructures and assets related to defence, national security, energy, transportation and communication services (Strategic Assets).

According to the framework set out in the Strategic Assets Special Framework, the Portuguese Council of Ministers, following a proposal by the Minister overseeing the sector to which the relevant Strategic Asset pertains (the Sector Minister), may oppose the conclusion of a transaction in relation to a Strategic Asset in the event that it results in the direct or indirect acquisition of control of that Strategic Asset by a Foreign Investor and that circumstance poses a real and severe threat to national security or the provision of basic services considered fundamental to the country. The procedure *ex officio* for clearing the acquisition of Control by a Foreign Investor over a Strategic Asset is outlined below.

a Within 30 calendar days of the execution date of the relevant agreement (or other legal instrument, as applicable) pursuant to which the Foreign Investor will directly or indirectly acquire Control over a Strategic Asset, or of the date the transaction became public knowledge, if later, the Sector Minister may open an assessment procedure to determine the risk that the acquisition may pose to national security or the provision of basic services considered fundamental to the country.

b When the procedure referred to in point a is opened, the Foreign Investor is legally obliged to provide all information and documentation requested by the Sector Minister. The Minister in charge of foreign affairs and the Minister in charge of national and homeland security are immediately notified of the opening of the procedure.

c Within 60 calendar days of delivery by the Foreign Investor of the information or documentation requested by the Sector Minister, the Council of Ministers may oppose completion of the transaction envisaged by the Foreign Investor.

d If the Council of Ministers opposes completion of the transaction envisaged by the Foreign Investor, the legal instruments underlying the transaction, and any subsequent acts related thereto, including transfer of ownership of the Strategic Asset, are null and void.

e The decision by the Council of Ministers to oppose completion of the transaction is subject to appeal by the Foreign Investor.

9 Decree-Law 138/2014 of 15 September.

In addition to the procedure *ex officio* described above, which is triggered by the Sector Minister, the Foreign Investor may, on its own initiative, request confirmation from the Sector Minister that the envisaged transaction will not be opposed by the Council of Ministers. If the request for confirmation is not answered within 30 days, the Strategic Assets Special Framework sets out that tacit confirmation is given. The request for confirmation must be accompanied by a description, by the Foreign Investor, of the terms and conditions of the intended transaction involving the acquisition of Control over the Strategic Asset.

The real and severe threat to national security or the provision of basic services considered fundamental to the country is asserted exclusively by the following criteria:

a the physical security and the integrity of the relevant Strategic Asset;

b the permanent availability and operability of the relevant Strategic Asset, as well as its ability to fully comply with its obligations, in particular the functions of public service that are the responsibility of the entities that control them, in the terms prescribed by law;

c the continuity, regularity and quality of the services of public interest to be provided by the person or company who controls the relevant Strategic Asset; and

d conservation of the confidentiality, imposed by law or public contract, of the data obtained during the course of activity by those who control the relevant Strategic Asset and of the technological resources required for management of the relevant Strategic Asset.

Moreover, the acquisition by a Foreign Investor of Control of a Strategic Asset is considered to be potentially capable of representing a threat to national and homeland security or to the provision of basic services considered to be fundamental for the country, whenever:

a there is serious evidence, based on objective factors, of the existence of a connection between the purchaser and third countries that:
- does not observe the principles of the rule of law;
- represents a risk to the international community as a result of the nature of its alliances;
- maintains relations with criminal or terrorist organisations or with persons associated with such organisations, taking into account the official positions of the European Union in these matters, if any;
- where the purchaser has used, in the past, a controlling shareholding held over other assets with the purpose of creating serious difficulties in the regular provision of essential public services in the country where it was located or in neighbouring countries; or
- does not ensure that neither the allocation of the assets to its main function, nor their reversion at termination of the corresponding concession agreements, if applicable, in particular considering the absence of appropriate contractual provisions for said purpose; or

b the relevant transaction alters the function of the relevant Strategic Asset, threatening the permanent availability and operability of the Strategic Asset to comply with its applicable obligations, in particular the functions of public service, in the terms prescribed by law.

III TYPICAL TRANSACTIONAL STRUCTURES

i General environment

In view of the prohibition against discrimination based on nationality, when setting up a transactional structure in Portugal, there is no need to involve a domestic partner and there are no specific obligations for foreign investors; the treatment of foreign and domestic investment in Portugal is identical.

In addition to enjoying the same conditions and rights as domestic companies, foreign companies are liable for the same taxes and must also satisfy social security payment deadlines.

Regarding exchange control and currency regulations, the Treaty on the Function of the European Union establishes the free movement of capital within the European Union and therefore, as a rule, all restrictions on capital movements and payments between EU Member States are prohibited. There are no exchange controls or currency regulations affecting inbound or outbound investment, the repatriation of income, capital or dividends, the holding of currency accounts or the settlement of currency trading transactions. However, there are separate restrictions relating to the provision of funds or dealing with the assets of certain individuals and entities (e.g., entities linked to terrorism and recognised terrorist organisations).

ii Setting up a business in Portugal

Foreign investors typically choose a transaction structure that allows them to directly invest in Portugal. The two most important structures involve the incorporation or acquisition of a subsidiary or the establishment of a branch. The choice between the two options is determined primarily on the basis of commercial reasons, given that the opening and registration costs involved, as well as the tax and accounting duties, are generally similar.

A subsidiary is an independent legal entity that may be incorporated under any of the structures established under Portuguese law.

The most frequently used structures are limited liability companies and public limited companies. Both limit the shareholders' liability for the company's obligations to the amount invested as share capital. A foreign investor's choice between a limited liability company and a public limited company primarily depends on the simplicity of the corporate and management structure, the investment to be made as share capital and any confidentiality issues surrounding shareholdings in the company.

The process of incorporating a company in Portugal was recently amended to simplify the process. A company may be set up by means of a private document signed by the shareholders whose signatures are certified by a notary or a lawyer, unless a more formal instrument is required to transfer the assets brought into the company (in which case a notarial deed must be executed). Registration with the Commercial Registry takes only a few days.

Establishing a branch

Any foreign corporation seeking to carry out activities in Portugal for a period longer than one year must arrange permanent representation in Portugal. If the activity has minimum material substance, that representation may be carried out through a branch. The branch is not deemed an autonomous legal entity and, consequently, the foreign company will be liable for all actions carried out by its local branch. The branch must have a representative with general managerial powers and be registered with the Commercial Registry.

iii Corporate law residency requirements

Under Portuguese law, a tax identification number is mandatory for both natural and legal persons, whether domestic or foreign, who hold obligations or intend to exercise their rights in relation to the tax authorities pursuant to Decree-Law 14/2013 of 28 January. A tax identification number is obtained by filing specific documentation with the tax authorities regarding residency in the country of origin and, in certain cases, by appointing a representative.

No tax issue should arise from a non-Portuguese resident's application for a Portuguese taxpayer number. In particular, obtaining a Portuguese taxpayer number does not imply that the non-resident individual will be taxed in Portugal as a Portuguese resident taxpayer, or that the individuals will be subject to Portuguese income tax as a non-resident on income obtained abroad; they will only be taxed in Portugal on income considered to have been obtained within Portuguese territory, if and when applicable.

IV REVIEW PROCEDURE

According to Portuguese law, there are thresholds for notification and review, and special situations regarding the regimes governing banking and other financial institutions, insurance and television broadcasting.

i Banking and other financial institutions

Change of control and takeover bids

The acquisition of a qualified holding in a Portuguese credit institution triggers disclosure duties whenever legally established thresholds are reached.[10]

Under Portuguese law, any natural or legal person (whether domestic or foreign) who intends to directly or indirectly hold or increase a qualified holding in a Portuguese credit institution must give prior notice to the Bank of Portugal of that intention.

A qualified holding in a Portuguese credit institution is any direct or indirect holding (as defined by law) of at least 10 per cent of the share capital or voting rights of the entity in which the stake is held, or a stake that allows the holder to exercise significant influence over the management of that entity.

Prior notice must also be given to the Bank of Portugal regarding actions that involve an increase in a qualified holding whenever the proportion of the voting rights or share capital held would reach or exceed any of the statutory limits (10 per cent, 20 per cent, one-third or 50 per cent), or when the credit institution becomes a subsidiary of the acquiring company.

If the action involves an increase in a qualified holding to above the 50 per cent limit, the Bank of Portugal shall forward the notification and a proposal for a decision to oppose, or not to oppose, the acquisition to the European Central Bank, at least 10 working days before the expiry of the relevant assessment period. The European Central Bank shall then decide whether to oppose or not to oppose to the acquisition.

Actions or events that result in the acquisition or increase of a holding representing at least 5 per cent of the share capital or the voting rights of a credit institution must also be notified to the Bank of Portugal within 15 days of their occurrence. The Bank of Portugal is obliged to inform the party concerned if the holding is to be deemed a qualified holding.

10 Applicable merger control rules must also be observed.

Additionally, as with any lasting change of control over an undertaking with a market presence for competition purposes that meets any of the notification thresholds set out in the Portuguese Competition Act[11] and the EC Merger Regulation,[12] the acquisition of control over a credit institution or its assets[13] is subject to prior merger control review by the Portuguese Competition Authority (AdC)[14] or the EC, depending on the scale of the change of control (see Section VI.ii).

Notifications and approvals

The incorporation of a Portuguese credit institution is subject to authorisation granted by the Bank of Portugal.

Authorisation will be granted by the Ministry of Finance if the matter involves establishing within Portuguese territory a branch of a credit institution whose registered office is located in a non-EU Member State (although that power may be delegated to the Bank of Portugal).

In addition, if from a competition standpoint the transaction is a concentration and meets the relevant merger control notification thresholds, it is mandatory to notify the AdC or the EC and obtain clearance before implementing the transaction (see Section VI.ii).

Voting caps

The legal framework for credit institutions and financial companies has been amended by Decree-Law 20/2016 of 20 April, which determined that it is the duty of credit institutions whose by-laws include voting caps, to vote on their maintenance or removal every five years to avoid the relevant voting cap being removed ope legis. In the event that removal of the voting cap is proposed by the board of directors, the relevant resolution of the shareholders' meeting is subject neither to the voting cap nor to special quorum requirements set out in the by-laws for removal of the voting cap.

ii Insurance

Change of control and takeover bids

The acquisition of a qualified holding in a Portuguese insurance undertaking triggers disclosure duties whenever the established thresholds are reached.

Any natural or legal person (whether domestic or foreign) who intends to hold or increase, directly or indirectly (as defined by law), a qualified holding in a Portuguese insurance undertaking must give prior notice to the ASF of its intention.

A qualified holding in a Portuguese insurance undertaking is a direct or indirect holding (as defined by law) of at least 10 per cent of the share capital or voting rights of the entity in which a stake is held, or a stake that allows the holder to exercise significant influence over the management of that entity.

11 Article 37(1) of Law No. 19/2012 of 8 May 2012.

12 Council Regulation (EC) No. 139/2004 of 20 January 2004 on the control of concentrations between undertakings.

13 The acquisition of assets will only constitute a concentration if the assets constitute an activity resulting in a presence on a market to which a turnover can be attributed.

14 Autoridade da Concorrência.

Prior notice must also be given to the ASF regarding actions that involve an increase in a qualified holding whenever the proportion of the voting rights or share capital held would reach, exceed or fall below any of the thresholds (20 per cent, one-third or 50 per cent), or when the insurance undertaking becomes a subsidiary of the acquiring company. Whenever the proportion of the voting rights or share capital reaches, exceeds or falls below 10 per cent, notice must be provided to the ASF within 15 days of the triggering event.

Furthermore, as with undertakings in the banking sector, a lasting change in the control structure of an insurance undertaking is subject to prior merger control review, provided that the concentration meets the applicable notification thresholds (see Section VI.ii).

Notifications and approvals

The incorporation of a Portuguese insurance undertaking is subject to the ASF's authorisation. The authorisation covers the entire EU territory.

In the event of establishing a branch in Portuguese territory of an insurance undertaking that has a registered office in a non-EU Member State[15], the Ministry of Finance will grant the authorisation (or that power will be delegated to the ASF). An authorised agent must be appointed.

If the concentration meets the merger control criteria, it is also mandatory to notify the operation to the AdC or the EC (see Section VI.ii).

iii Television broadcasting

The Television Act sets out the obligation of transparency[16] of broadcasters' property and management by requiring that the shareholders of a broadcaster, the composition of members of a broadcaster's administration and management, and identification of the people in charge of the orientation and supervision of a broadcaster's contents, be published on the broadcaster's website and updated during the seven days following the occurrence of the corresponding relevant fact; that is, whenever[17]:

a a shareholder reaches or exceeds 5, 10, 20, 30, 40 or 50 per cent of its share capital or voting rights;

b a shareholder reduces its shareholding to a value that is less than each of the above percentages;

c a change of control of the broadcaster occurs; or

d a modification occurs in the composition of the members of administration or management, or in the structure of the orientation and supervision of its contents.

15 Special rules apply to the establishment in Portugal of a branch of an insurance undertaking that has its registered offices in Switzerland.

16 Similar rules also exist for radio and written press activities.

17 Applicable merger control rules must also be observed.

V FOREIGN INVESTOR PROTECTION

Concerning the protection of foreign investors, arrangements for the reciprocal protection and promotion of investments, which are bilateral instruments containing binding measures to create more favourable conditions for investments by investors of one signatory state in the territory of another, ensure more favourable treatment of investors and guarantee complete security and protection of investments already made, on a reciprocal basis.

According to the agency for investment and external commerce, AICEP Portugal Global – Trade and Investment Agency, the arrangements cover four major areas:

a entry of investments;
b treatment of investments;
c expropriation and losses realised on investments; and
d conflict resolution.[18]

Investment in Portugal and the globalisation of the Portuguese economy are supported by a set of tools offered through the National Strategic Reference Framework for the next planning period of EU-level economic and social cohesion funds.

In general, incentive mechanisms usually comprise a set of repayable incentives (fixed-term interest-free loans). A repayable incentive may be replaced by interest-rate benefits, provided that they are stipulated in a call for tenders, or converted into a non-repayable incentive, depending on the performance evaluation of a project, as set out in applicable incentive rules, up to a maximum of a certain percentage of incentives to be granted. In certain cases, or for certain expense categories, incentives may be allocated directly in the form of non-repayable incentives (grants).[19]

Incentives are set out in investment agreements with the government in return for making investments and achieving specific contractually stipulated targets.

Securing incentives is generally subject to a process of submitting offers in competitive bids, in which projects are evaluated and selected in decreasing order of merit up to a budget limit set in the call for tenders, according to a set of selection criteria and based on a calculation method defined in the call for tenders.

Certain projects, in view of their strategic importance (including the size of the investment), may bypass the bidding process. Thus, for example, special-regime projects are exempt from a competitive bid. Special-regime projects may also benefit from a more flexible system for investment-contract negotiations, either in terms of setting goals or, in respect of specific limits, setting the amount and type of incentives to be granted.

18 More information about Portugal's Agreements for the Reciprocal Protection and Promotion of Investments can be found at www.portugalglobal.pt/EN/InvestInPortugal/internationalagreements/Paginas/InternationalAgreementsAgreementsfortheReciprocalProtectionandPromotionofInvestments.aspx.

19 Incentive mechanisms promoted by the state should also comply with the applicable EU state aid rules.

VI OTHER STRATEGIC CONSIDERATIONS

i Securities law

Companies operating in Portugal or planning to enter the Portuguese market must take into consideration that the acquisition of a stake in a Portuguese company is subject to specific rules regarding disclosure of the stake held or, to some extent, to the duty to launch a mandatory takeover.[20]

Securities code

Disclosure duties

Any legal or natural person who acquires a direct or indirect holding that, in aggregate or with the shares already held, reaches, exceeds or falls below 2 per cent, 5 per cent, 10 per cent, 15 per cent, 20 per cent, 25 per cent, one-third, 50 per cent, two-thirds or 90 per cent of the voting rights attached to the shares of a public company[21] is required to notify the Portuguese Securities Exchange Commission (CMVM) and the issuer of that fact.

The 2 per cent, 5 per cent, 15 per cent and 25 per cent thresholds apply only to qualified holdings in public companies that have their shares or other equity securities listed in regulated markets located or operating in Portugal.

The Securities Code requires the aggregation of voting rights attached to shares held directly by a shareholder and those held by certain related parties. The shareholder's notification to the CMVM and the issuer must include details of the voting rights held by third parties that have been attributed to that shareholder.

Mandatory takeovers

A legal or natural person who acquires more than one-third or half of the share capital with voting rights of a Portuguese public company must make an offer to acquire all the remaining shares and other securities issued by that company that grant rights to subscribe for or acquire shares (e.g., subscription rights issued in the context of a share capital increase). The launch of an offer is not required when, despite exceeding the one-third threshold, the holder proves to the CMVM that it neither has control of the target company nor is involved with it in a group relationship. In addition, the obligation to make an offer may be waived by the CMVM if the thresholds are reached in the context of:

a a takeover bid for all the shares of the relevant company, as long as the rules relating to the consideration to be exchanged for the shares are satisfied;

b a financial restructuring plan within the scope of statutory reorganisation measures; or

c a merger.

20 As previously mentioned, applicable merger control rules must also be observed.

21 Under Portuguese law, the following qualify as public companies: (1) companies incorporated through an initial public offer specifically made to individuals or entities resident or established in Portugal; (2) companies that have publicly offered issued shares or other equity securities to individuals or entities resident or established in Portugal; (3) companies that have issued shares or other equity securities that are or have been listed in a regulated market located or operating in Portugal; (4) companies that have issued shares sold or exchanged, in excess of 10 per cent of their share capital, via a public offer to individuals or entities resident or established in Portugal; and (5) companies incorporated as the result of a split or merger of a public company.

ii Antitrust: merger control rules

As mentioned earlier, companies operating in Portugal or planning to enter the Portuguese market should take into consideration that a concentration between companies active in Portugal may be subject to mandatory merger control review by the corresponding competition authorities. This may entail an obligation to notify the AdC, and therefore may also be subject to a suspension obligation (the 'standstill obligation')[22] until the operation is authorised. For that reason, merger control has a very significant role in establishing the expected timetable for a transaction and, from a contractual perspective, requires the inclusion of specific provisions regarding the possibility that the transaction may be subject to prior authorisation from the competition authorities.

For merger control purposes, both EU and domestic rules define a concentration as a transaction that implies modification of the control structure of the company on a long-term basis through:

a the merger of two independent companies;
b the acquisition of partial or sole control over a company or various companies, by any legal means or legal contract; or
c the creation of a joint venture and, in general, the acquisition of joint control over a company if the latter performs all the functions of an autonomous economic entity.

From a practical perspective, the competition authorities (including the AdC) have considered a wide range of transactions as concentrations for merger control purposes. Most of these transactions involve acquisitions of majority stakes in certain companies. However, the concept of 'concentration' also applies to other operations, such as the acquisition of assets (e.g., factories, commercial premises and even intellectual property), provided that these assets constitute an activity resulting in a market presence to which a turnover can be attributed, and even to agreements that do not involve a change of ownership. Furthermore, a change in the nature of control, from sole control to joint control or vice versa, is also relevant for merger control purposes and may constitute a concentration for competition purposes.

As in the EU, the Portuguese merger control system relies on the concept of 'control'. Only transactions that entail a change in the structure of control of an undertaking will constitute a concentration subject to merger control rules. In this regard, it is important to take into account that the veto rights conferred to minority shareholders may grant them control under the applicable merger control regulations. For instance, this will occur if they refer to:

a approval of the company's budget;
b approval of the business plan;
c appointment of managers and directors;
d appointment of the majority of the members of the board; or
e decisions on strategic investments.

Once the existence of a concentration is established, the Portuguese Competition Act (unlike the EU Merger Regulation and the laws of most Member States – except for Spain) establishes alternative turnover and market share notification thresholds.

22 Significant fines could be imposed – up to 10 per cent of the worldwide turnover of the company – and even the validity of the agreement challenged, if the suspension obligation is not met.

Therefore, in short, undertakings must notify a concentration if any of the following conditions are met:

a the combined aggregate turnover in Portugal of all the undertakings exceeds €100 million, provided that the individual turnover in Portugal of each of at least two of the undertakings concerned exceeds €5 million;

b the concentration results in the acquisition, creation or increase of a market share in Portugal equal to or greater than 50 per cent; or

c the concentration results in the acquisition, creation or increase of a market share in Portugal equal to or greater than 30 per cent and less than 50 per cent, provided that the individual turnover in Portugal of at least two of the undertakings concerned exceeds €5 million.

If a transaction has an EU dimension, the EC will have exclusive jurisdiction over the merger and, in principle, the Portuguese merger control procedure will not apply. In this regard, the EU Merger Regulation establishes the thresholds[23] that trigger the obligation to notify the EC. Nevertheless, the issue must be analysed in each case depending on the market affected by the transaction.

In this context, when a transaction qualifies as a concentration, from a competition standpoint, and meets one of the notification thresholds, it will be subject to both the prior notification obligation and the standstill obligation. The parties are then obliged to notify the AdC or the EC and are obliged to suspend the implementation of the concentration until the AdC has issued a clearance decision and until the real closing of the operation. In exceptional circumstances, the AdC, like the EC, can grant a waiver from the standstill obligation in cases where the acquirer can demonstrate that serious harm will arise from the suspension and that no competition law concerns are expected.[24] Derogation of this kind is relatively rare and is normally only considered in cases where the target is facing serious financial and structural difficulties that threaten its viability.

Otherwise, a breach of these obligations (notification and standstill), which qualifies as 'gun-jumping', entails a fine of up to 10 per cent of the turnover of the undertaking in breach. Under the Portuguese Competition Act, members of the board of directors of the infringing undertakings, as well as any individuals responsible for their management or supervision, could also be sanctioned for gun-jumping, especially when directly involved in an unlawful decision not to file a notification or to breach a standstill obligation. The fine imposed on individuals cannot exceed 10 per cent of the individual's annual income deriving from the exercise of their functions in the undertaking concerned.

Additionally, over the past few years, there have been wide-ranging discussions about the adequacy of the existing merger control tools in the EU, and worldwide, to capture and sufficiently assess the concentrations that could significantly impede effective competition. These discussions are starting to materialise at the EU level with direct impact in Portugal. For instance, the new guidance issued by the EC on the application of the referral mechanism

23 A concentration has an EU dimension if the combined aggregate worldwide turnover of all the undertakings concerned is more than €5 billion, and the aggregate EU-wide turnover of each of at least two of the undertakings concerned is more than €250 million, unless each of the undertakings concerned achieves more than two-thirds of their aggregate EU-wide turnover within one and the same Member State.

24 Article 40(3) of the Portuguese Competition Act.

set out in Article 22 of the EU merger regulation,[25] aims at ensuring the review by the EC, through referrals by Member States, of certain transactions that otherwise would escape merger control by falling below the relevant and existing thresholds. Even if the AdC has not used, to date, this mechanism, this new position has, necessarily, a relevant impact at national level, requiring the careful assessment of any transaction that, although not fulfilling the national or EU notification thresholds, could justify being subject to merger control. This could end up introducing more uncertainty for businesses, increased costs, potential delays to closing and increased burdens in the drafting of the transaction documents.

iii Anti-commercial bribery law

Various acts are criminalised by the Portuguese Criminal Code to prevent corruption in both the public and private sectors.

The concepts of 'corruption' and 'bribery' can have different connotations in different countries and are often used interchangeably. For the purposes of this summary, the concept of 'corruption' is used to describe the broader phenomenon of dishonest conduct. As such, it includes the narrower concept of 'bribery', understood as the act of providing (or receiving) an advantage to obtain (or perform) a favoured treatment.

The Penal Code distinguishes between acts of passive bribery (generally, the act of receiving an advantage in exchange for a certain action) and active bribery (providing an advantage to someone to receive favourable treatment) committed in both the public and private sectors.

VII CURRENT DEVELOPMENTS

As mentioned above, the Recovery Plan aims to reactivate the Portuguese economy and a set of guidelines and recommendations are being established to achieve this.

With a focus on attracting foreign investment, one of the main ideas is to transform Portugal into a 'laboratory' capable of developing and testing new technological solutions for issues arising in relation to cities, networks, energy, resource management, mobility and waste management and treatment, all of which would be undertaken in liaison with Portuguese companies.

Another way of attracting foreign investment would be through the external promotion of some of Portugal's key assets, together with the creation of international consortiums to develop these resources:

a mineral resources, such as lithium, cobalt, nickel, niobium, tantalum and rare earths – these minerals are crucial to the energy transition, both for the manufacture of new batteries and for the high-precision electronics industry;

b the sea and in particular the Portuguese exclusive economic zone, which extends to the outer limit of the continental shelf – the sea represents a golden opportunity for Portugal because crusts of nickel, cobalt and manganese are found on the seabed to the north of the Azores archipelago (the crusts are the easiest to extract); to the south, the archipelago has one of the biggest deposits of polymetallic sulphides in the world, containing galena (from which lead is extracted), calcopirite (from which copper is

25 Available at https://ec.europa.eu/competition/consultations/2021_merger_control/guidance_article_22_referrals.pdf.

extracted) and sphalerite (from which zinc is extracted); and the archipelago is also crossed by the Mid-Atlantic Ridge system, which includes a series of hydrothermal fields with streams of gold, copper, silver, zinc and lead; and

c hydrothermal fields – these fields offer unique biological resources, produced in the depths of the ocean utilising energy from the chemical synthesis of hydrogen sulphides (lethal to most species other than those specific to this environment), and which are of interest to the health and pharmaceutical industries.

Moreover, in line with the EU's European Green Deal goals, one of Portugal's key strategies for obtaining foreign investment has been its focus on the renewable energy industry sector, where it has shown itself to be one of the best countries in which to invest.

Appendix 1

ABOUT THE AUTHORS

TÂNIA LUÍSA FARIA

Uría Menéndez – Proença de Carvalho

Tânia Luísa Faria is counsel and head of the competition and European Union practice area in the Lisbon office of Uría Menéndez – Proença de Carvalho. She graduated from the University of Lisbon faculty of law and pursued her PhD, master's degree and postgraduate studies at the same university.

Tânia joined the firm in 2004, having worked in both the Lisbon and the Brussels offices. Her practice area is EU and Portuguese competition law, covering, in particular, merger control issues, cartels and abuses of dominant position. She acts for clients in various sectors, including financial institutions, telecommunications and media, air transport, energy, retail distribution and other industry sectors. She regularly advises leading multinational companies in the pharmaceutical sector, including in relation to proceedings before the European Commission, the Portuguese competition authorities, the Court of Justice of the European Union and the Portuguese Competition, Regulation and Supervision Court.

Tânia is also a teaching assistant at the University of Lisbon faculty of law.

MIGUEL STOKES

Uría Menéndez – Proença de Carvalho

Miguel Stokes joined the Lisbon office of Uría Menéndez – Proença de Carvalho in 2009 and has been a senior associate at the firm since 2018. Between July 2015 and December 2016, he was assigned to the Uría Menéndez London office.

Miguel has more than nine years of professional experience in advising industrial and financial clients in the areas of mergers and acquisitions and capital markets.

MARGOT LOPES MARTINS

Uría Menéndez – Proença de Carvalho

Margot Lopes Martins is a junior associate in the Lisbon office of Uría Menéndez – Proença de Carvalho. She joined the firm in July 2019. Her practice area is EU and Portuguese competition law.

Margot graduated with a Bachelor of Laws from the University of Nice (France) and with an LLM joint degree in European legal practice integrated studies from the University of Lisbon (Portugal), the University of Rouen (France) and Mykolas Romeris University in Vilnius (Lithuania). She also has a postgraduate degree in EU competition law from the King's College London, and postgraduate degrees in competition law and regulation, and in tax law, both from the University of Lisbon faculty of law.

INÊS DRAGO

Uría Menéndez – Proença de Carvalho

Inês Drago is a junior associate in the litigation practice area at Uría Menéndez – Proença de Carvalho in Lisbon.

Inês graduated in law from the University of Lisbon faculty of law and obtained her master's degree in law and business from the Catholic University of Portugal. She also has a postgraduate diploma in commercial litigation from the University of Lisbon.

URÍA MENÉNDEZ – PROENÇA DE CARVALHO

Edifício Rodrigo Uría
Praça Marquês de Pombal, No. 12
1250-162 Lisbon
Portugal
Tel: +351 210 308 600
Fax: +351 210 308 601
tanialuisa.faria@uria.com
miguel.stokes@uria.com
margot.martins@uria.com
ines.drago@uria.com
www.uria.com

an LBR business

ISBN 978-1-83862-779-9