



Mergers & Acquisitions

in 58 jurisdictions worldwide

2009

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Portugal

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1 Form

How may businesses combine?

The acquisition of all or part of the capital of a privately or publicly traded company (the target company) by another (the acquiring company), can be made through the purchase of the shares of the target company, usually aiming at taking control of the target company. If the target company is a publicly traded company its acquisition is usually done through a public offer for shares. Conversely, when the target company is a privately traded company its acquisition is usually documented and executed through a private share purchase agreement. In the share purchase agreement, most commonly subject to conditions precedent and/or to closing requirements, the vendor of the shares will typically limit its liability towards the purchaser. Full exclusion of liability is not admissible under the law. The financing of a company purchase transaction can be done through the use of equity, debt or a combination of both. Subject to certain relevant statutory restrictions, leveraged buy-out (LBO) transactions are admissible.

The acquisition of a business or a set of businesses of a company as ongoing concerns is an alternative to the acquisition of the shares in the company. This type of business combination might be preferred by purchasers and vendors especially if the target company is involved in a set of different or separable activities.

The merger of companies, consisting generally of the combination of two or more companies into one, can be done either through the formation of a new company to which the merged companies transfer their assets and liabilities (the merger-concentration) or through the global transfer of the assets and liabilities of one or more companies to another (the merger-incorporation). Beyond the allocation to shareholders of shares of the new company or the acquiring company, the shareholders of the merged companies or the acquired company can receive cash values not exceeding the equivalent to 10 per cent of the nominal value of the shares allocated as a result of the merger.

The setting of corporate joint ventures and entering into non-corporate joint ventures or consortium contracts are also possible.

2 Statutes and regulations

What are the main laws and regulations governing business combinations?

The main Portuguese laws and regulations governing business combinations are:

- the Civil Code – regulates in general the private law capacity, formal and especially contractual aspects and concerns of business combination transactions;
- the Companies Code – regulates commercial companies and most non-commercial companies from their incorporation to their

dissolution and winding up, including statutory amendments, mergers, scissions and changes of corporate form, covering also the regulation of some issues relating to groups of companies;

- the Commercial Code – enacted in 1888 and having been considerably narrowed and modified since, it still regulates a set of aspects relevant to the contracting of commercial business combinations;
- the Commercial Registry Code – regulates the commercial registration requirements for some types of business combinations, including mergers and cross-border mergers;
- the Securities Code – regulates the legal aspects of securities, such as shares, bonds or equity instruments, and the public offers relating thereto. Regulatory instruments approved of by the Securities Market Commission (Comissão do Mercado de Valores Mobiliários or CMVM) are also applicable to such matters (as well as to the corporate governance rules and recommendations for publicly traded companies);
- the Antitrust and Competition Act – regulates the concentrations resulting from mergers or acquisitions of control of all or parts of one or more companies, excluding the acquisition of shareholdings or assets under the terms of a special process of corporate rescue or insolvency, the acquisition of a shareholding merely as a guarantee and the acquisition by credit entities of shareholdings in non-financial companies when such acquisition is not covered by the prohibition provided for in the act regulating credit entities;
- the Employment Code – regulates labour relations and workers' rights in the case of a merger, acquisition, assignment or transfer of holding of a company or business;
- the Insolvency and Enterprise Rescue Code – regulates the aspects related to the insolvency and judicial rescue proceedings of companies. Separate legislation regulates non-judicial methods to restructure companies in economic and financial difficulties;
- taxation statutes such as the Corporate Income Tax Code, the Tax Incentive Act, the VAT Code and the Stamp Tax Code are most likely to be of major relevance when considering and structuring a business combination in Portugal; and
- Decree-Law No. 231/81, of 28 July – regulates consortium contracts.

When it comes to business combinations involving a business directly or indirectly owned, controlled or relevantly held by the government or by a local public authority, a set of specific and stringent public enterprise rules and regulations are likely to apply.

Depending on the economic sector at stake, it is possible that specific sets of more or less complex regulations apply. That is the case, among others, with sectors like banking, insurance, water treatment and supply, energy and telecommunications.

3 Governing law

What law typically governs the transaction agreements?

The general principle stated in article 41 of the Portuguese Civil Code is, subject to some bona fide restrictions, the free choice by the parties of the law applicable to a certain contract. This applies to contracts setting business combinations.

However, as to non-contractual aspects of a business combination, it is certain that some sets of domestic injunctive rules shall claim application. The regulation of matters such as the capacity and powers of each of the contracting parties is just an example. In the case of cross-border mergers, the laws of the jurisdictions of the merging companies will have to be looked at.

In practice, parties typically choose Portuguese law as the law applicable to share purchase agreements and business transfer agreements having as their objects Portuguese based companies or businesses.

When signed in Portugal, share purchase agreements and business transfer agreements very seldom call for notarisation.

4 Filings and fees

Which government or stock exchange filings are necessary in connection with a business combination? Are there stamp taxes or other government fees in connection with completing a business combination?

Business combinations involving non-public enterprise privately traded companies are not subject to filing requirements except when such business combinations are subject to notification to Portugal's Antitrust and Competition Authority (under the Antitrust and Competition Act) and, depending on the economic sector at stake, to specialised regulatory authorities (such as Portugal's Central Bank, the Insurance Authority and the Energy Sector Authority).

It is almost certain that business combinations involving a public enterprise shall be subject to some kind of government or local authority filing or permit.

Finally, business combinations involving publicly traded companies or effected through public offerings are subject to a complex filing and registration proceeding and to fees as regulated by the Securities Code and other related ancillary regulations, under the authority of Portugal's Securities Market Commission. This regime shall apply without prejudice, when applicable, to the cumulative and separate intervention of the Antitrust and Competition Authority and of a given specialised regulatory authority.

Within a business combination, it is most likely that some stamp tax shall be levied. Such cost shall, however, be material only when it comes to some forms of capital increase or to the acquisition of a business or a set of businesses of a company (as opposed to the purchase of the shares in the company). Loans for the financing of a business combination shall also bring about relevant stamp taxation.

Within a business combination, it is almost certain that some registration with the commercial registrar shall be made and therefore registration fees shall be levied.

Any other governmental fees shall be due only when a business combination involves any kind of governmental filing or control.

5 Information to be disclosed

What information needs to be made public in a business combination? Does this depend on what type of structure is used?

The information to be made public in a business combination depends on the structure adopted and on the nature of the target company.

Business combinations targeting privately traded companies usually do not require any special information disclosure (unless the purchaser itself is a publicly traded company). However in the case of mergers, the merger projects must be registered and made public to the target company's creditors prior to completion of the transaction, enabling them to oppose the contemplated merger judicially. The assignment of quotas in private limited liability companies is also subject to registration and publication requirements in the Commercial Register.

Business combinations targeting publicly traded companies or effected by way of public offerings are subject to, among other requirements, registration with the Securities Market Commission and to prior approval of a prospectus, which has to incorporate a variety of complete, true, updated, clear, objective and lawful information regarding the target company, the offer, the securities and the guarantor, if any. Listed companies have also to disclose any changes in the members of their statutory bodies, which often occur as a consequence of business combination transactions.

6 Disclosure of substantial shareholdings

What are the disclosure requirements for owners of large shareholdings in a company? Are the requirements affected if the company is a party to a business combination?

The disclosure requirements for owners of large shareholdings in a company depend on the type and nature of the target company involved in the business combination.

The members of the management body and the company's auditor of a limited liability company by shares, even if privately traded, have the duty to notify the target company of the number of shares they own as well as of any acquisition, attachment or sale of such shares within 30 days of their election or of the fact (if it occurs after the election) and in the annual report of the target company.

Also, shareholders of bearer non-registered shares must notify the target company of the number of shares they own within 30 days of the fact (and such information must be disclosed in the annual report of the target company) whenever their holdings exceed or fall below any of the following thresholds: one-tenth, a third and half.

Also a company that acquires more than 10 per cent of the share capital in another company must notify such other company of such fact and of any further acquisitions of shares of the target company.

In some industries, the acquisition of relevant shareholdings might be subject to prior notification to or approval by a given specialised authority. That is the case with the banking and insurance industries, where the acquisitions of shares is subject to prior authorisation by the Central Bank or the Insurance Authority when by way of the transaction the holding of one given party exceeds or falls below 5 per cent, 10 per cent, 20 per cent, 33 per cent or 50 per cent of the company's shares or voting rights. Moreover, the mere acquisition of a 2 per cent stake in a bank or other credit institution triggers notification requirements to the Central Bank (in this case, within 15 days after such acquisition).

Substantial shareholdings or changes in substantial shareholdings in publicly traded companies or listed companies have to be made public whenever they exceed or fall below any of the following thresholds: 10 per cent, 20 per cent, a third, half, two thirds and 90 per cent of the voting rights of the target company. In addition, listed companies are also subject to the 2 per cent, 5 per cent, 15 per cent and 25 per cent thresholds.

7 Duties of directors and controlling shareholders

What duties do the directors or managers of a company owe to the company's shareholders, creditors and other stakeholders in connection with a business combination? Do controlling shareholders have similar duties?

In the case of mergers, the directors of each of the merging companies are subject to specific duties of information to the shareholders and to creditors.

In the case of takeover bids, among several other duties, the company's directors must act fairly and in good faith, particularly as to the accuracy of the information supplied.

This is without prejudice to the general, permanent and overriding duties of care and loyalty of the company's directors established in the interest of the managed company, taking into account the long-term interests of the shareholders and the interests of other stakeholders, such as employees, clients and creditors.

Normally, no such duties would be regarded as impending over controlling shareholders (despite the existence of more recent doctrinal trends favourable to a duty of loyalty of controlling or majority shareholders towards the company or minority shareholders). However, in the case of groups of companies, a corporate controlling shareholder can issue binding instructions to the directors of a subsidiary company, in principle including instructions detrimental to the subsidiary (provided that such instructions serve the interests of the controlling shareholder or of other companies in the same group). In such circumstances, it is only normal that the corporate controlling shareholder is liable towards the creditors of the subsidiary for the subsidiary's debts and losses.

8 Approval and appraisal rights

What approval rights do shareholders have over business combinations? Do shareholders have appraisal or similar rights in business combinations?

The terms of a merger must be approved by the shareholders of the participating companies at their respective general meetings of shareholders. Approval depends in the case of limited liability companies by shares upon a majority of two thirds of the votes cast and in the case of private limited liability companies upon a majority of three quarters of the votes corresponding to the entire capital.

If the merger increases the obligations of all or of some of the shareholders, affects special rights of some shareholders or changes the proportion of shares of some shareholders in relation to others in the same company, it is also necessary to obtain the consent of the affected shareholders.

Regarding appraisal rights held by minority shareholders under business combinations the following situations may be identified where minority shareholders are entitled to sell their shares to the company or to the dominant shareholder against a consideration determined in accordance with the criteria set by law: within a domestic merger, whenever the law or the company's by-laws confer such right upon the shareholders having voted against the contemplated merger; under a takeover bid, when a company reaches or exceeds 90 per cent of the voting rights in a publicly traded company; and when a company reaches or exceeds 90 per cent of the share capital in a privately traded company.

9 Hostile transactions

What are the special considerations for unsolicited (hostile) transactions?

Friendly and hostile takeover bids are both regulated in title III of the Securities Code. From the moment it becomes aware of a decision

to launch a takeover and until finalisation or early termination of the takeover process, the management of the target company cannot perform any acts that materially affect the net equity of the target company or that affect the objectives announced by the bidder. The management may, however, look for competing bids.

Portuguese companies, in particular privately traded companies, are allowed, in advance of any possible offers, to implement certain measures aimed at preventing hostile takeover bids. For example, they may limit in their articles of association or shareholders' agreements the transfer of shares (for instance, providing for pre-emption rights) or limit to a defined ceiling the number of votes that may be held or exercised by a sole shareholder.

Portugal's Securities Market Commission has issued, in September 2007, a Corporate Governance Code, in fact a set of recommendations mainly (but not exclusively) directed at listed companies, in which the Commission expresses some views on the defensive measures that companies should or not be allowed to implement to fight hostile takeover bids. The main recommendation is that any defensive measures must abide by the interests of the company and by those of the company's shareholders. Said Code also discourages the adoption of defensive measures that, in case of change of control or in the composition of the management board, provides for automatic and material erosion in the assets of the company (poison pills).

10 Break-up fees – frustration of additional bidders

Which types of break-up and reverse break-up fees are allowed? What are the limitations on a company's ability to protect deals from third-party bidders?

Break-up fees and reverse break-up fees are allowed under Portuguese law in business combinations involving privately traded companies and are subject only to the limitations arising from the general law of contract, including the good faith principle.

The same freedom of contract observations may be made as regards a company's ability in general to protect deals from competing bidders. For example, it is usual to establish an exclusivity period for the carrying out of negotiations. One could argue that the main limitations on a company's ability to protect deals from third-party bidders derive indirectly from the duties of diligence, care and loyalty that the management of the target owe to the target company itself.

In principle financial assistance is prohibited under Portuguese law, thus making it complex to implement competing leveraged buy-out offers. In accordance with article 322 of the Companies Code, companies, either privately or publicly traded, cannot make loans or by any other means provide funds or grant security to a third party intending to buy or subscribe for shares in such companies. However, these restrictions are not applicable to transactions implemented in the ordinary course of the business of a bank or financial entity or to transactions envisaging the acquisition of shares by the personnel of the issuing company or that of a related company. In such cases, the net assets of the company may not, as a result of such admissible transactions, become lower than the aggregate amount of its statutory share capital plus non-distributable reserves.

11 Government influence

Other than through relevant competition (antitrust) regulations, or in specific industries in which business combinations are regulated, may government agencies influence or restrict the completion of business combinations including for reasons of national security?

Other than through the aforementioned sets of regulations, as a matter of law there are in general no legal grounds for the government or government agencies to influence or restrict the completion of business combinations.

However, taking into account the existing competition and specific industry regulations, as well as the considerable weight of the public sector, including that of state owned or controlled companies, financial or others, in the Portuguese economy, a de facto power to influence or restrict business combinations is normally available to government agencies.

In addition, the government, in the processes of privatisation, has retained for reasons of protection of the national interest 'golden shares' in companies regarded as strategic as is the case with Portugal Telecom (telecommunications) and Galp Energia (oil and natural gas).

A golden share, for those less familiar with the issue, is a minority shareholder stake in a company conferring upon its owner (typically the state or state-owned agencies) disproportionate rights to influence the business and activities of such company. An example is the power to veto resolutions on strategic matters for the company, such as mergers, acquisitions or changes in the bylaws of the company.

The validity of golden shares under the fundamental freedoms of the EU market has consistently been, and remains, under close discussion and scrutiny, including by the EU Court of Justice.

12 Conditional offers

What conditions to a tender offer, exchange offer or other form of business combination are allowed? In a cash acquisition, may the financing be conditional?

In accordance with and subject to the Portuguese Civil Code the parties to a transaction can subject the production of effects of such transaction or its termination to a future and uncertain event, that is to say to a condition (a very frequent condition precedent to a business combination is that contingent upon the approval of a certain transaction by the Antitrust and Competition Authority or by a specialised regulatory authority). Such freedom of contract approach applies not only to share transfers in privately traded companies and business unit transfers but also to other forms of business combination, mergers included.

However, in the case of public offers conditions are acceptable only when based upon legitimate interests of the offeror and as long as they do not affect the normal functioning of the market and their actual verification is not merely dependent upon the will of the offeror.

Conditional financing structures are allowed (although less and less advisable) in business combinations involving privately traded companies and are not feasible as far as takeover bids on publicly traded companies are concerned.

13 Minority squeeze-out

May minority stockholders be squeezed out? If so, what steps must be taken and what is the time frame for the process?

Minority shareholders of privately traded companies can be squeezed out when a company acquires 90 per cent or more of the target company's share capital. For such purpose the controlling shareholder is entitled, within six months from the date it notifies the target company of the acquisition of such 90 per cent stake (which notification has, in turn, to be effected within 30 days from the date of such acquisition), to launch a compulsory offer for the acquisition of the remaining shares. In such offer the cash or own share or bond consideration must be backed by an evaluation report made by an independent statutory auditor. The compulsory acquisition of the remaining shares shall be completed upon registration in the Commercial Register and being made public. The registration shall be effected only after the controlling shareholder has deposited the

consideration for the shares. This whole process would normally be completed within a few months only. However, in such situations litigation is likely to occur and might delay completion considerably. Out-of-court settlements are, in such circumstances, almost unavoidable.

Anyone that, following the launch of a general takeover bid over a publicly traded company, reaches or exceeds a 90 per cent holding of the target company's share capital and voting rights, may, within three months, acquire the remaining shares for a fair consideration, in cash. The controlling shareholder who chooses to go forward with such compulsory takeover should immediately publish a preliminary announcement and submit the same for registration with the Securities Market Commission. With the publication of the preliminary announcement, the controlling shareholder must deposit the consideration for the shares.

14 Cross-border transactions

How are cross-border transactions structured? Do specific laws and regulations apply to cross-border transactions?

In principle, the structuring of cross-border business combinations in Portugal does not encompass any major differences if compared to merely domestic transactions. The obvious main difference is the case of cross-border mergers. However, things will tend to be less complex as far as cross-border EU mergers are concerned with the entry into force of Law No. 19/2009, of 12 May, which implemented the EU Cross-Border Mergers Directive into the law of Portugal.

In addition, in situations where a certain transaction is significant enough to be qualified as having a European community dimension it is likely that antitrust and competition control and clearing of the transaction will be a competence of the European Commission.

Apart from such specific concerns, it is to be noted that any cross-border business combination (involving Portugal or not) typically raises the choice of law and choice of jurisdiction issues. Moreover, on capacity and authority, on non-contractual and on public policy issues, cross-border transactions call for the application of different laws and, thus, for the involvement of lawyers based on different jurisdictions.

For those fond of settling disputes with resort to arbitration, Portugal's regulation of international commercial arbitration (though not as yet based on the UNCITRAL Model Law) may be said to be modern enough to turn Portugal into an appropriate (and usually warm and pleasant) venue for international commercial arbitration.

Portugal is also a party to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

Finally, Portugal has over the last decade increased significantly the number of double tax agreements to which it is a party; tax and other incentives for inward direct investment in Portugal could prima facie be available.

15 Waiting or notification periods

Other than competition laws, what are the relevant waiting or notification periods for completing business combinations? Are companies in specific industries subject to additional regulations and statutes?

Apart from waiting or notification periods arising out of the law on competition or of regulations applicable to business combinations in specific industries, it should be said that the existence of other waiting or notification periods shall very much depend upon whether the transaction is public, thus involving waiting periods related to the intervention of the Securities Market Commission.

As to private transactions, more complex forms, such as mergers (as opposed to more straightforward share or business unit transfers, not to mention the mere joint-venture or consortium agreements), shall also entail waiting and notification periods. In the case of a merger, general meetings of shareholders should be convened to meet at least one month after the commercial registration date of the merger plan, so that they decide upon such merger plan. In this case the convening notice shall also be expressly addressed to the creditors of the companies involved, drawing their attention to the fact that, within one month after publication of the notice, they may oppose in court to the completion of the merger. If one or more creditors actually file opposition as against a certain merger, the final registration of such merger and, thus, its completion shall be stayed until the opposition is finally dismissed or withdrawn, or the opposing creditor consents upon said registration or the creditor's credit is paid or secured.

16 Tax issues

What are the basic tax issues involved in business combinations?

To start with, as a general matter, an appropriate tax due diligence to the target companies or businesses is of course to be considered. In businesses organised as groups of corporate entities (which is, most times, the case with Portuguese businesses) a close look should be taken at the transfer pricing internal guidelines, mandatory for groups of related companies.

Taking Portugal's tax regulations into account, the following might, in our view, be the most sensitive and specific tax issues to be addressed in association with each of the main forms to combine businesses in Portugal:

As regards the purchase of shares in a target company, both VAT and stamp tax exempt, a foreign investor should mainly consider to invest directly from abroad or to incorporate a Portuguese vehicle for the purpose. In such latter case, incorporating a wholly owned Portuguese holding company (an SGPS) would normally be the most sensible option as, subject to certain more or less standard conditions, any future capital gains on the sale of companies held by the SGPS would be corporate tax exempt.

Another relevant aspect is that, under article 47 of the Corporate Income Tax Code, the mere change of control of a company that is tax resident in Portugal (as well as a material change in the nature of the activities being carried out by such company) implies automatic loss of the (six-year) right of such company to offset the tax losses of any given year as against future profits. In such circumstances, any purported purchaser should consider to, prior to the signing of the transaction, have the target company applying for an authorisation from the Minister of Finance to maintain such right. A sound business reason for the transaction should, then, be sufficiently evidenced.

In cases of direct acquisition of a business or a set of businesses of a company as ongoing concerns, in principle VAT exempt, the main concern should be careful assessment of the costs associated with the transaction under the Stamp Tax Code which, in such case, could go as high as 5 per cent of the value of the transaction. Any subsequent gains on the sale of the business or businesses would, subject to some adjustments and particularities, be taxed at a 25 per cent rate.

Mergers could, in turn, benefit from a favourable rollover regime, enacted to incorporate into the Corporate Income Tax Code EU Directive No. 90/434/EEC, as subsequently amended. Moreover, as with the change of control of one company, the rights of the merged companies to offset their past tax losses as against future profits might be transferred to the new or the incorporating company under authorisation from the minister of finance, to be applied for until the end of the calendar month following the month in which registration

of the merger is filed with the Commercial Register. In such a situation, it must also be evidenced that the merger was decided upon for valid and substantial economic reasons.

17 Labour and employee benefits

What is the basic regulatory framework governing labour and employee benefits in a business combination?

The legal basis in the Portuguese legal system that governs labour relations and employees' rights in case of business combinations (whether by means of merger, share transfer, transfer of business unit or other) is currently article 285 of the Employment Code, as amended and re-enacted by Law No. 7/2009, of 12 February, which, among other issues, incorporated EU Directives No. 2001/23/EC and No. 77/187/EEC into the national legal system.

In accordance with paragraph 1 of the identified article 285, transfer, in whole or in part, under any title, of the ownership of a company or business unit, involves automatic transfer to the purchaser or transferee of the contractual position of employer in the employment contracts of the company or business unit (without change or loss of employee benefits). The employee may not, therefore, oppose to such transfer effect of the business combination. The employee may, however, in such circumstances, freely terminate the employment contract.

Together with the position of employer, the business combination brings about the transfer to the purchaser or transferee of the obligation to pay any employment related fines.

For one year after the transfer date, the transferor shall remain jointly and severally liable with the purchaser or transferee for the obligations having become due up to the transfer date.

Regarding protection extended to employees in such business combination situations, article 286 of the Employment Code imposes upon the transferor and the purchaser or transferee a duty to inform the employees or their representatives in advance about the envisaged transfer date and the reasons for the transfer, as well as about the legal, economic and social consequences of the transfer for the employees and the measures planned in relation to such employees.

Such information must be given in writing and subject to appropriate prior notice as the representatives of the employees must subsequently, but in advance of the business combination, have the opportunity to negotiate the measures to be applied to the employees following the transfer.

18 Restructuring, bankruptcy or receivership

What are the special considerations for business combinations involving a target company that is in bankruptcy or receivership or engaged in a similar restructuring?

Portugal's Insolvency and Enterprise Rescue Code clearly favours the alienation of the company as a whole as a means of addressing the insolvency challenges. In this sense, it can therefore be said that the law favours business combinations in situations of insolvency.

After taking office, the insolvency manager must entertain immediate efforts aiming at the sale of the debtor's company or of its businesses.

The sale of the company, of its businesses or of all of its assets requires the consent from the creditors' committee or, if such committee has not been appointed, from the creditors' meeting.

In addition, an intention on the part of the insolvency manager to sell the company by means of a private negotiation, as well as the identity of the purchaser and all other terms of the transaction, must be communicated to the debtor and to the creditors' committee at least 15 days in advance of the purported transaction. The court

Update and trends

The current downturn in mergers and acquisitions in Portugal is basically the result of the steep recession of the world's economy triggered by the banking crisis. The Portuguese M&A market is nowadays characterised by fewer deals, lengthier negotiations, thorough due diligence and severe restrictions on financial leverage. Nevertheless the financial crisis will create opportunities and it is likely that in the near future we will see concentrations in various economic areas mainly dictated by forced sales and restructuring processes. As companies focus in their core businesses they will as a consequence divest lateral businesses, thus generating transactional pressures and opportunities.

Law No. 19/2009, of 12 May, is the most recent significant change in the statutory framework governing business combinations. This statute that implemented EU Directives No. 2005/56/EC and No. 2007/63/EC and amended the Companies Code and the Commercial Registry Code regulates, among other issues, cross-border mergers between various types of limited liability companies governed by laws of different EU member states and the participation of employees in the cross-border merger process and in the management of the merged company. Portugal's government is currently considering the adoption of a set of legal measures designed to simplify and facilitate the carrying-out of company mergers and spin-offs especially targeted for small and medium-sized enterprises.

might order the stay of such specific sale and convene the creditors' meeting so that an authorisation for the sale is voted upon if such vote is applied for by the debtor or by a creditor or a group of creditors and the applicant satisfies the court that the sale to a different purchaser would be more advantageous to the insolvent estate.

As an aid to restructure and consolidate economic and financially distressed companies with resort to business combinations (mergers and acquisitions), the government has set up a specific incentive pro-

gramme, the System of Incentives for the Revitalisation and Modernisation of Businesses (SIRME). Applications to such programme are to be filed with a specific state agency, the IAPMEI, and their approval is a competence of the minister of economy. To access the SIRME it is a condition that the target company is in economic and financial distress and that the entity interested in the merger or acquisition of the target retains reputable financial and managerial skills.



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