The pursuit of a company's interest over the life of a company

Corporate Acquisition and Joint Ventures Commission

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National Report of Portugal

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Introduction

The typical lifecycle of a company consists of various phases, as for example, startup, growth phase, maturity (mid- to large-size privately held company), IPO and listed phase, and finally the acquisition by another company.

The various stakeholders in a company – understood in a very broad sense including equity holders, debt holders, management, employees, advisors and public – have expectations in the company. According to the stakeholder-value-theory all these expectations of the stakeholders form the company's interest.

Undoubtedly, the expectations of the various stakeholders and, therefore, the company's interest change and develop over the life cycle of the company.

The general report and the working session focus on these changes and developments, how they are reflected resp. influenced by the rules of the various jurisdictions and what the consequences are for us, the legal advisors. For efficiency reasons, the general report is limited to the developments of certain stakeholders' expectations (see A to D in the below matrix)

The following matrix provides an overview of the stakeholders (A to D) and the phases (1 to 5) that are covered by this general report. At the same time it provides an overview of the structure of this questionnaire (chapters A to D, each having sub-chapters 1 to 5). Our goal is to shed light on one or several aspects of a specific stakeholder's interests in each phase so that, as a result, the entire questionnaire provides an overview of the development of the interests of the various stakeholders over the life cycle of the company and, thus, shows the development of the company's interest as such.

	1. Startup	2. Growth	3. Maturity	4. IPO / Listed	5. Acquisition
A. Equity holders	A.1	A.2	A.3	A.4	A.5
B. Debt holders	B.1	B.2	B.3	B.4	B.5
C. Management / Employees	C.1	C.2	C.3	C.4	C.5
D. Lawyers	D.1	D.2	D.3	D.4	D.5

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A. Interest of equity holders

1. Start-up phase

In the start-up phase, an entrepreneur or third parties may wish to invest in a business idea as equity holders in a business association. In this context:

1.1 In your opinion, what is an entrepreneur's typical reasoning for setting up a specific business association? Attract investments by third parties? Avoidance of personal liability? Tax reasons? Protect IP rights and technology?

Entrepreneurs usually establish business associations for two main reasons: tax purposes and investment attraction. As regards tax purposes the lower rates of Corporate Income Tax (currently at a flat rate of 22,5% and expected to lower) versus the applicable rates for Personal Income Tax (with progressive rates up to 48% plus surtaxes, if applicable) are the main reason. Also, providing of personal guarantees and accounting transparency allows for better financing. Coupled with limited liability, these structures allow for different setups of risk exposure. These structures are also convenient for better allocation of costs/effort and/or profit on endeavours with more than one entrepreneur.

Finally, establishing a brand name, applying for grants/prizes and fulfilling legal requirements are also common reasons for the establishment of business associations.

1.2 What kind of business association structures does your jurisdiction offer to equity holders (e.g., partnerships, corporation, LLC, etc.)?

Portugal has three major types of companies – partnerships, companies (equity divided by quotas) and corporations (equity divided by shares).

- ***What are the most crucial differences between these business association structures from an equity holder's perspective?***

  Partnerships do not benefit from limited liability and have therefore fallen into disuse in face of the other two types of corporate structures, companies and corporations.

  Companies have a more personal nature than corporations and are ideal for most startups by requiring both small initial investment and low maintenance costs. Companies may have a single equity holder (quota-holder). Also, quota-holders usually have a bigger role to play on Companies opposed to shareholders in Corporations. Obstacles to transmission of equity, transparency regarding its shareholders, flexibility on the number and constitution of corporate bodies and low equity requirements allow for a quick setup of a limited liability structure with minimum investment (the minimum

equity requirement to set up one Company is € 1,00). Finally, Companies' flexible rules allow for growth by adopting some of the rules applicable to corporations.

Corporations require a minimum equity of € 50.000,00 and at least five initial shareholders (or one, if it is a Company). Also, Board of Administration and Legal Auditor/s are mandatory statutory bodies. The main role is usually played by the Administration. Corporations are heavier, more transparent structures and are consequently better at attracting third party investment and financing conditions.

- ***If statistics on the use of business association structures are available in your jurisdiction: which are the most commonly used business association structures for start-ups? Do you see a particular reason for the dominance of one specific structure?***

Despite statistics are not available, it is safe to assume that Companies are the most common corporate structure. Low cost requirements make them particularly suitable for the setup of small and medium businesses, allowing for the investment to be channeled directly to its core purpose, while also its flexible legal framework allows for growth.

As the Portuguese economy is largely comprised by small and medium-sized businesses[1] – 99,9% on 2010 as per INE's published statistics (Portuguese Statistics Institute) – it comes as no surprise that Companies are far and wide the most common business association structure. Also note that despite the overwhelming number of small businesses, their total turnover is only 60,9% of the whole economic activity.

- ***In case of a corporation or LLC (in the following we simply refer to the "company"): are there any equity instruments other than common shares that are typically used for equity investments? Non-voting shares? Other forms of participation rights?***

Equity instruments other than shares are available. Non-voting shares, preferential shares, bearer or nominative shares and convertible bonds can be issued. Rights may be detached from shares allowing for a variety of combinations and equity solutions.

Notwithstanding, equity instruments are usually issued by Corporations rather than by Companies. Since equity in Companies is divided by quotas which are subject to registry, preemptive rights and/or prior approval by the Company/Quota-holders, and other formalities and/or transaction costs, business structures seeking finance through equity investments are usually Corporations.

Regarding equity instruments, only the Corporations have a sophisticated range of participation rights. Corporations are allowed to issue equity instruments with different

[1] In Portugal, categories of businesses are established according to the total number of employees/collaborators, total turnover, and equity held as per Recommendation n.º 96/280/CE of April 3rd, of the European Commission.

structures: common shares; preferred shares without voting rights; and preferential shares redeemable on demand, for example. Likewise, debt can be structured in convertible bonds and warrant bonds. Derivatives, such as puts and calls, can have common shares as underlying assets.

Preferred shares without voting rights provide a priority dividend that must be paid prior to the common shares. These shares offer the same rights to the shareholders as the one offered by the common shares, except the voting right.

Preferential shares redeemable on demand are the ones that provide a patrimony privilege, which can be removed by paying compensation, after a fixed term limit or by resolution of the general meeting. Redeemed shares are considered as common shares.

Convertible bonds are debt securities, but they provide the right to debtholders to convert these bonds into shares, under certain conditions that must be stated on the issuing resolution. Also, warrant bonds provide the debtholder the right to purchase shares at a strike price, so it may be a way for debtholders to enter in the company's equity.

Shareholders may acquire their shares through calls, by buying the right to purchase shares at a strike price.

There can be registered shares and bearer shares in the same company, and it is possible for the partners to choose whether the shares have a nominal value, or not.

- ***Can equity investors remain anonymous (for example by the use of bearer shares)? Anonymous towards the company, other investors, the public? In the event equity investors cannot remain anonymous when holding shares, is there any alternative scheme that can be implemented to participate on an anonymous basis (for example, silent partnership schemes)?***

Information on equity holders depends on the type of company and equity titles. Initial quota-holders and subsequent transmission of quotas are subject to registry. As such, information on Companies' quota-holders is generally available to the public.

As regards Corporations, equity holders are not public as transmissions are not subject to registry. Note, however, that Corporations are obliged to maintain a shares registry book where transmissions of shares should be duly registered. In this regard bearer shares are usually the best way to maintain anonymity.

Finally, and despite the above mentioned anonymity, the Portuguese Securities Code establishes reporting duties to the Portuguese Securities Commission regarding any shareholders that either sells/acquires a number of participations on public companies

beyond certain thresholds of its total voting rights. These reporting duties are further enhanced if the equity belongs to a listed company.

1.3 Once the entrepreneur has set up a company: what could be a typical focus of third party equity investors when they invest in a company in this phase?

- ***What could typically be the friends', family's and fools' ("FFF") focus? Helping the entrepreneur to get his / her business going?***

Typically, FFF's focus would be allowing for the providing of guarantees that would enable the entity to get access to better financing agreements. In Portugal, most of the financing is provided by banking institutions, and providing of collateral by relatives is standard practice on opening new businesses. Giving an initial financing assistance assisting with contacts and each one's expertise are also standard practice.

Alternative methods are emerging, but are still in their early stages (*business angels* and, more recently, crowdfunding).

- ***What could typically be the professional investor's focus?***

Third parties interested in becoming equity investors usually demand personal guarantees and long term commitments of the entrepreneur. Innovative business models and/or products, financial stability, level of indebtedness, potential liabilities and intellectual property are also major elements sought out by investors.

- ***If there is a difference in focus among the various equity investors, how is this typically reflected in the legal relationship (be it corporate or contract law)? Are there legal instruments that are only used by certain investors (e.g., only by professional investors)?***

When anticipating varying interests in the same company, equity holders (investors or not) usually celebrate shareholders agreements in order to anticipate possible issues. Regardless of their equity stake, professional investors tend to impose rules and qualified voting rights (such as veto right), as regards approval of budgets and other relevant financial and/or economic decisions. In addition, usually professional investors have a term and exit plan for their investments. On the contrary, FFF´s tend to be more focused on receiving their investment in a later stage or when possible and usually they do not require specific voting rights in certain matters. This is all agreed under a shareholders agreement.

2. Growth phase

In the start-up phase a business idea comes into existence: the idea is put into a business plan, a company is set up, first steps relating to production, service, distribution, sales etc. are made. The growth phase allows potential new investors to better assess not only the viability of business idea, but also the commitment of the people involved. In this phase, the new investors are usually not FFF, but professional investors. As a result, the FFF who invested in the start-up phase are faced with more demanding and skilled potential new co-investors. Against this background:

2.1 In your opinion, does the focus of the equity holders (e.g., the FFF or professional investors) shift in the growth phase (as compared to the start-up phase)?

After the initial setup and investment phase, professional equity holders usually opt-out or seek a way to capitalize on investment. Since Portugal has a small market economy investors require financial stability and/or alternative means to expand existing revenues. If the goal is expansion, the Company will soon start planning to move to foreign markets. In this phase usually FFF's get diluted and their role as a financial kick-off provider ends.

This is also the phase where entrepreneurs face unexpected legal issues and start seeking counsel. Portuguese lawyers usually try to provide viable alternatives and may also provide important network contacts.

Finally, this is a critical phase and most of the startups are either bought or terminated in this phase. Risk adversity and credit crunch usually determine that promising startups are either bought by competitors or business entities trying to gain market entry or are terminated. Other businesses remain small while trying to maintain steady revenues. Only some few actually grow into major businesses, mostly by exportation.

- ***If so, what could be a particular focus for equity holders in the growth phase? Protection from dilution?***

Since the Portuguese are risk adverse, equity dilution only happens in companies with proven outstanding performance or potential. Preventing dilution and continuing the investment on the company will be the focus of professional investors provided that the investment phase is still within the respective investment plan and/or investment portfolio or that the professional investor may still give a valuable contribution ofr the business. Even then, the most likely scenario in these cases is outright buyout. This, in turn, may allow for exponential growth or entry into previously restricted markets.

- ***In your experience, do the equity investors from the start-up phase participate in further capital rounds in the growth phase? Do they usually accept dilution? Do they usually cash out at this point in time?***

At this point, most equity investors will either cash-out or actually try to play a role in the business. As mentioned above, dilution is uncommon and will not happen in all but the most promising businesses. Thus, equity dilution is not a major concern for professional investors, while it may be a concern for FFF's that are not following further rounds of investment.

Capital rounds are usually used as a bargaining chip on bringing valuable expertise and/or connections into the company. This means that, if the business is financially stable, it will, in most instances, seek to finance itself with bank loans.

Also, and since most businesses are family financed, family equity holders are not expecting swift returns on investment regarding most startups.

2.2 In your jurisdiction, does the company law provide existing equity holders protection from being diluted in further financing rounds in the growth phase? If so, how are they protected? Is there a need for equity holders to seek protection on a contractual basis?

Portuguese Company Law provides several protection measures of equity holders. Among other, these measures entail:

i) Previous approval on capital increases by the equity holders meeting (General Meeting or Shareholders Meeting, depending on the type of company);

ii) A preemption right given to existing equity holders, ensuring that, should they wish, the capital structure could remain the same;

iii) Consent of the General Meeting and/or quota-holders on transfer of quotas (applicable only to companies).

Further limitations may be implemented, notably by increasing majorities required for consent, establishing limitations on the transfer of equity. Also, in respect to public companies, acquisition of shares beyond certain thresholds (1/3 or 50% of total voting rights) may result in a mandatory Public Offer (if the shareholder does not disprove the existence of corporate dominance), further protecting existing minority shareholders.

2.3 When new potential investors offer to come on board during the growth phase, the existing equity holders may be reluctant to provide the information required to satisfy the potential new investor's need for valuation. The reason for the existing shareholders' reluctance may be, for example, that the required information contains (still) unprotected intellectual concepts, knowledge or ideas. In your experience, which legal instruments are used to find a balance between the potential new investor's need for information and the existing equity holders' wish to keep such

information confidential? Do existing equity holders have legal means to prevent management from disclosing such information?

Besides the existing fiduciary duties, the main point is to align existing equity holders' interests and management interests. In the growth phase, usually, equity holders and management are still close and will be aligned when facing this reality. However, if that is not the case, equity holders may impose via articles of association that the management should not engage in any further investment rounds with new investors without prior approval of the respective terms by the general meeting. In such case existing shareholders may protect themselves by imposing contractual means with non-disclosure agreements, non-competing clauses and contractual penalties. The providing of collateral may also prove useful. Notwithstanding, companies seeking equity investors are subject to the superior economic power of the latter, which may opt to default if it deems to have some advantage.

Potential investors are thus faced with something akin to the prisoner's dilemma. They may stick to the existing business structure or may willingly pay any existing penalties walking away with intellectual property. Entrepreneurs are either aware of this problem and try to limit access to information or outright dismiss potential investors approaches usually at the cost of growth.

3. Maturity

During the various capital rounds in the growth phase, the circle of equity investors in a company typically becomes larger and the atmosphere may become less familiar. Also, in the maturity phase the management of the company may become more professional in the sense that there is a management in place which is not, or not significantly, invested in the company (i.e., intensification of the principal-agent-conflict). As a consequence, legal concepts that govern the relationship between equity holders (such as fiduciary duties of majority equity holders) as well as legal concepts that govern the relationship between management and equity holders (such as fiduciary duties of the board members management, duty of loyalty, principle of equal treatment) may become more important. In other words, corporate governance may become more important. Against this background:

3.1 In your opinion, how does the equity holder base change between the start-up phase, the growth phase and the maturity phase? How does the focus of the equity holders change? Focus on fair distributions of earnings?

In most Portuguese companies, the number of equity holders at this stage is usually set between 5-15, depending on the company's growth and sector of activity. This is due to risk adverse investors on one hand and conservative equity holders on the other.

At the maturity stage certain equity holders look to cash-out, selling the equity to a third party or strengthen the position of existing shareholders, maintaining or even reducing the

number of equity holders. Remaining equity holders not looking to sell their equity are either directly involved to the company's activity or seeking for long-term commitments.

In your jurisdiction, does the law provide for stricter corporate governance rules for large (privately-held) companies as compared to small companies? If so, what exactly triggers the application of the stricter corporate governance rules? In which sense are the corporate governance rules different / stricter?

Large privately-held companies have to comply with more requirements on corporate governance. Portuguese Company Law provides three types of governance models, being very flexible on these rules. These three types are designed in the following way:

a. Management Body and Fiscal Council – management should be assured by more than one manager whenever the corporate capital is higher than €200.000. The Fiscal Council has to be composed by at least three members, but in small enterprises, Fiscal Council can be replaced by a single auditor. Small enterprises are the ones that meet two of the following three requirements: less than €100.000.000 of the total balance sheet, less than €150.000.000 of goods sold, or a number of workers higher than 150. In larger enterprises, it is mandatory the existence of a Statutory Advisor outside the Fiscal Council.

b. Management Body, Audit Committee and Statutory Auditor – This governance model demands that the Management Body has a plural composition, since the Audit Committee is part of the Management Body and has to be composed by at least three members. In Portugal, the largest companies are organized according to this governance model.

c. Executive Board of Directors, Supervisory Board and Statutory Auditor - management should be assured by more than one manager whenever the corporate capital is higher than €200.000. In larger enterprises (the classification requirements are the ones above mentioned), the existence of a Financial Matters Committee within the Supervisory Board is mandatory.

Concluding, there is a concern with improving corporate governance, even in privately-held corporations, when they achieve a substantial size or substantial economic value.

In your jurisdiction, do (certain) equity holders (e.g., majority shareholders) have obligations towards (certain) other shareholders or the company (e.g., duty of loyalty)? Please explain such obligations.

3.2 Does the company have any means to control the circle of its equity holders (i.e., can the articles of incorporation prevent competitors from holding shares in the company?) or have such restrictions to be agreed among the other equity holders (e.g., shareholders' agreement)?

Companies can control the circle of equity holders by determining that the respective shares are registered shares. It is possible to have registered shares and bearer shares in the same company, which makes it possible for the companies to control capital structure in a more flexible way. However, when it comes to bearer shares, there is no control over the holders and it can be sold to competitors.

Other restrictions may also apply: preemption rights, non-convertibility of nominative shares on bearer shares are such example. Shareholders agreements may have provisions establishing restrictions, provided that such restrictions are not forbidden by law. Such restrictions may address the transfer and/or holding of shares, non-competing duties linked to penalty clauses and/or redemption of equity, etc.

4. IPO / Listed phase

Following the IPO, a company enters into a new phase of being listed. The listing has potentially a great influence on the equity holder: the sale of their interest becomes easier. Against this background:

4.1 How does the focus of the shareholders change through the going public as compared to the maturity phase? Does the fact that a shareholder may at any time sell the residual value in its share (ideally) at a fair price in your opinion soften the focus on distribution of earnings? Does the focus shift from long term to short term?

By going public, the capital structure may vary for the first time in the company life-cycle. In Portuguese capital markets, the most significant investors are the institutional investors, frequently with a designed investment policy, but seeking capital gains and dividends, rather than participating and engaging in the management of the company. Therefore, focus will be on a short term approach, since institutional investors are only interested in obtaining return in capital markets, rather than the long term life of the company.

4.2 In your jurisdiction, are there publicly available records on the identity of (certain of) the shareholders in a listed company? If so, does this in your opinion influence the shareholders' focus?

In Portugal, listed companies are obliged to report annually to the public information on corporate governance. This information may contain capital structure and the identification of the main shareholders in the company. All shareholdings surpassing 2% of the share

capital, becoming thus a relevant shareholder, must be disclosed to the Portuguese securities market watchdog "CMVM" (Comissão do Mercado de Valores Mobiliários). CMVM has such information publicly available on their website.

Disclosing this type of information doesn't change shareholders' focus. Shareholders are typically institutional investors and they have strong investment policies designed to obtain high returns and are not always concerned with the companies that are in the investment portfolio, and are usually unaware of their inherent contingencies.

4.3 An efficient allocation of resources requires a most accurate pricing of the shares.

- ***In this regard, are companies that are listed in your jurisdiction under an obligation to publish price-relevant information (ad hoc publicity)? If so, please provide a short overview of the respective rules including the exemptions from such obligation.***

Price-relevant information is required to all publicly-held corporations. Capital markets are supervised by CMVM, the National Competent Authority. Information provided to the public on financial instruments, market negotiation, financial intermediation, intermediaries, issuers, among others must be clear, complete, true, objective and in a legal manner. In Portugal there are no exemptions and CMVM defends the disclosing of information in a very effective way.

- ***It can be assumed that no jurisdiction requires listed companies to publish all price sensitive information. If this is correct in your jurisdiction, how does the law protect the market and its participants (including, the equity holders in the company) from market abuse? Are there insider trading and market manipulation prohibitions? If so, please provide a short overview and, if you can, provide certain peculiarities about them?***

Insider trading and market manipulation are crimes punishable by a term of imprisonment that can go until 5 years, or with heavy fines and/or prohibition from exercising related activities. CMVM must be informed whenever there are signs of a possible crime and the Authority has the obligation to open preliminary assessments, in which CMVM is allowed to request clarifications, to confiscate all items deemed necessary, and consult private information (with due legal authorization) such as telephonic communications between market players under suspicion. If CMVM finds that a crime was committed, the competent judicial authority must be informed.

5. Acquisition

In its life cycle, the company may itself become the object of an acquisition and integration into the acquirer's structure. At this point the life cycle of the company ends. For the purpose of the remainder of this questionnaire, we assume the acquirer proceeds via a public tender offer. Against this background:

5.1 In case a listed company (target) is approached by another company (bidder), the board of the target will have to decide whether it supports the offer (friendly offer) or not (unfriendly offer). What are the interests that the board of directors needs to take into consideration for this decision? Shareholders' interests only (e.g., offer price only)? The interests of other stakeholders (employees, community etc.)?

Portuguese law establishes that the Directors should essentially consider the companies interests on making any decisions. What constitutes the companies interests is subject of some debate on corporate legal circles, but may be defined as the aggregate interest of all stakeholders (mainly employees, shareholders and creditors/lenders).

Directors may be liable if the interests pursued are not those of the company and its stakeholders.

5.2 In case of an acquisition of the listed company (target) by another company (bidder), the shareholders' are at a disadvantage as they cannot communicate efficiently or act in concert (for example, regarding the rejection of a low offer). A rational bidder should try to use this disadvantage of the shareholders to his benefit. In your jurisdiction, how does the law protect shareholders of the target in case of public tender offers? (for example, is there a specific process for public takeover offers which provides protection? Does the bidder need to treat target shareholders equally? Are there, for example, minimum price rules and/or best price rules?)

The market for corporate control in Portugal has rules preventing minority shareholders' patrimony from the perverse effects that public take-overs might have on the said patrimonies, by establishing an obligation of launching a mandatory public offer to all holders that exceed 1/3 or ½ of voting rights. By doing so, the bidder is forced to offer the same price for all shares, no matter who is the holder of the shares. It makes public offers more expensive, but prevents differential treatment and market manipulation.

Minimum price rules apply: in case the bidder acquired shares in the last six months, he may not offer a lower price than the amount paid at that time; if he did not, the price needs to be equal or higher to the average-weight of prices during the last six months; if it is not possible to establish a minimum price considering these rules, the adequate price should be fixed by an independent auditor, at the bidder's expenses.

5.3 As mentioned above, a listing provides (ideally) liquidity for the company's shares and ensures a high level of information for a potential new investor. In fact, equity investors may invest in listed companies exactly for these reasons. In your jurisdiction, how is an equity investor protected from a delisting? Does the delisting require (qualified) shareholder consent? What are the deadlines for the delisting? Do issuers need to provide for an off-exchange trading for a certain period following delisting?

A delisting in Portugal demands a majority of 90% of the total capital voting rights. The delisting is only possible when requested by the society or by the bidder, whenever he reaches 90% of the voting rights in the public company. When requested by the society, one shareholder must assume the obligation of acquiring all the securities of those who voted against the offer should be nominated.

The deadlines are established by CMVM. Regarding prices, they can be considered unfair by the CMVM. It is a supervised operation, in order to assure that no interested party may be unfairly treated.

B. Interest of debt holders

1. Start-up phase

In the start-up phase, the entrepreneur may ask the so called "FFF" (friends, family and fools) for a loan. In other words the entrepreneur asks them to invest in a business idea as debt holders. In this context:

1.1 In your experience, what could be the typical focus of the FFF in this phase? Helping the entrepreneur to get his / her business going? How is this focus reflected in the legal relationship? For example, will such debt holders be likely to refrain from asking for security? Is the agreed interest rate likely to correctly reflect the risks for the debt investor?

Entrepreneurship in Portugal is mainly supported by banking and financial institutions when it comes to support financing needs. It is difficult to implant a business when the entrepreneur has no funds of his own due to low investment. Family may provide an important jump-start for entrepreneurs, but do not act as typical professional debt holders and don’t usually charge interests or request any securities for the provided loans or for an eventual capital or quasi-capital injections. Frequently, when companies are not able to pay back the provided loan, such loan is transformed into capital. Therefore, FFF focus is not on the high risk but rather on the support of an emerging business.

Venture capital companies are emerging in Portugal as an interesting alternative, rather than the expensive banking loans.

1.2 ***In your experience, is it common for professional investors to act as debt holders in this phase? If so, how is the different focus of professional investors typically reflected in the legal relationship? What are the legal instruments commonly used in your jurisdiction to protect their interests? For example, is it common for the professional investors to request a personal security by the entrepreneur in case the company does not yet have (a lot of) assets to secure a loan?***

Equity and debt holding may be viewed as a contingency, since any investment on the company may be considered as junior debt. Any such debt holders will likely request for collateral either by personal guarantees from the entrepreneur or any of the remaining equity holders or real estate mortgages. However, usually debt holders would require as well certain form of control of the company or at least control regarding some economic decisions, preventing for instance the company to surpass a certain level of indebtedness.

2. Growth phase

2.1 ***In your experience, who provides debt in this phase and what could typically be their focus (e.g., high return on investment)?***

In this phase, it is more likely for the companies to obtain cheaper funding, once the business is growing and generating wealth. Growth phase was also the most affected by the recent credit crunch. Usually debt comes from banking and financial institutions at a higher price. Eventually, debt may also come from the shareholders themselves through quasi-capital shareholders contributions.

- ***Are the debt holders and their focus in the growth phase typically different from the ones in the start-up phase? Is it now mostly professional investors (and no FFF)?***

  The growth phase is substantially different than before 2009. FFFs will now likely carryover the equity and debt throughout more phases and their focus remains the same. Professional investors may also hold a stake on the company, either by debt or equity, but usually are no more than one or two and the focus remain the same in the sense that they want to be sure that the loan is duly repaid.

- ***If there is a difference, how could this be reflected in the contractual relationship? For example, do the interest rates or the security for the debt change?***

At this phase interest rates may be lower, but requested collateral is usually not so flexible. As such, personal guarantees (such as pledges, promissory notes, letters of credit and comfort letters) and mortgages are still standard practice. Professional investors will only forgo obtaining these types of collateral on the most promising of companies, where finance would be easily obtained through competitors.

2.2 What kind of security is commonly request by debt holders in this phase? For example, rather collateral (pledge, etc.) or personal guarantees by the entrepreneur? What is the reason for the preference of a specific kind of security?

Promissory notes and mortgages are the most commonly requested. Promissory notes are usually required due to the growing rate at which companies file for bankruptcy and allow for swift procedures of credit recovery. Mortgages are also usually a safe way of ensuring that the credit is recovered – mortgages are subject to registry and may triggered even after the sale of property to third parties.

2.3 During the growth phase, the burn rate of the company may be quite high and the company may continuously be at the verge of over-indebtedness. Will investors usually be willing to subordinate their debt? Usually only the entrepreneur / FFF from the start-up phase or also professional investors?

Subordinate debt is unadvisable, due to a lengthy and expensive insolvency process and due to the fact that tax authorities, social security and employees are usually senior debtors. Therefore, lending is risky, not only because of the credit risk, but also because of the impact of public contributions in the insolvency mass. Apart from this reality, professional investors most frequently require collateralization of their financings and usually rank higher than FFF.

2.4 Investors providing debt in this phase may wish to keep the possibility to participate in the potential valuation upside. How could this wish be accommodated in your jurisdiction? For example, are profit-participating loans or convertible loans commonly used instruments?

Profit-participating loans and convertible loans are commonly used instruments on significant financing loans. Such agreements usually allow for early reimbursement and refinancing according to the evolution of the company.

3. Maturity

After having reached maturity, the structure of debt holders may change fundamentally. Against this background:

3.1 In your jurisdiction, who is usually the debt holder in the maturity phase (e.g., banks)?

The more significant debt holders are usually the banks throughout all business phases.

3.2 Before providing debt to a company, the potential debt holder may require information about the company's financial status to assess the default risk. What financial information is publicly available for potential new investors who wish to invest in a privately-held company? Are financial statements available from public registers? Excerpt from the debt enforcement register? Tax returns? Do companies have means to influence the amount of publicly available financial information?

Companies must register and submit the years' accounts and tax forms by July 15th (unless they adopt a fiscal year different from the calendar year). Accounts submitted are available to the public but may not provide a full and accurate picture for the company. Also, corporate information may be obtained from the commercial registry.

Beyond the disclosing duties above mentioned further information may or may not be disclosed to the public according to companies' policy – especially when the companies are not listed. In this regard, investors may also acquire a small amount in equity in order to require further information – shareholders may request the board for information (in case of corporations a minimum equity stake may be required).

Lastly, it is possible to request the tax authorities and the social security if a company has its tax and social security situation duly regularized.

3.3 In your jurisdiction, is it common for privately-held companies to issue notes? Could you provide a short overview of the requirements and the procedure relating to the issuance of notes? Is the focus of note-holders any different from other debt holders?

Notes have recently been in high demand. Due to its lower risk (as opposed to equity) and high return on investment, notes have been viewed as a valuable commodity and are an effective alternative to banking finance. Note, however, in Portugal, only a few privately-held companies issue notes.

4. IPO / Listed

4.1 Once a company is listed, the debt holders have a considerably higher level of information regarding the company's financial situation. One could expect that this reduces the risk for the debt holder. Thus, in your jurisdiction, do listed companies usually have to pay lower interests?

Listed companies and even S.A.s benefit from lower interest rates due to transparency and disclosing of information. Listed companies have a higher level of obligations when it concerns disclosing of financial information. For instance, they may disclose quarterly information as opposed to yearly information. They are also requested to publish in their websites such information making the disclosing of information and the accuracy of that information more transparent and effective as regards protection of third parties. Legal and financial auditor's reports are also available and may play a part on providing a more accurate and complete view of a company's current situation. Also, listed companies are usually bigger and more stable than non-listed companies, providing further advantage on obtaining better financing conditions.

4.2 In your jurisdiction, is it possible to list notes? Could you provide a short overview of the requirements and the procedure relating to the listing of notes? In your opinion, is the focus of holders of listed notes any different from the focus of other debt holders?

Yes, it is possible to list notes. The loan must be of a total amount equal or superior to €200.000,00 and it can't double the equity value of the corporation. Also, it is not possible to issue notes whenever there are notes of a prior issuing to be subscribed. Listing notes must be recorded at the Commercial Registry and the resolution is attributed to shareholders, unless bylaws allow management to adopt the said operation. To list notes, corporations must assure that all relevant information is provided to retail investors (prospectus, summary, final terms, and all ancillary documents).

5. Acquisition

5.1 In your jurisdiction, what is commonly the effect of a public tender offer on listed notes. Do they have to be redeemed? Can holders of listed notes interfere in the process of a public tender offer? If so, by which means?

Listed notes holders are not considered in a public tender offer, which means that their debt is transmitted with the control of the corporation, under the same conditions as it was subscribed. Usually, holders of listed notes do not interfere in the process of a public tender offer.

5.2 In your jurisdiction, what is the typical influence of a public tender offer on existing credit facilities?

Depending on the offer, public tenders may be viewed as an adverse material change – by change of equity holders or by changing of the financial fundamentals of the company – thus triggering higher interest rates, further requests for collateral or even termination of the agreement, depending on how the tender offer is viewed by lenders and what has been

agreed on the credit facilities (Ex.: ownership or control changes clauses and financial status changes).

C. Interest of management / employees

1. Start-up phase

In the start-up phase, it is essential that the key management is committed towards the development of the business idea or project. In this context:

1.1 Which are the most commonly used means to ensure that the management / key employees will not leave the company until the company reaches the growth or maturity phase? Are warrants or similar incentives granted during this stage?

In the start-up phase workers and employees will be mainly the entrepreneurs that believe in their company. All players, at this point, perform an important role, but it will not be usual to find sophisticated arrangements on remuneration at this point. If the company is incorporated as corporation, certain bonus on achievement of certain developing goals or warrants may be available for high profile employees or the management.

1.2 It is likely that at this stage, there are not sufficient funds for remuneration of management / key employees. Is it common to grant warrant or stock incentive schemes in your jurisdiction? Is there any other scheme to liaise with this issue?

In case the company is incorporated as corporation, it is becoming more common to see such incentives being available for high profile employees or the management. However, at this phase, the major incentive a start-up can offer is its chances of growing, so it is likely that entrepreneurs motivate their employees by creating expectations on its growth and promising future incentives.

2. Growth phase

The management plays a crucial part in order that a company achieves going from a start-up phase to a growth phase and tend to assumes considerable risks by devoting to such project. Therefore, it would seem reasonable to protect the management in further financing rounds during the growth phase.

2.1 In case new investors come on board in the growth phase and such investors request replacement of the current management: in such replacement, does the current management usually lose rights granted under an incentive plan? How broad are "bad leaver" provisions usually formulated?

It all depends on what has been agreed with the management. Incentive plans may establish different provisions in case there is a replacement of the management in an acquisition or change in the control of the company scenario. Usually, all benefits related with the performance of the company cease to exist in exchange of a bonus linked with the price and/or value of the respective company at a certain point in time. Maturity of stock options may be anticipated and exchanged by cash as well. "Bad leaver" provisions in a scenario as described (as opposed to a termination by a breach of any management duty or agreement scenario) are usually broad and determine that the management is not hindered in their rights.

2.2 ***Upon implementation of an incentive plan, the rights related to the shares that the management will be entitled to receive are usually subject to vesting. Is there any specific vesting period that is applied in your jurisdiction or is the vesting period usually linked to a liquidation event (such as an IPO)?***

Under Portuguese law, there is no specific vesting period applied to rights related with shares, nor the vesting period is related with a liquidation event. However, please note that the maturity and option over the shares may be exercised in case of such events occur.

2.3 In certain jurisdictions the management ***may fall out of labor relationship since it is developing executive duties for the company and/or may hold certain stock of the company (it might fall in a special labor relationship or corporate relationship). Is this the case in your jurisdiction? If so, is the loss of labor rights compensated by special laws or by contractual means?***

In Portugal, management is developed under a provision of services basis, mainly following a contractual scheme. However, there are specific legal means of protecting management from the loss of labor. First, it is required just cause to remove a manager from its position, which is only verified if the manager has violated severely his duties or the manager represents mishandling at undertaking his functions; and second, it is assured to those managers whom are removed without just cause a compensation for his damages, which cannot go upper than the income he would probably receive until the end of his mandate.

3. Maturity

After having reached maturity, the business activity and the relationship between the shareholders and the management / key employees tend to become more complex (in particular, intensification of the principal-agent-conflict). The increasing complexity triggers certain hindrances or deterrents for the ongoing activity of the company. In this context:

3.1 In your jurisdiction, do the various corporate bodies (e.g., board of directors, directors, management) have

- ***an obligation to "act in the best interest of the company"? If so, how is the "interest of the company" defined? Is it the interest of all stakeholders (including the interests of all equity holders (e.g., holder of non-voting shares), debt holders, management, employees and public) or just the shareholders? Are only long term interests taken into account or also short term interests?***
- ***"fiduciary duties" or a duty to treat equity holders equally? How are these defined?***

All corporate bodies are obliged to comply with a professional duty of care and duty of loyalty when running a company. The Portuguese companies regime specifically refers that the management (including directors and/or the board of directors) must act in the interest of the company (for instance seeking the maximization of its value, non-competition duty, showing availability, technical competence, deep knowledge of the companies activity and business environment, etc.) and must assess the interest of all the other stakeholders interests such as employees, clients and debt holders. Management should be wise and organized, attending to the long term interests of the company and to the sustainability of its activity.

It is stated under the Portuguese corporate law that shareholders must be treated equally and there are mechanisms that allow minority shareholders to have a voice in the nomination of corporate bodies and rules that prevent majority shareholders from abusive actions impairing minority shareholders, by submitting shareholders' votes to judicial scrutiny. As such, management should also be prevented of making any decisions that would result in a different treatment for shareholders of the same class. Furthermore, inherent to the duty of loyalty the management shall comply with its fiduciary obligations which may be defined and exampled as the prohibition of competing with the company, taking advantage for its own interest of a business opportunity that should be developed by the company, preventing the management of misuse confidential and/or business information, etc. These obligations are examined in a practical and concrete way (examining concrete actions and/or omissions) rather than just looking to it in a formal way.

3.2 In your jurisdiction, how are conflicts of interest addressed by the law? Are the rules on conflicts of interests for listed companies applied to non-listed companies? Have the rules on conflicts of interests become more rigid in recent years?

According to the Portuguese corporate law, managers are forbidden to celebrate contracts containing special advantages, with the company. All contracts celebrated between the management and the company must be submitted to the statutory auditors or to the Audit

Committee to be approved, on the contrary, the contract may be considered null. These rules apply to listed and non-listed companies.

Financial intermediaries have more rigid duties. They may have a written conflict of interests policy, assuring their clients transparency and equal treatment. Clients' interests must precede all other interests that may be at conflict.

3.3 In your jurisdiction, is it common to put in place incentive plans for key management and employees or are they only entitled to receive a cash bonus (usually based on individual and overall performance)? Do incentive plans provide tax advantage for the company?

Fringe benefits have a special taxation regime, so it may be advantageous for employers and employees to put in place incentive plans based on other types of remuneration than cash bonus.

4. IPO/ Listed phase

Reaching an IPO is often the pinnacle of private companies which have reached certain growth and have an attractive equity interest. Obviously, the management and employees play a significant role in the IPO / listing process. In this context:

4.1 It is our understanding that when a company goes from a private to a public setting it implies considerable changes for management and employees. In your experience and within this framework, what is the most significant change for management and employees? Does going public usually increase the total amount of the compensation and/or does it usually change the structure of the compensation (cash, shares, warrants, etc.)?

The most significant changes for the management when a company becomes listed are the increase of obligations as regards disclosing of financial information, requirements to approve annual accounts and complying with enhanced supervision of both statutory auditors and external/independent auditors.

In general terms, listed companies mean that such companies are bigger than non-listed companies. Consequently, remuneration is usually higher in such type of companies in comparison with non-listed. Please note that most or all of the Portuguese listed companies have a Remuneration committee that is in charge of the remuneration policy which may be, and most of the times is, approved by the general meeting ,i.e., by the shareholders.

Additionally, the structure of compensation tends to become more complex and sophisticated. All instruments such as cash bonus, stock options, warrants, bonus related

with financial statements, bonus aligned with the share market value and price performance, etc., are commonly used.

In this phase, there is the risk that both employees and management that may have incentives attached to the value of the company's shares in the market, will only be focused on short term valuation as opposed to a long term valuation of the company.

4.2 Following the IPO the management is constantly assessed by the performance of the share price. Also the management's pay may to large extent depend on the share price performance. One could expect that management may abstain from taking any steps that are likely to weaken the share price – even if such steps are beneficial to the company in long term. In your jurisdiction, are there any measures that are commonly taken to address this conflict (i.e., incentives for long term strategies)? Is, for example, by law or by agreement a part of the pay paid in mid- to long term options?

In listed companies, variable remuneration represented around 27,3% of the total remuneration in 2012, according to CMVM[2]. Recently, financial institutions were forbidden of paying variable remunerations upper to 50% of the total remuneration, and a part of the variable remuneration must be deferred in time to avoid short-term incentives.

4.3 Is the management and/or employees bound by a mandatory lock up period upon the IPO? In the event the lock up period is not mandatory, please explain the common standards in your jurisdiction towards implementing a lock up period.

During an IPO, the lock up period is mandatory.

5. Acquisition

In the scenario of the acquisition, it is frequent that the management is essential towards the subsequent development of the company. In this context:

5.1 The focus of the board of directors of a listed company may be set to a large extent on the share price performance. Usually, this should be in line with the corporate interest. However, in case a listed company is being approached by a potential bidder, the board of directors and the management of the potential target may face a conflict of interest: an acquisition that may be beneficial to the shareholders of the potential target, may at the same time require replacement or adjustment of the target's board of directors and management. In your jurisdiction, how is this conflict of interest addressed? For example, are there limits to the defense measures that the board of directors of the target may take?

[2] Here, Annual Report on Corporate Governance, page 35.

Under Portuguese law there are no specific limits to defenses within a takeover that the Management may trigger. In general all known defenses may be used. However, Management actions are limited by the duty of loyalty and care towards the company and its shareholders, therefore, they will be liable for any acts that may hinder the interests of shareholders and the company. If a takeover would be in the interest of the company and/or its shareholders the Board of Directors actions are rather limited. In general terms, management is forbidden to pursue acts that may alter substantially the corporate's assets and liabilities during a takeover operation. Managers will be allowed to look after the ordinary management of the company, but they can't squander corporate value through ruinous management with the intention of blocking the market for corporate control to function.

5.2 *Which are the common alternatives in order to keep management / key employees focused and keen to continue in the company?*

That would depend on the company and on the financial performance of the company in a given point. Common alternatives to keep the management/key employees "on board" within a takeover scenario may be directly linked to the commitment of the purchaser to not engage in major changes in the management and top employees level. Stability and a forecast of growth which will benefit all parties usually work.

5.3 *In parallel, is it common to reinforce non-competition and confidentiality undertakings of the management / key employees upon acquisition? Is it common to regulate a non-solicitation by the Seller and that it is enforceable (for which period)?*

In Portugal is common to reinforce non-competition and confidentiality undertakings upon acquisition.

It is also common to regulate non-solicitation rules by the Seller. However, such arrangements may not be enforceable under Portuguese law, in what regards the effectiveness of the contract established with the employee, since it may hindered the freedom of work granted to each individual. To prevent such fact, penalty clauses for breach of the non-solicitation arrangements are common.

D. Interest of advisors / lawyers

1. Startup

During the startup phase, it is one of the most difficult stages to advice companies and/or projects since the company does not have the resources (funds) to implement an appropriate legal scheme and the management/equity holders tend to think in the short term rather than the long term.

1.1 *Which are the common difficulties you liaise with during this stage? How do you tend to structure your fees (for example, do you go below your standard rates and agree to have this difference compensated at a later stage when the company has become more successful)?*

On incorporating a company and/or establishing a new business enterprise, most difficulties arise from lack of investment and/or establishing a business strategy. Also, a number of legal formalities and procedures may be required before initiating activity, depending on the kind of business being established. Committing to a course is also an obstacle, as most entrepreneurs will have reduced knowledge on the legal aspects of business and will require advice from all available alternatives. Thus, changing strategies will require further legal advice as to the impact of such strategies, and such fees will likely be lowered to meet the entrepreneur's financial needs.

Lowering standard rates and fees on setup is also standard practice if the lawyer expects to be required to provide continuous advice throughout the company's business. Low initial monthly retainers and later increase of those retainers are also considered best strategies on nurturing an ongoing relationship with the client.

1.2 *In case you accept warrants / rights to shares as compensation for professional services rendered: how do you set the amount or the value of such warrants and rights? Do you rely on valuations of the company? If so, whose valuations? Is it common for an advisor in this situation to request that the company has previously successfully completed a minimum viable product ("MVP") stage which reduces the risk of failure (i.e., as part of the lean startup methodology it is advisable to diminish uncertainty for the project by means of developing an MVP to validate the project)?*

The Legal Statutes of the Portuguese Bar Association ("Ordem dos Advogados") states that lawyers fess should be paid in money, rather than in kind. Also, lawyers are required to maintain independency and distance from their client's issues. As such, accepting equity or similar instruments is frowned upon albeit not expressly prohibited.

2. Growth

Commonly, it is important to provide appropriate legal advice when the company intends to achieve going from the start-up phase to a growth phase. The role of lawyers and advisors would likely enhance the possibilities to effectively reach a solid growth phase. In this context:

2.1 *How do you tend to structure your fees during this stage (in particular, is there a difference in the fee structure as compared to the start-up phase)?*

Lawyers will try to obtain monthly retainers for better financial stability. If the company is constantly requesting for advice, an hour cap may be established, or separate retainers for separate areas may be agreed upon. Also, specific budgets may be requested for intensive projects or isolated tasks. Other than that, Portuguese lawyers usually have hourly rates that vary according to the lawyer seniority, type of work produced, specialization required and or needs/special circumstances of the entity requesting for advice.

2.2 Is it common for advisors (in particular, lawyers) to take board positions during this phase? If so, how is such board member compensated? In cash? Or with exclusivity for providing legal services to the company?

Non-executive membership may be granted to lawyers as insurance for the continued activity and supervision of operations. The position may also be remunerated. Usually, the positions granted are as chairman of general assembly or supervising positions. Also note that if the lawyer holds a position in a company he or she may not represent the company in court procedures, due to independency issues.

2.3 As the lawyer you may be asked by the entrepreneur to render advice on the division of equity (in particular to FFF)? What is the basis for your advice regarding the division of equity?

Division of equity should be approached on a case-by-case basis. Dispersion of equity should be considered carefully and the entrepreneur should be made aware of the consequences of having minority stakes and/or of the obstacles such minorities may provide. This is especially relevant in companies by quotas. Despite facilitating the transfer of equity and provide easier financing options, alternatives should be considered before the dispersion of equity. The above mentioned is also valid to varying degrees with FFFs.

2.4 In certain jurisdictions corporate law is rigid and does not allow to regulate certain rights of the shareholders in the by-laws of the company (such as, preferential preemptive rights, drag along or tag along rights). Please explain (succinctly) which is corporate legal scheme that applies in your jurisdiction. Is the shareholders agreement enforceable against third parties in your jurisdiction or is only binding between the relevant shareholders?

Regulations regarding the transfer and holding of equity may be established in the by-laws provided the applicable mandatory rules are complied with. Besides such limitation, schemes may be established such as preferential rights, special rights (e.g., right to the management), mandatory redemption situations, tag-alongs and drag-alongs, etc.

Notwithstanding, shareholders agreements allow for more flexible solutions and are enforceable only between relevant shareholders. As such, choosing to establish provisions

on the by-laws or the shareholders agreement requires a trade-off that should be carefully considered.

3. Maturity

After having reached maturity, the business activity is much more complex and the interests of the company become more intricate. In this context:

3.1 How do you tend to structure your fees during this stage (in particular, is there a difference in the fee structure as compared to the start-up or growth phase)?

The requested fees do not change in the maturity phase. On this phase, it is usually the clients' needs that change, and the advice provided should be adapted accordingly. At this stage, the business structure may have internal counsel and request more specific advice or need specific kinds of services. Note that it is uncommon for a business to have internal counsel.

3.2 Are you able to become member of the board of directors of the companies? Do you tend to render more unique advice to companies (while the corporate counsel provides the typical ongoing corporate advice)?

Pursuant to the above mentioned, the rendering of some services (e.g., representation in court) may not be compatible with holding a position in the board of directors. Should a lawyer hold a position in the board of directors, he/she will request a colleague to render such services instead. As a board member, the lawyer tends to be closer to a company's reality and provide more accurate advice. The lawyer will be better prepared to provide advice that the company actually needs, rather than the advice that is usually requested. Also, by keeping a lawyer on the board, the company will better avoid corporate legal contingencies.

3.3 From a lawyers' perspective, how is the conflict of interest of the management liaised with (are there any mandatory provisions that apply in your jurisdiction)?

Pursuant to the Portuguese Bar Association Statutes, the lawyer must always maintain independency from the client, and the client must always be able to freely choose whoever provides legal counsel. Should such independency be compromised the lawyer should refrain from rendering further advice.

As for conflicts of interests, Portuguese lawyers may not provide advice on any disputes/conflicting issues if any privileged information was obtained previously to the arising of such dispute/conflict. As per the above mentioned Statutes, lawyers must generally avoid potential conflicts of interest, without providing specific rules in that regard. What is

considered conflict of interest has been otherwise developed by decisions of the Portuguese Bar Association and Courts. As an example, if a lawyer renders advice to entrepreneurs and prospective shareholders regarding the setup of a company, that same lawyer may not represent any of the shareholders in case of conflict. This is also true if the lawyer participated in negotiations between management and the shareholders prior to the dispute.

3.4 Does the anti-money laundering provisions in your jurisdiction have changed the form your render advice?

Anti-money laundering provisions are mostly addressed to extreme circumstances. Lawyers need to balance two important rules – (i) compliance with confidentiality duties; and (ii) compliance with anti-money laundering rules. In fact, in accordance with anti-money laundering provisions lawyers have the duty to report and to collaborate with the criminal authorities in case they acknowledge that any type of laundering money was, is being or is going to be prepared.

However, in some cases, lawyers are concerned with complying with confidentiality rules and not breaking attorney-client privilege rather than disclosing information that may or may not fall under anti-money laundering provisions. In the past 20 years lawyers have change completely their approach to these cases complying more often with anti-money laundering duties despite the risk that in certain circles breaking attorney-client privilege can potentially determine a loss of reputation.

4. IPO/ Listed phase

Reaching an IPO is often the pinnacle of private companies which have reached certain growth and have an attractive equity interest. It is unlikely that the process of becoming a listed company will be successful without the proper advice. In this context:

4.1 How do you structure your fees for an IPO?

The fees for an IPO are structured taking into account the following: (i) size of the IPO and therefore the responsibility attached to the operation; (ii) the planning of the IPO, applying a fee structure that meets the IPO structure and applying a cap fee for each stage of the IPO that may have adjustments in accordance with the hours effectively spent on the operation; (iii) a limited success fee. Usually, the fees are charged on a time spent basis, but if the parties are comfortable with that and there is enough information that allows the time spent to be predictable, cap fees structure with a success fee on top is proposed to the respective client.

4.2 From a lawyers' perspective, which are the main regulatory aspects of offering equity to the public? Is it common that companies reach this stage (in certain jurisdictions becoming a listed company is less rigid)?

Lawyers assist their clients in case of an IPO since the very beginning of the operation (apart from previous financial studies). Lawyers are required to provide services concerning preparation of the offering documents (including prospectus, base prospectus, final terms, summary, etc.), prepare all communications with CMVM, gathering of important documentation to fulfill the mandatory disclose of information in the different stages, assuring that the IPO is done in a legal manner, and assuring that all the necessary deadlines are complied with. In Portugal an IPO is not that common, since in the last ten years we had not more than 10 IPO's. Being a small market, with small companies explains such low number.

4.3 Is there any specific secondary market in your jurisdiction that allows early startup companies to become listed with the aim of obtaining more equity (given the complexity of becoming a public company in certain jurisdictions a startup company can become listed in a specific market which is less rigid and allow it to obtain other sources of financing, among others)?

We have two specific secondary markets that are being used by mid-sized companies more often, Alternext and Enternext.

(i) Alternext - is an international market created by Euronext in May 2005 to offer small and mid-sized companies simplified access to the stock market. Regulated solely by Euronext, the market's streamlined listing requirements and trading rules suit the needs of small and mid-sized firms while ensuring investor transparency.

(ii) EnterNext is the subsidiary of Euronext dedicated to Small and Midsized Entities (SMEs). This entity covers companies listed on the B and C compartments of Euronext (the prime and bigger market) and Alternext, i.e. issuers with a market cap of less than € 1 billion. EnterNext announced objective is to build close and trusted relationships with both listed companies by helping them to make better use of the market through secondary issues (stocks or bonds); and non-listed companies in order to highlight the benefits that the financial markets can bring at a time when access to bank credit is somewhat complicated. In addition, we are very active in promoting the market to investors. Its main goal is to position the Exchange as an alternative source of funding for SMEs in Europe. EnterNext is a pan-European initiative, covering more than 750 SMEs listed on Euronext's European markets in Belgium, the Netherlands, Portugal and France.

4.4 *Does the fact of becoming a listed company imply that the lawyers and/or advisors adjust rates their rates accordingly?*

In principle the rates should not be automatically adjusted in case a company becomes listed. However, the Legal Statutes of the Portuguese Bar Association establishes that the lawyers' fees should be valued in accordance with the importance of the services rendered, difficulty and complexity of the matter, its urgency, the level of creativeness involved to offer a solution, should also be dependent on the result that was obtained, to the time used to cope with this matter and to the level of responsibility and commitment applied in the respective matters. Consequently, is frequent that listed companies are requested to pay more fees to their legal advisors as a consequence of the more complexity and volume of work.

5. Acquisition

In the scenario of the acquisition, it is frequent that lawyers and advisors are highly involved. In this context:

5.1 Which is most frequent scheme of implementing an acquisition (asset deal vs share purchase deal)?

Share purchase deals are the most frequent scheme of acquisition. Asset based deals generate expensive contextual costs and are usually reserved for when the target has high contingencies that may not be lessened by the share purchase agreement or when the disclosed information unsufficient for the bidders purpose. Tax reasons may also play a part on choosing the type of scheme pursued.

5.2 From a lawyers' perspective, which are the main differences within the process of acquiring a stake in listed companies versus private companies?

Acquiring equity in listed and non-listed corporations may involve the same type of agreements between the parties (SPAs). What may be different is the mandatory registry (bearer shares in case of a non-listed company do not require any registry), and the type of registry to comply with. Operations regarding listed corporations require registry in a centralized system through the respective financial intermediary. Therefore, liaising with the financial intermediary is the main difference as regards the two types of operations.

5.3 From a lawyers' perspective, which are the main steps in your jurisdiction in order that a public entity becomes a private entity as a consequence of an acquisition?

Corporations shall become private if any one of the following occurs: i) a single shareholder directly or indirectly owns 90% or more of total voting rights, ii) upon deliberation of the Shareholders meeting, with a majority not inferior to 90% of the total equity and iii) if the

shares of that company are excluded from trading on a regulated market due to lack of equity dispersion.

The loss of public status should be requested by the company, or the buyer in the case of i) above. Also, if the loss of "public" status is deliberated by the Shareholders, the company should appoint a shareholder to acquire the nonvoting securities. The appointed shareholder must also provide collateral assuring the compliance of such an acquisition either by deposit or bank guarantees.

If, as a consequence of the acquisition of 90% or more of a company's equity or total voting rights are held by a single company, such a company may acquire the remaining equity by sending an offer to the remaining shareholders. This acquisition does not require the shareholders consent. If such an offer is not made in the following six months upon surpassing said 90% threshold, those shareholders may require that that company individually acquires their respective shares. Also note that loss of public status and mandatory offers are subject to registry and publication by CMVM.

5.4 How do you tend to structure your fees during this stage (in particular, is there a difference in the fee structure as compared to other phases)?

The fees for an acquisition are structured taking into account the following: (i) size of the acquisition and therefore the responsibility attached to the operation; (ii) the planning of the acquisition (negotiation, due diligence, closing, etc.) applying a fee structure that meets the acquisition structure and applying a cap fee for each stage of the acquisition that may have adjustments in accordance with the hours effectively spent on the operation; (iii) a limited success fee. Usually, the fees are charged on a time spent basis, but if the parties are comfortable with that and there is enough information that allows the time spent to be predictable, cap fees structure with a success fee on top is proposed to the respective client. In an acquisition scenario the fees for a Due diligence process would depend on the data room and usually are charged on a cap fee basis with an average hour fee lower than usual.