



A Guide to Takeovers in Portugal

Banking and Capital Markets



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1. Introduction

After the unsuccessful takeover bids of Sonaecom for Portugal Telecom and of BPI for BCP in 2006/2007, the international financial crisis in 2007/2008 and the economic recession in 2009 had the effect of putting the M&A activity in Portugal on hold.

In December 2009, Companhia Siderúrgica Nacional (**CSN**), the largest steel producer and one of the main cement procedures in Brasil, launched a takeover bid for Cimpor, the largest cement producer in Portugal. The aim of CSN is the acquisition of 100% of the share capital of Cimpor.

Although the problems in Cimpor's shareholder structure were well known and entailed the risk of a hostile takeover, the position of Cimpor as a leading player in the Portuguese market advised some caution, in particular, in case of a change of control to a foreign country. This explains why the hostile takeover launched by CSN, a Brazilian player, caught the market by surprise and, at the same time, raised the interest of other players.

Following the offer launched by CSN, one of CSN's Brazilian competitors, Camargo, instead of launching a counter offer, initiated discussions with some of Cimpor's key shareholders regarding a possible merger between the two companies. It is no surprise that the Portuguese Securities Commission (*Comissão de Mercado de Valores Mobiliários - CMVM*), although with some delay, has notified Camargo to either launch a counter offer for Cimpor or to cease to advertise its proposal to the market.

Meanwhile, the takeover of Ongoing for Media Capital launched in October 2009 is awaiting a decision of the Portuguese Competition Authority (*Autoridade da Concorrência*). Although the takeover procedure has been very straightforward, due to the prior agreement between Prisa, Media Capital's main shareholder, and Ongoing, the competition issues will play an important role in the success of the transaction, considering that Ongoing holds a qualifying stake in one of Media Capital's competitors, Impresa.

This paper reviews some of the most important legal aspects regarding takeovers in Portugal.

2. Launching the takeover

2.1. Takeover bids

Takeovers are defined by the Securities Code, approved by Decree-Law no. 486/99 of 13 November 1999, as amended (the **Securities Code**), as an offer to purchase securities of a target company addressed to all its holders.

The object of the offer may include the shares representing the entire share capital of the target company as well as any other type of securities issued by the target company or not.

If the takeover does not entail the acquisition of all the shares and securities issued of the target company, which confer the right to its subscription or acquisition, neither the offeror nor any other individual or entity which, due to its relationship with the offeror or otherwise, is presumed to be acting in concert with the offeror pursuant to article 20(1) of the Securities Code may accept the offer.

Publication of the preliminary announcement

According to article 175 of the Securities Code, as soon as the decision to launch a takeover is taken, the offeror must send a preliminary announcement to the CMVM, the target company and the managing entities of the regulated markets on which the securities that are object of the offer or comprised in the consideration for the offer are listed, which must be immediately published.

The publication of the preliminary announcement obliges the offeror to:

- (a) Launch the offer to the offerees in terms that are not less favourable than those of the preliminary announcement;
- (b) Apply for registration of the offer within twenty days; and
- (c) Inform the workers' representatives or, instead, the workers themselves about the documents of the offer, immediately after becoming public.

The preliminary announcement must contain:

- (a) The name, denomination or trade name of the offeror and its domicile or head office;
- (b) The name and head-officer of the target company;
- (c) The securities that are object of the offer;
- (d) The consideration;
- (e) The name of the financial intermediary in charge of assisting the offer;
- (f) The percentage of voting rights in the target company held by the offeror and by any individuals or entities mentioned in article 20 of the Securities Code;
- (g) A brief reference to the objectives of the offeror, in particular, those regarding the continuity or modification of the businesses of the target company and its affiliates and the offeror, to the extent it may be affected by the offer; and
- (h) The information regarding the application (or not) to the offeror of the same limitations on the management and on the exercise of voting rights set out in articles 182 and 182-A of the Securities Code.

The determination of a maximum or minimum limit number of securities to be acquired and the settlement of conditions of the offer will only be effective if such limits and conditions are described in the preliminary announcement.

Under article 177 of the Securities Code, the consideration may consist of cash, securities already issued or to be issued, provided that they are liquid and can be evaluated in monetary terms, or a combination of the two.

If the consideration consists of cash, the offeror must deposit the total amount with a financial institution or present a bank guarantee before registering the offer.

Under article 113 of the Securities Code, public offers relating to securities, in which a prospectus is required, must involve the intervention of a financial intermediary that must provide assistance as from the preliminary announcement and receive the statements of acceptance.

2.2. Publicity

Advertisements regarding public offers must:

- (a) Follow the principles set out in article 7 of the Securities Code, which requires offerors to provide complete, true, updated, clear, objective and lawful information on the offer;
- (b) Refer the existence or future availability of a prospectus and how potential investors may have access to it; and
- (c) Be in accordance with the prospectus.

All advertising material related to the public offer is subject to the prior approval of the CMVM.

Civil liability for the content of information disclosed for advertising purposes, with any due modifications, is subject to article 149 *et seq.* of the Securities Code.

2.3. Transactions during the offer

Under article 180 of the Securities Code, as from the publication of the preliminary announcement and until the assessment of the offer's result, the offeror and the individuals or entities mentioned in article 20:

- (a) May not negotiate, outside the stock exchange, securities of the same class as those that are object of the offer or those that comprise the consideration, except if authorised by the CMVM after obtaining an opinion from the target company; and
- (b) Should inform the CMVM on a daily basis of the transactions carried out by each of them relating to the securities issued by the target company or the class of the securities comprised in the consideration.

The acquisitions of securities of the class of those that are the object of the offer or comprised in the consideration, carried out after the publication of the preliminary announcement, are considered in the calculation of the minimum amount that the purchaser proposes to acquire.

The CMVM may require the offeror to review the consideration if, due to these acquisitions, the original consideration is no longer reasonable.

2.4. Duties of the target company

The management body of the target company must, within eight days from receipt of the draft prospectus and the public offer's announcement, and within five days from the disclosure of any modification to the offer documents, notify the offeror and the CMVM and make public a report regarding the opportunity and conditions of the offer prepared in accordance with article 7 of the Securities Code.

Since the publication of the preliminary announcement until the assessment of the result of the offer, the management body of the target company must:

- (a) Inform the CMVM on a daily basis of the transactions carried out by its securities holders, or by individuals or entities mentioned in article 20(1);
- (b) Supply all the information requested by the CMVM;

- (c) Inform the employees, directly or through their representatives, as to the content of the offer's documentation, as soon as they are made public; and
- (d) Act in good faith, in particular, as regards the accuracy of the information and the loyalty of the behaviour.

From the moment it has knowledge of the decision to launch a takeover for more than one third of the securities of the respective class, and until the assessment of the result or until the conclusion of the offer procedure, the management body of the target company is not allowed to take any action that may materially affect the net equity value of the target company and which may significantly affect the objectives announced by the offeror, that are not within the ordinary management of the company.

The target company will be deemed to have knowledge of the launching of the offer upon the receipt of the preliminary announcement and the relevant changes in the net asset situation of the target company shall include, but not limited to, the issue of shares and other securities conferring the right to subscribe or acquire shares and the entering into contracts that may lead to the sale of significant parts of the target company's assets.

The following acts are excluded from this limitation: (i) acts resulting from the fulfilment of obligations assumed before the knowledge of the offer launch and (ii) acts authorised by resolution taken in a general assembly convened specifically for this purpose during the offer period and (iii) acts leading to launching of counter offers. During this period, the general meetings may be convened with a 15 days prior notice and the resolutions of the general assembly mentioned in (ii) as well as those related to the anticipated distribution of dividends and other earnings may only be taken by the majority required for the amendment of the target company's articles of association.

The offeror is responsible for the damages incurred by the target company if the main purpose of its decision to launch the takeover was to place the target company in a situation with limited powers.

3. Registration of the offer

3.1. Application

For the registration of the offer, the offeror must submit the following documents:

- (a) A copy of the resolution to issue the offer taken by the offeror's competent bodies, and the necessary management decisions;
- (b) A copy of the offeror's and the issuer's articles of association;
- (c) An up-to-date certificate of company registration of the offeror and the issuer;
- (d) A copy of the management and financial reports, reports of the auditing bodies as well as audit reports covering the offeror's accounts of the periods in accordance with Regulation (CE) no. 809/2004, European Commission, of 29 April;
- (e) A report or statement from an auditor, prepared in accordance with articles 8 and 9;
- (f) The identification code of the securities that are object of the offer;
- (g) A copy of the contract entered into with the financial intermediary assisting the transaction;

- (h) A copy of the distribution agreement (*contrato de colocação*) and the selling group agreement (*contrato de consórcio de colocação*), if it exists;
- (i) A copy of the market promotion contract (*contrato de fomento de mercado*), the rebalancing contract (*contrato de estabilização*) and the option agreement for the distribution of supplementary allotment (*contrato de opção de distribuição de lote suplementar*), if they exist;
- (j) A draft of the offer prospectus;
- (k) Financial information in favour of the reform, when required;
- (l) A feasibility study, when required; and
- (m) Expert reports, when required.

The filing of these documents may not be required if they are already in the possession of the CMVM.

The CMVM may request from the offeror or any other individual or entity mentioned in article 20(1) to provide additional information necessary for the analysis of the registration application.

In addition, the application for registration of a takeover submitted to the CMVM must also include documents evidencing the following:

- (a) The submission of the preliminary announcement, draft public offer announcement and draft prospectus to the target company and the competent authorities of the regulated markets on which the securities are listed;
- (b) Deposit of the consideration in money or the issue of a bank guarantee; and
- (c) Blocking of the securities already issued that are comprised in the consideration and those held by the offeror and the individuals or entities mentioned in article 20 of the Securities Code.

3.2. Registration

The CMVM must inform the offeror of the registration of the offer or of its refusal within eight days as from the date of receipt of the application or of the additional information requested from the offeror or from third parties.

If the CMVM, following its preliminary review of the application, considers the registration of the offer to be acceptable, it may authorise advertising prior to the publication of the offer announcement, as long as this does not cause problems to the offerees or to the regular functioning of the market.

The registration is based on legal criteria and does not involve any guarantee as to the content of the information or the feasibility of the offer or the quality of the securities.

Under article 119, registration of the offer must be refused when:

- (a) Any of the documents used in the preparation of the request are false or are not in accordance with the legal or regulatory requirements; or
- (b) The offer is illegal or defrauding the law.

Before refusing the offer, the CMVM must notify the offeror to rectify, within a reasonable period of time, the defects that may be remedied.

4. The offer announcement

4.1. Requirements and content

The offer announcement must contain information required for the preparation of the contracts to which it refers, including, in particular, the following:

- (a) The head-office and the identification of the offeror and the financial intermediaries responsible for assisting and placing the offer;
- (b) The characteristics and number of the securities that are object of the offer;
- (c) The type of offer;
- (d) The extent to which the financial intermediaries may intervene in the offer;
- (e) The price and total amount of the offer, nature and payment conditions;
- (f) The expiration date of the offer;
- (g) *Pro rata* criteria;
- (h) Any conditions to which the offer is subject;
- (i) The percentage of the voting rights held by the offeror or by any of the individuals or entities mentioned in article 20;
- (j) The locations for publication and distribution of the prospectus; and
- (k) The name of the entity responsible for the assessment and disclosure of the result of the offer.

The offer announcement must be published, simultaneously with the disclosure of the prospectus, in a publication of wide circulation, as well as in the bulletin of the regulated market where the securities have been or are due to be admitted to trading.

In general, the offeror must offer the same price to all the offerees. However, it is possible to establish different prices for different classes of securities or offerees, provided that they are determined in objective terms and the offeror has a legitimate interest in offering different prices.

The offer may only be subject to specific conditions that are justified by a legitimate interest of the offeror and provided that they will not affect the normal functioning of the market and are not controlled by the offeror.

4.2. Validity of the offer and price revision

The duration period of the offer must be determined in accordance with its characteristics, the defence of the offerees' and the market's requirements.

The duration of a takeover offer lasts between two and ten weeks. The CMVM, on its own initiative or at the request of the offeror, may extend the offer period in the event the offeror has changed the offer terms, a counter bid was presented or, in general, if the protection of the interests of the offerees so justifies.

Until five days before the end of the offer period, the offeror may revise the type of the consideration or its value. The consideration of the revised offer must be at least 2% higher than the previous offer.

4.3. Modification, cancellation and withdrawal of the offer

In the event of an increase in the risks of an offer due to an unforeseen and substantial change of circumstances known by the offerees on which the decision to launch the offer was based, the offeror may, within a reasonable period and subject to the CMVM's prior authorisation, modify or cancel the offer.

If the offer terms are changed, the CMVM may extend its duration on its own initiative or at the request of the offeror. The modification must be disclosed immediately by the same means used for the disclosure of the public offer announcement.

Any statements of acceptance made prior to the change are considered effective for the modified offer.

Public offers may only be revoked in accordance with article 128, in the event of an unforeseen and substantial change of circumstances on which the decision to launch the offer was based.

The revocation must be disclosed immediately, by the same means used for the disclosure of the offer announcement.

The CMVM must order the withdrawal of the offer if it concludes that it contains any illegality or violates any applicable regulation that cannot be cured.

The decision to withdraw is published by the CMVM, at the expense of the offeror, using the same means used for the offer announcement.

Pursuant to article 132, the revocation and withdrawal of the offer determines the ineffectiveness of the offer and acts of acceptance prior or subsequent to the revocation or withdrawal, and with the right to restitution of whatever was delivered.

4.4. Suspension of the offer

The CMVM must suspend the offer when it discovers the offer to contain any reparable illegality or to be in violation of a regulation.

In addition, the offeror must suspend the offer until the prospectus has been amended or rectified following any event that requires an amendment or rectification of the prospectus.

If the offer is suspended, the offeror may withdraw or revoke the acceptance until the fifth day following the suspension. The duration of the suspension may not exceed ten days. If at the end of the period referred above the defects that caused the suspension have not been corrected, the CMVM must order the withdrawal of the offer.

5. Prospectus

5.1. Requirements and content

Under article 134 of the Securities Code, the carrying out of any public offer for the acquisition of securities in listed companies must be disclosed in a prospectus.

The information in the prospectus must be complete, true, updated, clear, objective and lawful information, allowing the offerees to make an informed assessment of the offer.

In addition to the information that must be included in the offer announcement, the prospectus must include information on:

- (a) The individuals who, in accordance with article 149, are responsible for its content;
- (b) The purpose of the offer;
- (c) The offeror and its activity;
- (d) The name of the members of the offeror's corporate bodies; and
- (e) The financial intermediaries which compose the consortium for the placement, if any.

Lastly, the prospectus must also include the following information:

- (a) The consideration that is offered and its justification. If the consideration consists of securities, the prospectus must include the information that would be required if the securities were the object of a public offer for sale or subscription;
- (b) The minimum and maximum amounts of securities that the offeror intends to acquire;
- (c) The percentage of voting rights that, in accordance with article 20(1), may be exercised by the offeror in the target company;
- (d) The percentage of voting rights that, in accordance with article 20(1), may be exercised by the target company in the offeror company;
- (e) The entities that have any of the relations with the offeror or the target company as set out in article 20(1);
- (f) The securities of the same class as those that are object of the offer, and have been acquired in the six months before the offer by the offeror or any of the individuals or entities mentioned in article 20(1), indicating the acquisition dates, amount and consideration;
- (g) The purposes of the offeror concerning (i) the continuity or modification of the business of the target company, whether it is affected by the offer, and, in the same terms, by companies that have a group relationship with the listed company, (ii) the maintenance and working conditions of workers and managers of the mentioned companies, in particular (iii) the consequences over the places where the activities are developed, (iv) the maintenance as a public company and (v) the maintenance in the regulated market of the securities that are the subject of the offer;
- (h) The possible implications of the success of the offer on the offeror's financial situation and any financing arrangements in respect of the offer;
- (i) The shareholders' agreements, entered into by the offeror or any entity described in article 20(1), with significant influence on the target company;
- (j) The agreements entered into between the offeror or any entity mentioned in article 20(1) and the members of the governing bodies of the target company, including any special advantages that may have been stipulated in their favour;

- (k) The method of payment of the consideration when the securities that are object of the offer are also listed in a regulated market located or functioning abroad;
- (l) The proposed compensation due in case of right's suppression, specifying the payment method and the method used to determine the amount;
- (m) The national legislation under which the contracts between the offeror and the holders of the securities of the target company will be governed, as a result of the acceptance of the offer, and also the competent courts to solve the disputes that may arise; and
- (n) Any expenses or charges that are borne by the recipients of the offer.

The content of the prospectus must be adapted, in accordance with article 135, if and to the extent required by the legal form, the nature and characteristics of the securities that are object of the offer.

At the request of the offeror, the CMVM may waive the obligation to include certain information in the prospectus if its disclosure would be contrary to the public interest, provided that such omission is not likely to mislead the public as to any facts or circumstances whose knowledge is essential for the assessment of the offer.

5.2. Disclosure, addendum and rectification of the prospectus

The prospectus may only be disclosed after receiving the approval of the CMVM. Under article 140 of the Securities Code, the prospectus must be disclosed:

- (a) By publication in one or more of the most read newspapers in the country;
- (b) In the form of a brochure to be made available, free of charge, to the public, in particular at the offeror's head-office, at the head-office and agencies of the financial intermediaries responsible for collecting the offeree's declarations, and at the head-office of the managing entity of the regulated markets in which the securities are or will be listed; or
- (c) At the CMVM website.

When the prospectus is also disclosed by other means, it must be made accessible in a separate form from other information, in particular from any advertisements of the offer.

If, from the date of approval of the prospectus and until the offer's deadline, an error is detected in the prospectus or a new fact occurs or a fact not previously considered that is relevant to the decision to be taken by the offerees is revealed, the offeror must file an addendum or rectify the prospectus. The addendum or rectification of the prospectus must be disclosed in accordance with article 142.

5.3. Liability for the prospectus

Under article 149 of the Securities Code the following entities or persons are liable for damages caused by the non-compliance with the content of the prospectus in accordance with article 135, except in the case they prove to have acted without fault:

- (a) The offeror;
- (b) The members of the offeror's management body;

- (c) The members of the auditing body, accounting firms, chartered accountants and any other individuals that have certified or, in any other way, verified the accounting documents on which the prospectus is based;
- (d) The financial intermediaries in charge of assisting with the offer; and
- (e) Any other entities that accept being appointed in the prospectus as responsible for any information, forecast or study included in the same.

Fault is judged in accordance with the highest standards of professional diligence. Liability is excluded if any of the individuals mentioned above prove that the offeree knew or should have known of the error in the prospectus on the date of his acceptance of the offer or until the date it could have cancelled the acceptance.

The offeror may be liable even without fault, if any of the persons or entities referred to in paragraphs (b), (d) and (e) are held responsible; the leader of the consortium will also be liable even if he acted without fault if the financial intermediary is held liable.

If several entities or persons are liable for damages, their liability shall joint.

6. Counter bids

6.1. Conditions of counter bids

Under article 185 of the Securities Code, any other takeover of securities of the same class may only be carried out through a competing offer launched, until the fifth day before the end of the original offer, for:

- (a) At least, the same amount of securities as the original offer; or
- (b) A consideration that is, at least, 2% higher than the original offer price and under conditions that are not less favourable.

Unless authorised by the CMVM, any persons who participated in the original bid or a prior bid in any of the capacities set forth in article 20(1) of the Securities Code may not launch a counter offer.

6.2. Special rules applicable on counter bids

Counter bids are subject to the general rules applicable to public takeover bids, with certain exceptions, *e.g.*:

- (a) If the preliminary announcement of the counter bid is published prior to the registration of the original takeover bid with CMVM, then the offering periods must be the same, unless the particular circumstances of the offers in question make this impossible;
- (b) If the preliminary announcement of the counter bid is published after the registration of the original takeover bid, or of prior counter bids, then the time periods set forth in article 175.2(b) and article 181(1) of the Securities Code shall be reduced to 8 days and 4 days, respectively; and
- (c) The registration application for a counter bid must be rejected by the CMVM if it concludes that, given the date of presentation of the offer registration application and based on an examination of the application, it will not be possible to make a

decision in time to allow for a timely launch of the bid. The rejection decision must be published immediately by the offeror.

When a counter bid is launched, the offering period of the original takeover bid or of previous counter bids must be extended by the CMVM until the end of the new bid's offering period.

If a counter bid is launched, both the original offeror and any other competitive bidders will be allowed to revise the terms and conditions of their offer, regardless of having or not done so in accordance with article 184 of the Securities Code, provided that the consideration is at least 2% higher than the previous offer.

Any person who accepted the original offer may revoke his acceptance within five days following the launch of the counter bid.

Save when expressly authorised by the CMVM, neither the offeror nor any of the individuals involved in any of the situations described in article 20(1) may launch directly, by means of a third party or on the account of a third party, any takeover for securities pertaining to the same class of those that were object of the offer or that grant the right to their subscription or acquisition, within twelve months following the publication of the assessment of the offer's result.

7. Offer results

The acceptance of the offer by the offerees is made by an instruction to an authorised financial intermediary with whom the securities are registered or a broker.

Acceptances may be revoked by a notice to the financial intermediary if received before the fifth day prior to the expiration of the offer or earlier if so specified in the offer documentation.

At the end of the offer period, the offer results are immediately published:

- (a) By a financial intermediary that collects all the acceptance declarations; or
- (b) In a special session of the stock exchange.

8. Mandatory and compulsory takeovers

8.1. Mandatory takeovers

(a) Duty of launching a takeover

A entity or person who acquires a shareholding in a public company that exceeds, directly or in accordance with article 20(1), one third or half of the voting rights attributable to the share capital, must under article 187 of the Securities Code, to launch a takeover for all the shares and other securities issued by the listed company.

The publication of the preliminary announcement of the offer must be made immediately after the occurrence of the fact which gives rise to the duty of launching the offer.

The launching of an offer is not required when the entity or person, exceeding the limit of one third, proves to the CMVM that it neither has the control of the target company nor has a group relationship with the listed company, in which case, the shareholder is obliged to:

- (a) Communicate to the CMVM any change in the percentage of voting rights resulting in an increase greater than one percent in relation to the previously communicated situation; and
- (b) Launch a takeover as soon as it acquires a position allowing it to exercise a dominant influence over the target company.

The limit of one third may be set aside by the articles of association of publicly held companies that have not issued shares or securities granting the right to their subscription or acquisition listed in a regulated market. For this purpose, the voting rights restraints set out in article 192 shall not be considered.

A mandatory offer will not be required when the limit of the relevant voting rights under article 187 has been exceeded due to:

- (a) The acquisition of securities by a takeover launched over all the securities described in article 187 issued by the target company, without any restriction relating to the quantity or maximum percentage of securities to be acquired;
- (b) The execution of a financial recovery plan within the scope of one of the types of recovery prescribed by law; or
- (c) The merger of companies, if the resolution of the general meeting of the issuing company of securities in relation to which the offer would be launched, expressly specifies that the operation would result in the duty to launch a takeover.

The exemption of the duty to launch an offer is object of a statement by the CMVM, requested and immediately published by the interested party.

Under article 188 of the Securities Code, the consideration for a mandatory takeover may not be less than the highest of the following amounts:

- (a) The highest price paid by the offeror or by any individuals or entities involved in some of the situations described in article 20(1), for the acquisition of securities of the same class, in the six months immediately prior to the date of publication of the preliminary announcement of the offer; or
- (b) The average price of these securities quoted in a regulated market during the same period.

If the consideration cannot be calculated by reference to the criteria described above or if the CMVM understands that the consideration, in cash or securities, proposed by the offeror is not duly justified or equitable, is insufficient or excessive, the minimum consideration will be calculated, at the offeror's expense, by an independent auditor appointed by the CMVM.

If the consideration consists of securities, the offeror must specify the alternative in cash of an equal value.

(b) Suspension of the duty to launch a mandatory offer

The duty to launch a mandatory takeover will be suspended if the person that is obliged to launch it undertakes to end the situation that give rise to such duty within 120 days after the occurrence of such situation, by written communication addressed to the CMVM.

Within this period the interested party must sell to those who are not involved in any of the situations set out in article 20(1), sufficient securities for their voting rights to be reduced below the limits described in article 187.

During the suspension period, the voting rights may not be exercised.

The individual so obliged may be replaced by another in the compliance of such obligation.

(c) Restraint on voting rights

Failure to fulfil the obligation to launch a mandatory takeover causes the immediate restraint on the voting rights and dividends relating to the shares that:

- (a) Exceed the limit from which a launch would be mandatory; and
- (b) Have been acquired by the exercise of rights inherent to the shares referred to in the previous paragraph or in other securities granting the right to their subscription or acquisition.

The restraint will be in force for five years, ceasing:

- (a) In relation to all shares subject to the restraint with the publication of a preliminary announcement of a takeover by a consideration not less than it would be required if the duty had been complied with in due time; and
- (b) In relation to each of the shares subject to the restraint that are sold to an entity that is not deemed to be in any of the situations described in article 20(1).

The restraint covers, firstly, the shares directly held by the individual obliged to launch the offer and, successively, to the extent necessary, those held by the individuals or entities described in article 20(1), in accordance with the order of the respective paragraphs and in relation to those described in the same article, in the proportion of the shares held by each of them.

The resolutions of the shareholders that would have not been approved without the restrained votes are voidable.

The dividends that have been object of restraint revert to the company.

8.2. Acquisition of total control

(a) Compulsory takeovers

Article 194 allows the acquirer of a percentage exceeding, directly or in accordance with article 20(1), 90% of the voting rights of a publicly held company (*sociedade aberta*) subject to Portuguese law until the assessment of the offer results and 90% of the voting rights covered by the offer, following a takeover offer for the entire share capital of such company, to squeeze the minority shareholders within the three months period following the acquisition for a consideration calculated in accordance with rules applicable to the mandatory takeovers.

The controlling shareholder must immediately publish a preliminary announcement and submit it to the CMVM for registration.

The publication of the preliminary announcement obliges the controlling shareholder to deposit the consideration with a credit institution, to the order of the holders of the remaining shares.

The acquisition becomes effective upon publication by the interested party of the registration with the CMVM.

The CMVM will relay the information necessary for the transfer between accounts to the centralised system management entity or registering entity of the shares.

In case the shares of the target company are represented by certificates that are not integrated in a centralised system, the company may issue the new certificates representing the acquired shares and the old certificates will only be used to evidence the entitlement of the holder to receive the consideration payable by the offeror.

The acquisition implies the immediate exclusion from trading of the company's shares and securities granting the right to the acquisition of the shares. The company may not apply for listing during the following year.

In compulsory acquisitions, the purchaser must ensure that all holders of shares of the same class are treated equally, in particular with regard to the calculation of the consideration.

(b) Compulsory sales

Under article 196, , each of the remaining shareholders may, in the three months subsequent to the determination of the results of the takeover bid referred in article 194, require the controlling shareholder to present a proposal for the acquisition of their shares within eight days.

In the absence of the purchase proposal or if the proposal is not considered satisfactory, any holder of the remaining shares may exercise its right to a compulsory sale by means of a request to the CMVM submitted together with the following documents:

- (a) A document proving the deposit or the blockage of shares to be sold; and
- (b) Information on the consideration calculated in accordance with article 194, numbers 1 and 2.

Once the sale requirements have been verified by the CMVM, the sale is effective from the date of notification by that authority to the controlling shareholder. The certificate of the notification constitutes a writ of execution.