



# Mergers and Acquisitions Report **2016**

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INTERNATIONAL FINANCIAL LAW REVIEW

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INTERNATIONAL FINANCIAL LAW REVIEW

Ruben Brigolas and Sónia Martins Reis, PLMJ

## Section 1: GENERAL OUTLOOK

### 1.1 What have been the key recent M&A trends or developments in your jurisdiction?

The main development was the enactment of the Securities Code in August 2015. The new statute revoked the previous Securities Law of 2005 and brought the legal framework up to date and into line with the new challenges Angola faces, particularly as a result of the creation of the Angola stock exchange (*Bolsa de Dívida e Valores de Angola, or BODIVA*). Furthermore, the new Private Investment Law of August 2015 brought about a substantial change in the private/foreign investment legal framework in Angola.

### 1.2 What is your outlook for public M&A in your jurisdiction over the next 12 months?

The BODIVA is expected to fully start operations in 2017. Both companies and regulators are eager to see how the markets will react to this milestone. In January, the BODIVA registered a transaction with a value of roughly AKZ 33 million in government bonds (approximately \$207,000). This amount is expected to increase during the year.

## Section 2: REGULATORY FRAMEWORK

### 2.1 What legislation and regulatory bodies govern public M&A activity in your jurisdiction?

The main regulatory bodies are: the Capital Markets Commission; the President of Angola and the ministries; and, the National Bank of Angola.

The main applicable legal statutes are: the Securities Code; the Companies Law; and, the Private Investment Law.

### 2.2 How, by whom, and by what measures, are takeover regulations (or equivalent) enforced?

The Capital Markets Commission has full statutory powers to supervise and inspect takeovers transactions and to impose sanctions. The Capital Markets Commission has a wide range of powers that include: dealing with clarification/information requests; providing instructions to revise takeover consideration; extending the takeover term; and, appointing the independent auditor.

## Section 3: STRUCTURAL CONSIDERATIONS

### 3.1 What are the basic structures for friendly and hostile acquisitions?

The two main options for structuring a takeover bid are: (i) launching a bid to acquire all or part of the target's shares or assets; or, (ii) via a merger according to the process set out in the Securities Code.

### 3.2 What determines the choice of structure, including in the case of a cross-border deal?

There is no current benchmark. From our experience in other deals, several factors are taken into consideration, in particular: the level of investment required; local content and the level of regulation; and, approval timelines.

### 3.3 How quickly can a bidder complete an acquisition? How long is the deal open to competing bids?

The timeline for approval by the Capital Markets Commission can be two to 10 weeks.

A competing bid can be presented up to five days before the end of the initial offer period.

### 3.4 Are there restrictions on the price offered or its form (cash or shares)?

The consideration can consist of cash and/or securities.

### 3.5 What level of acceptance/ownership and other conditions determine whether the acquisition proceeds and can satisfactorily squeeze out or otherwise eliminate minority shareholders?

A shareholder with at least 90% of the voting rights may acquire the remaining share capital within the first three months of a takeover. The acquisition offer must be registered with the Capital Markets Commission.

### 3.6 Do minority shareholders enjoy protections against the payment of control premiums, other preferential pricing for selected shareholders, and partial acquisitions, for example by mandatory offer requirements, ownership disclosure obligations and a best price/all holders rule?

The takeover bid should be carried out so as to ensure equal conditions for the recipients.

Moreover, a person acquiring half or a third of the voting rights must immediately issue an offer to acquire the totality of the company's share capital.

### 3.7 To what extent can buyers make conditional offers, for example subject to financing, absence of material adverse changes or truth of representations? Are bank guarantees or certain funding of the purchase price required?

Conditions are only admissible when they: (i) correspond to a legitimate interest of the bidder; and, (ii) do not affect the normal operation of the market.

Where cash is offered as consideration, the bidder must deposit the total amount with a financial institution or present an appropriate bank guarantee before registering the offer.

## Section 4: TAX CONSIDERATIONS

### 4.1 What are the basic tax considerations and trade-offs?

Under the tax neutrality regime, there is no tax impact for the entities involved in mergers and demergers, provided that certain formalities and requirements are met.

In addition, income derived from bonds, such as interest, as well as other forms of remuneration of public securities, is subject to investment income tax at the rate of 10%. A five percent rate will apply when the securities are traded on a regulated market and have a three-year maturity or more.

Furthermore, capital gains derived from the sale of shares are subject to investment income tax at the rate of 10%. Capital gains and capital losses deriving from the disposal of public and private debt securities, which have a maturity of three or more years, realised in a regulated market, are subject to taxation on 50% of their amount.

# INBOUND

No reported value for outbound activity



NB only deals with publicly disclosed values are represented in the charts and infographics



## 4.2 Are there special considerations in cross-border deals?

There are no specific tax rules concerning cross-border deals.

## Section 5: ANTI-TAKEOVER DEFENCES

### 5.1 What are the most important forms of anti-takeover defences and are there any restrictions on their use?

There is no current benchmark since the BODIVA is not yet fully operational. Moreover, the legal framework does not have any specific regulations concerning anti-takeover defences, although some mechanisms can be created to act as in a similar manner. Examples include voting caps or golden parachutes.

### 5.2 How do targets use anti-takeover defences?

Not applicable.

### 5.3 Is a target required to provide due diligence information to a potential bidder?

No.

### 5.4 How do bidders overcome anti-takeover defences?

Not applicable.

### 5.5 Are there many examples of successful hostile acquisitions?

Not applicable.

## Section 6: DEAL PROTECTIONS

### 6.1 What are the main ways for a friendly bidder and target to protect a friendly deal from a hostile interloper?

There are no statutory anti-takeover defences. Having said this, we expect some mechanisms to be implemented that will amount to an anti-takeover defence, as stated above.

## 6.2 To what extent are deal protections prevented, for example by restrictions on impediments to competing bidders, break fees or lock-up agreements?

There is no benchmark.

## Section 7: ANTITRUST/REGULATORY REVIEW

### 7.1 What are the antitrust notification thresholds in your jurisdiction?

There are no antitrust regulations in Angola.

### 7.2 When will transactions falling below those thresholds be investigated?

Not applicable.

### 7.3 Is an antitrust notification filing mandatory or voluntary?

Not applicable.

### 7.4 What are the deadlines for filing, and what are the penalties for not filing?

Not applicable.

### 7.5 How long are the antitrust review periods?

Not applicable.

### 7.6 At what level does your anti-trust authority have jurisdiction to review and impose penalties for failure to notify deals that do not have local competition effect?

Not applicable.

### 7.7 What other regulatory or related obstacles do bidders face, including national security or protected industry review, foreign ownership restrictions, employment regulation and other governmental regulation?

Please refer to the private investment regulations mentioned above. In our view, and only in relation to foreign entities, compliance with the Private Investment Law is essential. Without compliance with this legal framework, the shareholder will not be able to enforce its rights, including as to dividend distribution.

## Section 8: ANTI-CORRUPTION REGIMES

### 8.1 What is the applicable anti-corruption legislation in your jurisdiction?

The main anti-corruption statutes in Angola are: the Criminal Code; the Public Probity Law, 2009; the Law of Infractions against the Economy 1999; anti-money laundering legislation.



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### 8.2 What are the potential sanctions and how stringently have they been enforced?

The sanctions range from hefty fines to imprisonment for several years. To date, corruption cases have rarely been made public or prosecuted in the Angolan courts.

## Section 9: OTHER MATTERS

### 9.1 Are there any other material issues in your jurisdiction that might affect a public M&A transactions?

Compliance with the Private Investment Law assumes paramount importance in M&A transaction in Angola (in cross-border deals).

#### About the author

Ruben Brigolas specialises in energy and M&A. Since 2006, he has been advising national players and foreign investors on drafting and implementing investment projects in several sectors of the economy, including the related financing agreements.

He has extensive experience in multi-jurisdictional and multilingual international banking and corporate transactions.

More recently, he has assisted both Portuguese and international companies and banks in their activities in the Angolan oil and gas industry. This assistance has included advising on oil and gas deals and their financing.



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Sónia Martins Reis specialises in tax and customs law and has been providing advice in these areas to Portuguese and international clients on their dealings in Angola for over 10 years.

More recently, she has been involved in several complex and cross-border operations involving Portuguese and Angolan companies.

She also lectures on tax law at the Lisbon University Law School and has been a speaker at many seminars on Angolan tax law.