

# Private Equity

**Jurisdictional comparisons**

**Second edition 2014**

- Foreword** Charles Martin & Simon Perry Macfarlanes LLP
- Australia** Philip Kapp & James Delesclefs Corrs Chambers Westgarth
- Austria** Thomas Schirmer & Markus Uitz Binder Grösswang Rechtsanwälte GmbH
- Belgium** Stefaan Deckmyn & Wim Vande Velde Loyens & Loeff N.V.
- Brazil** Álvaro Silas Uliani Martins dos Santos & Felipe Tavares Boechem Pinheiro Neto Advogados
- Bulgaria** Yordan Naydenov & Dr Nikolay Kolev Boyanov & Co
- Canada** Stewart Sutcliffe, Andrew Cunningham & Ramandeep Grewal Stikeman Elliott LLP
- People's Republic of China** Jonathan Zhou & Ying Zhang Fangda Partners
- Czech Republic** Barbara Kusak & Dita Šulcová Noerr s.r.o.
- Finland** Ari-Pekka Saanio, Paulus Hidén, Tuomas Tikkanen, Janne Juusela & Antti Hemmilä Attorneys at law Borenium Ltd
- France** Daniel Hurstel, Grégoire Finance & Philippe Grudé Willkie Farr & Gallagher LLP
- Germany** Patricia Volhard, Jens Hörmann, Solveig Polsfuß & Lennart Lorenz P+P Pöllath + Partners
- Hungary** Csilla Andrékó, Ádám Mátyus & Dániel Kaszás Andrékó Kinstellar Ügyvédi Iroda
- India** Richie Sancheti & Adhitya Srinivasan Nishith Desai Associates
- Ireland** Edward Miller, Deirdre MacCarthy & William Fogarty Maples and Calder
- Italy** Alessandro Varrenti & Angelo Bonisconi CBA Studio Legale e Tributario
- Japan** Ryo Okubo & Takashi Miyazaki Nagashima Ohno & Tsunematsu
- Luxembourg** Marc Meyers & Jérôme Mullmaier Loyens & Loeff Luxembourg S.à r.l.
- Mexico** Teófilo G Berdeja Prieto Berdeja Abogados, S.C.
- The Netherlands** Mark van Dam, Bas Vletter, Joep Ottervanger & Marco de Lignie Loyens & Loeff NV
- Poland** Ben Davey, Jakub Jędrzejak, Klaudia Frątczak & Łukasz Czekajski WKB Wierciński Kwieciński Baehr
- Portugal** Mafalda Barreto, Filipe Santos Barata & Ana Paula Basílio Gómez-Acebo & Pombo
- Romania** Mihai Macelaru Noerr
- Russia** Mikhail Kazantsev, Arkady Krasnikhin, Michael Copeland, Roman Malovitsky & Mark Rovinsky Egorov Puginsky Afanasiev & Partners
- Slovakia** Adam Hodoň & Martin Vojtko Kinstellar, s.r.o.
- Spain** Fernando de las Cuevas & Iñigo Erláiz Gómez-Acebo & Pombo
- Sweden** Dick Lundqvist, Carl Westerberg & Corinne Ekman Gernandt & Danielsson Advokatbyrå KB
- Switzerland** Dr Beat M Barthold, Dr Nicolas Iynedjian, Dunja Koch, Marco A Rizzi, Patrick W Vogel & Michael Fischer FRORIEP
- Turkey** Onur Taktak, Özlem Tolongüç & Hande Aksu Çetinkaya Avukatlık Ortaklığı in association with Kinstellar, Istanbul
- United Arab Emirates** Bill Jefferies & Jennifer Bibbings Trowers & Hamblins
- United Kingdom** Charles Martin & Simon Perry Macfarlanes LLP
- United States** David Lakhdir, Michael Hong & David Sicular Paul, Weiss, Rifkind, Wharton & Garrison LLP

**General Editors:**  
Charles Martin & Simon Perry  
Macfarlanes LLP

**THE EUROPEAN LAWYER  
REFERENCE**

# Private Equity

**Jurisdictional comparisons  
Second Edition 2014**

**General Editors:  
Charles Martin & Simon Perry, Macfarlanes LLP**



**THOMSON REUTERS**

**General Editors**  
**Charles Martin & Simon Perry, Macfarlanes LLP**

Commissioning Editor  
Emily Kyriacou

Commercial Director  
Katie Burrington

Design and Production  
Dawn McGovern

Editing and Typesetting  
Forewords

Published in September 2014 by European Lawyer Reference Series,  
Friars House, 160 Blackfriars Road, London SE1 8EZ  
part of Thomson Reuters (Professional) UK Limited  
(Registered in England & Wales, Company No 1679046.  
Registered Office and address for service:  
Aldgate House, 33 Aldgate High Street, London EC3N 1DL)

A CIP catalogue record for this book is available from the British Library.

ISBN: 9780414035348

Thomson Reuters and the Thomson Reuters logo are trade marks of Thomson Reuters.

Crown copyright material is reproduced with the permission of the Controller of HMSO and the Queen's Printer for Scotland.

*While all reasonable care has been taken to ensure the accuracy of the publication,  
the publishers cannot accept responsibility for any errors or omissions.*

*This publication is protected by international copyright law.*

*All rights reserved. No part of this publication may be reproduced or transmitted in any form or by any means, or stored in any retrieval system of any nature without prior written permission, except for permitted fair dealing under the Copyright, Designs and Patents Act 1988, or in accordance with the terms of a licence issued by the Copyright Licensing Agency in respect of photocopying and/or reprographic reproduction. Application for permission for other use of copyright material including permission to reproduce extracts in other published works shall be made to the publishers. Full acknowledgement of author, publisher and source must be given.*

© 2014 Thomson Reuters (Professional) UK Limited

# Contents

<b>Foreword</b>	Charles Martin & Simon Perry, Macfarlanes LLP	v
<b>Australia</b>	Philip Kapp & James Delesclegs, Corrs Chambers Westgarth	1
<b>Austria</b>	Thomas Schirmer & Markus Uitz, Binder Grösswang Rechtsanwälte GmbH	19
<b>Belgium</b>	Stefaan Deckmyn & Wim Vande Velde, Loyens & Loeff N.V.	35
<b>Brazil</b>	Álvaro Silas Uliani Martins dos Santos & Felipe Tavares Boechem Pinheiro Neto Advogados	55
<b>Bulgaria</b>	Yordan Naydenov & Dr Nikolay Kolev, Boyanov & Co	71
<b>Canada</b>	Stewart Sutcliffe, Andrew Cunningham & Ramandeep Grewal Stikeman Elliott LLP	83
<b>People's Republic of China</b>	Jonathan Zhou & Ying Zhang Fangda Partners	103
<b>Czech Republic</b>	Barbara Kusak & Dita Šulcová, Noerr s.r.o.	113
<b>Finland</b>	Ari-Pekka Saanio, Paulus Hidén, Tuomas Tikkanen, Janne Juusela & Antti Hemmilä, Attorneys at law Borenius Ltd	131
<b>France</b>	Daniel Hurstel, Grégoire Finance & Philippe Grudé Willkie Farr & Gallagher LLP	147
<b>Germany</b>	Patricia Volhard, Jens Hörmann, Solveig Polsfuß & Lennart Lorenz P+P Pöllath + Partners	177
<b>Hungary</b>	Csilla Andrékó, Ádám Mátyus & Dániel Kaszás Andrékó Kinstellar Ügyvédi Iroda	193
<b>India</b>	Richie Sancheti & Adhitya Srinivasan, Nishith Desai Associates	205
<b>Ireland</b>	Edward Miller, Deirdre MacCarthy & William Fogarty Maples and Calder	225
<b>Italy</b>	Alessandro Varrenti & Angelo Bonisconi, CBA Studio Legale e Tributario	243
<b>Japan</b>	Ryo Okubo & Takashi Miyazaki, Nagashima Ohno & Tsunematsu	261
<b>Luxembourg</b>	Marc Meyers & Jérôme Mullmaier Loyens & Loeff Luxembourg S.à r.l.	277
<b>Mexico</b>	Teófilo G Berdeja Prieto, Berdeja Abogados, S.C.	307
<b>The Netherlands</b>	Mark van Dam, Bas Vletter, Joep Ottervanger & Marco de Lignie, Loyens & Loeff NV	309
<b>Poland</b>	Ben Davey, Jakub Jędrzejak, Klaudia Frątczak & Łukasz Czekański WKB Wierciński Kwieciński Baehr	323
<b>Portugal</b>	Mafalda Barreto, Filipe Santos Barata & Ana Paula Basílio Gómez-Acebo & Pombo	343
<b>Romania</b>	Mihai Macelaru, Noerr	355
<b>Russia</b>	Mikhail Kazantsev, Arkady Krasnikhin, Michael Copeland, Roman Malovitsky & Mark Rovinskiy, Egorov Puginsky Afanasiev & Partners	367
<b>Slovakia</b>	Adam Hodoň & Martin Vojtko, Kinstellar, s.r.o.	383
<b>Spain</b>	Fernando de las Cuevas & Iñigo Erláiz, Gómez-Acebo & Pombo	393

<b>Sweden</b> Dick Lundqvist, Carl Westerberg & Corinne Ekman Gernandt & Danielsson Advokatbyrå KB	405
<b>Switzerland</b> Dr Beat M Barthold, Dr Nicolas Iynedjian, Dunja Koch, Marco A Rizzi, Patrick W Vogel & Michael Fischer, FRORIEP	423
<b>Turkey</b> Onur Taktak, Özlem Tolongüç & Hande Aksu Çetinkaya Avukatlık Ortaklığı in association with Kinstellar, Istanbul	443
<b>United Arab Emirates</b> Bill Jefferies & Jennifer Bibbings, Trowers & Hamblins	451
<b>United Kingdom</b> Charles Martin & Simon Perry, Macfarlanes LLP	469
<b>United States</b> David Lakhdhir, Michael Hong & David Sicular Paul, Weiss, Rifkind, Wharton & Garrison LLP	495
<b>Contact details</b>	523

# Foreword

## **Charles Martin & Simon Perry Macfarlanes LLP**

---

The private equity landscape has changed significantly since the first edition of this book was published in 2010. Back then the economies of many of the jurisdictions represented in these pages were in recession and the credit crisis meant that debt finance, on which so much private equity deal activity relies, was scarcely available in many places. There were other factors at work as well: fundraising was at an all-time low and, for those funds which were being raised, LPs had become more forthright in dictating fund terms. The heady days of 2006/2007 were a distant memory. The private equity mega-deal appeared to be dead and buried and what deal flow remained dried up almost to a trickle.

The private equity industry reacted with resilience to these and other challenges and, at the time of writing, the future is looking bright. With economies growing once again and a general improvement (even exuberance) in debt markets as well a number of alternative financing solutions now available, deals are once again being completed. The focus is on investing in high-quality businesses both in some of the more traditional jurisdictions and increasingly in high-growth and emerging markets. Exits are also back on the agenda: in 2013 there were 1,348 private equity exits valued at \$303bn, and this looks set to be exceeded in 2014. For the first time for a number of years, the resurgence in the IPO markets in the US and the UK, amongst others, has seen the return of the IPO as a viable exit route for private-equity-backed businesses. Leveraged recaps are happening again. Investment opportunities at attractive prices are hard to come by. Buy and build is a favoured strategy for dealing with that. Charles Darwin would smile.

The fund environment is also much different to 2010, with the emergence of a raft of new and more specialist funds, and with the traditional private equity fund facing increasing competition from sovereign wealth funds, family offices and LPs willing to invest directly. The traditional private equity fund does, however, retain a great deal of firepower: at the beginning of 2014 it is estimated that global buyout funds were sitting on over US\$400 billion of uncalled capital waiting to be spent.

The regulatory landscape has also changed significantly since 2010. The introduction of AIFMD has altered the way in which many funds operate within Europe and there are further changes on the horizon for certain categories of investor with the implementation of Solvency II and Basel III. In the US, regulatory scrutiny is attaching to fees in particular.

It is therefore a good time to launch the second edition of this book, which picks up on many of the themes referred to above. As with the first edition, we have aimed to provide a clear and comprehensive analysis of

the key issues relating to private equity fundraising and deal-doing on a jurisdiction by jurisdiction basis.

It has been a pleasure working on this edition with some of the leading private equity practitioners at independent law firms around the world, and we would like to thank them for their hard work and collaboration. Many thanks are also due to the team at Thomson Reuters for their tireless efforts in putting this edition together.

# Portugal

## Gómez-Acebo & Pombo

Mafalda Barreto, Filipe Santos Barata & Ana Paula Basílio

---

### 1. MARKET OVERVIEW

#### 1.1 Types of investors

The main investors in the private equity sector, which includes venture capital funds, are traditional market players, notably financial institutions, public investors, collective investment undertakings and their respective management companies, insurance companies, and private investors in general. A minimum investment in venture capital funds of EUR 50,000 is mandatory.

#### 1.2 Types of investments

The main types of investment carried out by venture capital funds in Portugal are management buyouts (MBOs), expansion/development of companies and start-ups, and additionally the restructuring or amalgamation of (pre)insolvent companies seeking their recovery. Seed capital is also used by venture capital funds, and its use is increasing rapidly due to the opportunities the market is currently presenting.

According to provisional data available, the amount invested in 2013 was approximately EUR 300 million, of which the largest percentage was in MBOs, whereas start-ups (in connection with entrepreneurship) accounted for about 10 per cent of this amount. This is a strong indication of a new trend in the investment strategies of venture capital funds, which are starting to contemplate investment in early-stage businesses.

The general increase in investment is also directly linked to turnaround funds (corporate recovery funds), which, as per the data of the Portuguese Securities and Markets Authority (CMVM), published in the *Annual Report of Private Equity Activity 2012*, represented approximately 41 per cent of all investments and revitalisation funds in 2012, first set up in 2013, and was aimed at the sustainable capitalisation of small to medium-sized enterprises.

### 2. FUNDS

#### 2.1 Fund structures

In the Portuguese jurisdiction, a private equity fund is a sort of undertaking of collective investment in transferable securities.

A private equity fund is an independent pool of assets (*património autónomo*), with no separate legal existence of its own, and belongs to the aggregate of the holders of units (*unidades de participação*) in the fund. A unit is a non-par-value security, which corresponds to a parcel of non-specified assets of the private equity fund.



A private equity fund is not liable for any debts of the holders of units in the fund or its management company.

Private equity funds are managed and represented by management companies (*sociedades gestoras*) acting on behalf of and in the interest of their investors.

Under law, private equity or venture capital activity and investment consists in the investment/acquisition, for a limited period of time, of equity instruments and debt capital instruments in target companies with a high potential of development and growth, as a means of benefiting from any appreciation in value.

In Portugal, venture capital funds (VCFs) are a particular type of private equity fund; there is no clear conceptual distinction between private equity and venture capital, the latter being subsumed under the former.

Private equity funds in general are subject to much more restrictive rules regarding their portfolio of assets, the percentage that may be held in respect of each type of equity and debt, and the percentage they may represent in the assets of private equity funds, which in general are not applicable to venture capital funds. Moreover, there are strict limits to the ownership of qualified holdings by the same management entity of private equity funds in general, which also do not apply to VCFs. Private equity funds in general may only hold minority stakes in the companies in which they invest, which is not the case of VCFs.

Considering the above, the issues raised, and in particular the operations contemplated in this chapter, which are mostly applicable to VCFs only rather than to private equity funds in general, we shall focus our analysis on VCFs.

VCFs must act in Portugal through a sort of private equity company known as venture capital companies (VCCs), but may also be a company of regional development or other entity legally capable of managing closed investment funds, which manage and represent them.

The intervention of these management entities consists basically in carrying out time-limited investments for and on behalf of the funds they manage, and providing financial, technical, commercial and management assistance to the companies in which those funds have a stake. This assistance may comprise technical and economic studies on the viability of companies or new investment projects (in particular, market studies), as well as on the conditions and types of relevant funding.

In practice, holders of units in VCFs do not interfere in the management of the VCFs, which is generally carried out by VCCs. Typically, there is an annual general meeting of holders of units in order to approve the VCF's accounts, at which they are informed by the management of the investments made. Resolutions of unit holders are taken at the request of VCCs, the consent of which is required for the amendment of proposals.

There is also a depositary of the units, typically a bank or other credit institution. The duties and remuneration of depositaries are set out in an agreement between VCCs and the depositary.

## 2.2 Regulation of fund raising and fund managers

VCFs are governed by the following applicable legislation:

- Securities Code, as amended;
- Decree-Law 375/2007 of 8 November, which governs the activity of investment in venture capital, through VCCs, VCFs or private equity investors (PEIs);
- Ministerial Order (*Portaria*) 913-I/2003 of 30 August, amended by Ministerial Order 1018/2004 of 17 September and by Ministerial Order 712/2005 of 25 August, which establishes the new regime of securities market supervision fees;
- Regulation 12/2005 of the CMVM, which governs the accounting of VCCs and VCFs;
- Regulation 1/2008 of the CMVM, which establishes the rules applicable to VCFs, VCCs and PEIs regarding the evaluation of their assets and liabilities, the provision of information, the registration procedure, the requirements of suitability of the holders of the corporate bodies and the holders of qualified holdings in VCCs or PEIs, and the performance of the activity of VCFs which invest mainly in other funds of a similar nature;
- Instruction No. 2/2013 of the CMVM, which focuses on the disclosure of information of portfolio of VCFs and VCC envisaging to automate procedures for information management; and
- Regulation 2/2008 of the Securities Commission, which amends Regulation 7/2003, establishing the fees charged by the CMVM, as the supervisory authority of private equity activities in transferable securities.

As described above, VCFs shall be administered and represented by a management entity, which may be a VCC, but the law extends this task to companies of regional development or other entities legally capable of managing closed-ended investment funds, such as banks and credit financial institutions. In any event, VCFs are typically managed by VCCs.

The management entity acts on behalf of the VCF and, in the performance of its duties and functions, shall comply with high professional and diligence standards and comprehensive management duties, whether set out by law, in the articles of association of VCCs or in the management regulation (*regulamento de gestão*) of VCFs, which sets out the contractual rules for their functioning. The subscription or acquisition by investors of units in VCFs requires the acceptance of the respective management regulation.

The law establishes that all VCCs and PEIs must be registered with the CMVM prior to carrying out any business. For registration purposes, the suitability of the members of the management bodies and the holders of qualified holdings in VCCs or PEIs is a requirement which must be met, otherwise registration shall be refused.

## 2.3 Customary or common terms of funds

VCFs are closed-ended funds (*fundos fechados*) of investment in securities, typically managed by VCCs, though occasionally by regional development companies or other legal entities capable of managing closed-ended investment funds. The minimum subscribed capital of VCFs is currently EUR 1 million and the units must all be registered.

The CMVM shall supervise and regulate the activity of the management entities of VCFs. The minimum share capital (represented by registered shares) required for the incorporation of VCCs is EUR 750,000, except when their scope is exclusively the management of VCFs, in which case the minimum amount of share capital will be EUR 250,000.

Shareholdings by a VCF may not be held for more than 10 years. Within this period, the main object of VCCs is to carry out temporary investments in companies with high growth potential, and in particular the management of VCFs.

Additionally, VCCs may perform ancillary services, such as the technical, financial and commercial management of the companies in which they hold equity shares or VCFs, including obtaining credit from financial institutions. VCCs are also allowed to develop market studies for companies or investment projects, upon request or whenever deemed to be an investment opportunity, as well as any other activities connected with their corporate object.

While carrying out the above-mentioned management activities, VCCs may appoint members of the management bodies of the companies in which they or, more frequently, VCFs have equity holdings, or make available technicians to provide services to these companies, within a limited time period.

PEIs are mandatorily incorporated by means of a private single member company limited by quotas (*Sociedade Unipessoal por Quotas*), where the single member must be a natural person.

Finally, it is important to note that the incorporation of VCFs, and the beginning of activity of VCCs and PEIs, is subject to prior simplified registration with the CMVM. The registration of PEIs should not be published.

The incorporation of VCFs and the beginning of activity of VCCs or PEIs are subject only to prior notification to the CMVM, provided that, in the case of VCCs, the amount of their share capital is not made available to the general public but is held only by qualified investors or when the minimum amount of the subscribed capital of VCCs or PEIs is equal to or higher than EUR 500,000, as far as each individual investor(s) is concerned, as the case may be. Any amendment to the particulars of registration must be notified to the CMVM.

## 3. DEBT FINANCE

### 3.1 Means of financing

Apart from the traditional secured-term loan facility, there are other means for private equity-backed vehicles to obtain financing, although they are not

often used. There are a few high-yield bonds marketed in Portugal relating to funds from other jurisdictions. Securitisation is also an alternative means of obtaining financing for private equity-backed vehicles, but is rarely used in Portugal. A financing alternative is constituted by instruments that can be redeemed at the option of the holder. The use of hybrid securities, which are different from those usually granted, also opens up further alternative sources of finance.

### 3.2 Restrictions on granting security

Under law, the capacity of companies includes all rights and obligations necessary for or convenient to the implementation of the respective corporate purpose. Accordingly, the granting of security on behalf of third parties has some restrictions.

However, subject to specific terms and circumstances, companies may provide security interests to secure third party debts. The rendering of security by companies in order to secure obligations of other entities is deemed to be contrary to their object, unless the companies have a justified self-interest (*justificado interesse próprio*) thereon, belong to the same group or are in a domain relationship. The Portuguese Companies Act sets forth that companies are in a group relationship whenever a company holds the entire share capital of another, whether directly or indirectly.

There will generally be justified self-interest whenever the issuance of security interests to secure third party debts is given in the context of a control or group relationship and thus a corporate benefit is clearly recognised as arising for the whole group of companies, not on an individual corporate basis.

When the security is provided by a third party, the purpose is to make the assets of that third party liable for paying the same debt, together with the debtor's assets.

It is important to note that, in the case of provision of security by a third party, when the guarantor's assets are enforced for paying the debt, it becomes subrogated (*subrogação*) to the creditor's right and therefore shall be paid by the debtor.

The law provides the possibility for creditors to rank their claims in a privileged position in relation to other creditors of the same debtor by obtaining a special security whereby statutory provisions create a legal priority as to ranking of certain types of claims. Regarding the ranking of claims, Portuguese law sets forth the priority ranking of certain claims over others, namely certain claims of the state and tax authorities and the claims of employees. These claims are considered preferential and shall be paid prior to any other, including any priority established contractually. In the event of insolvency, under the applicable law, security interests grant a priority to secured lenders limited to the proceeds obtained from the enforcement of the security, and any remaining unpaid debt will be considered an ordinary claim (*crédito comum*) and shall rank together with other unsecured ordinary creditors.

Finally, according to the Portuguese Companies Code, a company may not grant loans or provide funds or security for a third party to subscribe or in any way acquire its own shares. Such regime will not be applicable to transactions included in banking or financial current activities, nor to the transactions aimed at the acquisition of shares of the borrower by its employees or by the directors of a parent company, within certain limits. The acts or contracts that violate such provisions are null and void.

### **3.3 Inter-creditor issues**

Inter-creditor agreements are not commonly executed to the extent that syndicated loans are not typically used in Portugal to finance VCCs, VCFs or PEIs.

The ranking of *in rem* security *inter se*, and between those and personal security (*garantias pessoais*), is laid down in the law. In general, the former prevail over the latter. Additionally, only the different types of security *in rem* expressly provided by law (eg mortgages, pledges) are permitted. Parties to inter-creditor agreements may not create different security *in rem* or set out a different ranking. The ranking of security *in rem* is generally determined by priority of registration or by compliance with publicity requirements.

Creditors may agree that they shall only call default and enforce loans and security interests thereof after other creditors do so, but these agreements shall only be effective between the parties. If inter-creditor agreements are breached by a given creditor, it will not, as a general rule, have an effect on the relevant enforcement proceedings, although such creditor may be held liable to the non-defaulting creditor in accordance with the agreed terms.

### **3.4 Syndication**

In Portugal, the syndication of loans usually occurs in project finance or public-private partnerships projects.

## **4. EQUITY STRUCTURES**

### **4.1 Role of management**

Management (VCCs or their directors) may have board seats in the target company or just provide technical support to the management bodies of the company, in order to improve its value.

Further, management entities may have an equity stake in the investment vehicle, although, as mentioned above, VCFs are separate pools of assets that are not legal entities. VCCs may hold up to 50 per cent of the participating units in VCFs. Investments and holdings in target companies are typically held by VCFs.

### **4.2 Common protections for investors**

In practice, holders of units in VCFs do not interfere in their management or their investments. Notwithstanding, they have the right:

- to be informed in general meetings of holders of units, and by the management on the investments made by VCCs for and on behalf of VCFs; and
- to approve the annual accounts of VCFs; resolutions may only be taken at the request of VCCs and the amendment of proposals requires their consent.

By virtue of the law, the investors in VCFs or PEIs also have other information rights regarding investments. In this context, it is important to refer to the duty of listed companies to disclose, in their annual report, information related to corporate governance, their policy of remuneration of the members of the board of directors, and the supervisory bodies.

VCCs, either directly or as the management entity of VCFs or PEIs, typically have board seats or have the right to appoint directors in the target company, notwithstanding normally holding minority equity holdings. The degree and scope of intervention in the management of the target company varies.

VCCs, including as the management entity of VCFs and PEIs, may enter into shareholders agreements – a crucial tool in designing the legal scenario on which investors base their decisions – in order to rule on, *inter alia*, the transfer of shares in investee companies by setting, for instance, drag-along rights, tag-along rights and rights of first refusal. Typically, there is also a pre-emption right in the acquisition or transfer of units which is used as a mechanism to deter undesired investors.

### 4.3 Common protections for management

Management, ie usually VCCs and their respective directors, manage and represent VCFs. The holders of units have no material powers enabling them to interfere with the management of VCFs. Investments (ie target companies) are typically held by VCFs. In order to protect the investments of VCFs in target companies, as a standard practice, management holds board seats in their management bodies or has the power to appoint them.

### 4.4 Management warranties

Under law and in accordance with the management regulations of the VCFs, VCCs (as the management entity of VCFs) and their directors must always act in order to defend the rightful interests of the holders of the units in VCFs, and refrain from acting in businesses which may cause a conflict of interest with the holders of units. The directors of VCCs are also subject to suitability requisites, which are supervised and monitored by the CMVM. They are legally bound to comply with high professional and diligence standards in the performance of their duties, including, without limitation:

- issues concerning the incorporation of VCFs;
- the selection of VCFs' assets;
- determination of their value and management;
- the issue and refunding of units of VCFs;
- the accounts of VCFs; and
- the provision of information to the holders of units.

Those duties, supervised by the CMVM, are provided by law and are set out in the management regulation of VCFs.

Considering the above, VCCs, as the management entity of VCFs, are subject to the aforementioned duties as long as they manage the relevant VCF and the directors of VCCs whilst remaining in office. No liability cap is usually set out in the management regulation of VCFs.

#### **4.5 Good leaver/bad leaver provisions**

Management, ie usually a VCC, may have an equity stake in the investment vehicle. VCCs may hold up to 50 per cent of the units in VCFs. Where a director of a VCC holds units and ceases to be involved, it will transfer its units subject to pre-emption rights, which are typically set out in the management regulation of VCFs.

#### **4.6 Public to private transactions**

Public to private transactions do not exist in the Portuguese jurisdiction.

### **5. EXITS**

#### **5.1 Secondary sales**

Secondary sales are not usually used to exit investments.

#### **5.2 Trade sales**

Trade sales are the most commonly used mechanism for exiting private equity investments in Portugal, and are viewed as the simplest and most effective way to ensure a successful exit. In Portugal, it is common to see boiler-plate clauses used in this type of transaction, such as the conversion of preferential shares into common shares, the removal of restrictions regarding voting rights and majority rights.

#### **5.3 IPOs**

IPOs are not typically used to exit an investment.

#### **5.4 Refinancings**

Refinancings are not traditionally used to exit an investment.

#### **5.5 Restructuring/insolvency**

Generally, investment exiting in Portugal only occurs at the end of the investment period, ie when VCFs are wound up, and therefore no key issues arise because the winding up of VCFs is governed by law and the management regulation of VCFs. The time limit for private equity investment through VCFs or by VCCs is 10 years.

However, in the event of insolvency, it should be noted that any act deemed prejudicial to the insolvent company may be revoked, with retrospective effect, provided that the third party acted in bad faith, ie knew of the existence of the insolvency or the harmfulness of the act to the situation of the debtor. In principle, the declaration of the borrower's insolvency does not entitle the lenders to terminate the agreement. The

lenders may, however, set out certain pre-insolvency scenarios as defaulting events, enabling the supervision of the activity of the company and, whenever necessary, the termination of the agreement before the debtor is formally found insolvent.

## **6. TAX**

### **6.1 Taxation of VCFs and corresponding unit holders**

#### **6.1.1 VCFs are exempt from Portuguese Corporate Income Tax (CIT) on capital gains, dividends, interest and any other type of income, whether obtained from Portuguese or foreign sources**

Due to this CIT exemption, VCFs are unable to recover any foreign taxes that might be levied on investments made abroad.

#### **6.1.2 Taxation of the VCF unit holders**

##### **Non-Portuguese resident unit holders**

Non-Portuguese resident unit holders without a permanent establishment in Portugal to which those units are allocated are exempt from CIT/Personal Income Tax (IIT) both on the income distributed by the VCF (whether by means of periodical distributions or as a result of the redemption of its units) and on the capital gains obtained from the disposal of its units, except where such non-Portuguese unit holders:

- are resident in a tax haven, as per the Portuguese blacklist; or
- in the case of corporate entities, if more than 25 per cent of its share capital is held, directly or indirectly, by Portuguese residents.

Where the above-mentioned CIT and IIT exemptions are not applicable, income distributed by a VCF to its non-Portuguese resident unit holders, as well as capital gains obtained by the same on the disposal of its units, are taxed in Portugal at a rate of 10 per cent. Portuguese taxation may, however, be waived, if a double tax treaty between Portugal and the state of residence of the unit holder applies and the treaty grants the exclusive right to tax this type of income and capital gains to the state of residence of the beneficiary.

##### **Portuguese resident unit holders**

Income distributed by the VCF (whether by means of periodic distributions or as a result of the redemption of its units) to Portuguese resident unit holders (and to Portuguese permanent establishments of non-resident entities to which those units are allocated) is subject to a 10 per cent withholding tax (except where an exemption applies to the unit holder in question).

This 10 per cent withholding tax is the final taxation if the unit holders are individuals and they do not opt to aggregate the income distributed by the VCF with the other types of income obtained in the same year. If this option is taken, the general/progressive IIT rates (up to an aggregate rate of 56.5 per cent for 2014) will apply and thus the 10 per cent tax withheld at source constitutes simply a payment on account of the final IIT liability. In such case, the individual unit holder will only be taxed with regard to 50 per cent of the income distributed by the VCF corresponding to dividends



received by the VCF from Portuguese resident companies or from companies resident in other EU States, provided such companies are eligible for the Parent & Subsidiaries' Directive regime.

Where the unit holder is a corporate entity, the 10 per cent withholding tax is simply a payment on account of the final CIT liability.

Capital gains obtained by individuals from the disposal of its units in VCFs are taxed separately, at a special 10 per cent IIT rate.

Capital gains obtained by corporate entities from the disposal of its units in VCFs are taxed at the general CIT rate (up to an aggregate rate of 31.5 per cent for 2014).

## **6.2 Taxation of VCCs, PEIs and corresponding shareholders**

If VCCs or PEIs hold units in a VCF, the CIT regime described in section 6.1 above will apply both to the income distributed by the VCF and to the capital gains derived from the disposal of its units.

CIT general rules apply to VCCs and PEIs. As such (and in accordance with the rules recently enacted by the CIT Reform Act), VCCs and PEIs will be CIT exempt on dividends received provided that a minimum 5 per cent shareholding is held for at least two years in the companies distributing those dividends, and to the extent that these companies are subject to and not exempt from CIT, from one of the taxes listed in the annex to the Parent & Subsidiaries' Directive or from a tax similar to the Portuguese CIT, depending on the state of residency of the investee companies.

Capital gains obtained by VCCs and PEIs from the disposal of their shareholdings will also be CIT exempt, provided that the above-mentioned requirements as to the exemption of dividends are met, and to the extent that the stock was held for at least two years prior to its disposal.

If the requirements mentioned above are not met, dividends and capital gains obtained by VCCs and PEIs will be taxed in accordance with the general CIT rules.

The shareholders of PEIs are entitled to an IIT claim of 20 per cent of the amount invested by them or by the relevant PEI (of which they are shareholders) up to an amount equal to 15 per cent of their IIT final liability. This tax claim will not be available for investments in quoted companies or companies controlled by other companies (except for investments in VCCs and VCFs) and investments in companies subject to regulation by the banking and insurance supervision authorities.

With respect to resident individual shareholders of VCCs or PEIs, these are taxed at a 28 per cent final withholding tax on dividends distributed by the VCC/PEI, although they might opt to aggregate such dividends with the other types of income obtained in the same year. (If this option is taken, the general/progressive IIT rates (up to an aggregate rate of 56.5 per cent for 2014) will apply to 50 per cent of the dividend income.) Capital gains from the disposal of shares in a VCC/PEI are also taxed at a 28 per cent IIT rate, through separate taxation.

With respect to resident corporate shareholders of VCCs, a 25 per cent withholding tax applies on dividends received, as a payment on account of

the final CIT liability. Such dividends, as well as capital gains obtained from the disposal of shares in the VCC, are taxed in accordance with the general CIT rules unless the above-mentioned requirements are met, in which case a CIT exemption will apply.

As far as overseas shareholders of VCCs are concerned, withholding tax applies on dividends received, at a 28 per cent rate in the case of individuals and 25 per cent in the case of bodies corporate, except where a double tax treaty applies, in which case the withholding tax rate will range between 5 and 15 per cent, according to the relevant treaty. No taxation will be levied if the requirements of the Parent-Subsidiary Directive are met. Capital gains from the disposal of shares in a VCC are, in principle, tax exempt, unless the overseas investor is resident in a blacklisted territory or more than 25 per cent is held by Portuguese-residents, in which case individual shareholders are taxed at 28 per cent and corporate shareholders are taxed at 25 per cent (if a treaty applies, in principle no taxation will be due on such capital gains).

### **6.3 Other tax issues**

Loans granted to VCFs and granted guarantees are subject to stamp duty at a rate of 0.04 per cent (per month or fraction thereof), 0.5 per cent or 0.6 per cent, depending on maturity. If such loans were granted by a credit/financial institution, a 4 per cent stamp duty would also be due on the interest and commissions charged.

Fees for the management of VCFs are VAT exempt.

Investors usually choose to incorporate a new company (SPV, which can take the form of a holding company, a company limited by shares or a company limited by quotas), financed by the VCF (and by other investors, as might be the case), to acquire the stock or assets of the target (interest payable by the SPV is generally allowed as a deduction for CIT purposes).

In terms of post-acquisition scenarios, the upstream merger of the target into the SPV or the tax group regime are the two most favourable alternatives and the ones usually followed by investors.

## **7. CURRENT TOPICAL ISSUES/TRENDS**

Notwithstanding the impact that the financial crisis has had in Portugal, in the past decade there has been a significant increase in private equity.

The most common transactions regarding VCFs carried out in Portugal are MBOs, start-ups and expansions/recovery of businesses.

In this context, particular reference should be made to hybrid securities, which generally combine debt and equity, thus enabling remuneration to be set out under more attractive conditions without losing or sharing the vote and management control of the issuer. The use of these securities creates further alternative sources of finance. With regard to exits, they have been achieved in Portugal by way of trade sales, MBOs and silent 'partnerships'.

Notwithstanding this, we are of the view that, in the short and medium terms, fund-raising and deal-doing will not decrease in Portugal. Portugal has been giving signs of good, sound performance as far as private equity

transactions regarding VCFs are concerned, and this is expected to continue on a regular basis.

It is likely that most of the operations and transactions contemplated in this chapter will then become even more common in Portugal and fair competition with private equity funds incorporated in several EU jurisdictions will become a reality.

Finally, further developments following the adoption of the Alternative Investment Funds Managers Directive are awaited with anxiety by the market players. Comprehensive amendments to the applicable regime dated 2007 are expected to occur, which shall have a profound impact.

# Contact details

---

## GENERAL EDITORS

Charles Martin & Simon Perry  
Macfarlanes LLP  
20 Cursitor Street  
London EC4A 1LT  
T: +44 20 7831 9222  
F: +44 20 7831 9607  
E: charles.martin@macfarlanes.com  
simon.perry@macfarlanes.com  
W: www.macfarlanes.com

## AUSTRALIA

Philip Kapp & James Delesclefs  
Corrs Chambers Westgarth  
Level 17  
8-12 Chifley Square  
Sydney, New South Wales 2000  
T: +61 2 9210 6768 (PK)  
+61 2 9210 6139 (JD)  
F: +61 9210 6611  
E: philip.kapp@corrs.com.au  
james.delesclefs@corrs.com.au  
W: www.corrs.com.au

## AUSTRIA

Thomas Schirmer & Markus Uitz  
Binder Grösswang Rechtsanwälte  
GmbH  
Sterngasse 13  
Vienna 1010  
T: +43 1 53480 340  
F: +43 1 534808  
E: schirmer@bindergroesswang.at;  
uitz@bindergroesswang.at  
W: www.bindergroesswang.at

## BELGIUM

Stefaan Deckmyn & Wim Vande Velde  
Loyens & Loeff  
Rue Neerveld 101-103  
Brussels 1200  
T: +32 2 743 43 43  
F: +32 2 773 23 89  
E: stefaan.deckmyn@loyensloeff.com  
wim.vande.velde@loyensloeff.com  
W: www.loyensloeff.com

## BRAZIL

Álvaro Silas Uliani Martins Dos Santos  
& Felipe Tavares Boechem  
Pinheiro Neto Advogados  
Rua Hungria 1100  
01455-906 São Paulo  
Brazil  
T: +55 11 3247 8995  
F: +55 11 3247 8600  
E: asantos@pn.com.br  
fboechem@pn.com.br  
W: www.pinheironeto.com.br

## BULGARIA

Yordan Naydenov & Dr Nikolay Kolev  
Boyanov & Co., Attorneys at Law  
82 Patriarch Evtimii Blvd.  
Sofia 1463  
T: +359 2 8055055  
F: +359 2 8055000  
E: y.naydenov@boyanov.com  
n.kolev@boyanov.com  
W: www.boyanov.com

## CANADA

Stewart Sutcliffe  
Stikeman Elliott LLP  
5300 Commerce Court West  
199 Bay Street  
Toronto, Ontario M5L 1B9  
T: +1 416 869 5511  
F: +1 416 947 0866  
E: ssutcliffe@stikeman.com  
W: www.stikeman.com

## PEOPLE'S REPUBLIC OF CHINA

Jonathan Z Zhou  
Fangda Partners  
21/F., China World Tower 3, 1  
Jianguomenwai Avenue  
Beijing 100004  
T: +86 10 5769 5600  
F: +86 10 5769 5788  
E: jzhou@fangdalaw.com  
W: www.fangdalaw.com

## CZECH REPUBLIC

Barbara Kusak & Dita Šulcová  
Noerr s.r.o.  
Na Poříčí 1079/3a  
Praha 1, 110 00  
T: +420 233 112 111  
F: +420 233 112 112  
E: barbara.kusak@noerr.com  
dita.sulcova@noerr.com  
W: www.noerr.com

## FINLAND

Ari-Pekka Saanio, Paulus Hidén,  
Andrei Aganimov, Janne Juusela &  
Antti Hemmilä  
Attorneys at law Borenius Ltd  
Yrjönkatu 13 A  
Helsinki 00130  
T: +358 9 615 333  
F: +358 9 6153 3499  
E: ari-pekka.saanio@borenius.com  
paulus.hiden@borenius.com  
andrei.aganimov@borenius.com  
janne.juusela@borenius.com  
antti.hemmila@borenius.com  
W: www.borenius.com

## FRANCE

Daniel Hurstel, Grégoire Finance &  
Philippe Grudé  
Willkie Farr & Gallagher LLP  
21-23 rue de la Ville l'Evêque  
Paris 75008  
T: +33 1 53 43 45 00  
F: +33 1 40 06 96 06  
E: dhurstel@willkie.com  
gfinance@willkie.com  
pgrude@willkie.com,  
W: www.willkie.com

## GERMANY

Jens Hörmann  
P+P Pöllath + Partners  
Rechtsanwälte und Steuerberater  
mbB  
Hofstatt 1  
80331 München  
T: +49 89 24 240 278  
F: +49 89 24 240 996  
E: Jens.Hoermann@pplaw.com  
W: www.pplaw.com

## HUNGARY

Csilla Andrékó, Ádám Mátyus &  
Dániel Kaszás  
Andrékó Kinstellar Ügyvédi Iroda  
1054 Budapest  
Széchenyi rakpart 3  
T: +36 1 2240900  
F: +36 1 2240495  
E: csilla.andreko@kinstellar.com  
adam.mattyus@kinstellar.com  
daniel.kaszas@kinstellar.com  
W: www.noerr.com

## INDIA

Richie Sancheti & Adhitya Srinivasan  
Nishith Desai Associates  
93-B, Mittal Court  
Nariman Point  
Mumbai  
Maharashtra 400021  
T: +91 22 66695000  
F: +91 22 66695001  
E: nda@nishithdesai.com  
W: www.nishithdesai.com

## IRELAND

Edward Miller, Deirdre MacCarthy &  
William Fogarty  
Maples and Calder  
75 St. Stephens Green  
Dublin 2  
T: +353 1 619 2000  
F: +353 1 619 2001  
E: edward.miller@maplesandcalder.  
com  
deirdre.maccarthy@  
maplesandcalder.com  
william.fogarty@  
maplesandcalder.com  
W: www.maplesandcalder.com

## ITALY

Alessandro Varrenti &  
Angelo Bonisconi  
CBA Studio Legale e Tributario  
Galleria San Carlo 6  
20122 Milan  
Via Flaminia 135  
00196 Rome  
T: +39 02 778061  
F: +39 02 76002790

E: [alessandro.varrenti@cbalex.com](mailto:alessandro.varrenti@cbalex.com)  
[angelo.bonissoni@cbalex.com](mailto:angelo.bonissoni@cbalex.com)  
W: [www.cbalex.com](http://www.cbalex.com)

## **JAPAN**

Ryo Okubo & Takashi Miyazaki  
Nagashima Ohno & Tsunematsu  
Kioicho Building 3-12,  
Kioicho, Chiyoda-ku  
Tokyo 102-0094  
T: +81 3 3288 7000  
F: +81 3 5213 7800  
E: [ryo\\_okubo@noandt.com/takashi\\_miyazaki@noandt.com](mailto:ryo_okubo@noandt.com/takashi_miyazaki@noandt.com)  
W: [www.noandt.com](http://www.noandt.com)

## **LUXEMBOURG**

Marc Meyers & Jérôme Mullmaier  
Loyens & Loeff Luxembourg S.à r.l.  
18-20, rue Edward Steichen  
Luxembourg L-2540  
T: +352 466 230 1  
F: +352 466 234  
E: [marc.meyers@loyensloeff.com](mailto:marc.meyers@loyensloeff.com)  
[jerome.mullmaier@loyensloeff.com](mailto:jerome.mullmaier@loyensloeff.com)  
W: [www.loyensloeff.lu](http://www.loyensloeff.lu)

## **MEXICO**

Teo Berdeja  
Berdeja Abogados, S.C.  
Av. Santa Fe No. 170 - 4º Piso  
Col. Lomas de Santa Fe  
01210 México, D.F.  
T: +52 55 5292 2730  
F: +52 55 5292 2740  
E: [tberdeja@berdeja.com.mx](mailto:tberdeja@berdeja.com.mx)  
W: [www.berdeja.com.mx](http://www.berdeja.com.mx)

## **THE NETHERLANDS**

Mark van Dam, Marco de Lignie  
Loyens & Loeff N.V. (Amsterdam office)  
Fred. Roeskestraat 100  
1076 ED Amsterdam  
T: +31 20 578 5785  
E: [mark.van.dam@loyensloeff.com](mailto:mark.van.dam@loyensloeff.com)  
[marco.de.lignie@loyensloeff.com](mailto:marco.de.lignie@loyensloeff.com)

Joep Ottervanger  
Loyens & Loeff (Singapore office)  
80 Raffles Place

# 14-06 UOB Plaza 1  
48624 Singapore  
T: +65 6532 3070  
E: [joep.ottervanger@loyensloeff.com](mailto:joep.ottervanger@loyensloeff.com)

Bas Vletter  
Loyens & Loeff (New York office)  
555 Madison Avenue  
NY 10022 New York  
United States  
T: +1 212 489 0620  
E: [bas.vletter@loyensloeff.com](mailto:bas.vletter@loyensloeff.com)

## **POLAND**

Ben Davey, Jakub Jędrzejak, Klaudia  
Frątczak & Łukasz Czekanski  
WKB Wierciński, Kwiecieński, Baehr  
sp.k.  
ul. Polna 11  
00-688 Warsaw  
T: +48 22 201 00 00  
F: +48 22 201 00 99  
E: [ben.davey@wkb.com.pl](mailto:ben.davey@wkb.com.pl)  
[jakub.jedrzejak@wkb.com.pl](mailto:jakub.jedrzejak@wkb.com.pl)  
[klaudia.fratczak@wkb.com.pl](mailto:klaudia.fratczak@wkb.com.pl)  
[lukasz.czekanski@wkb.com.pl](mailto:lukasz.czekanski@wkb.com.pl)  
W: [www.wkb.com.pl](http://www.wkb.com.pl)

## **PORTUGAL**

Mafalda Barreto, Filipe Santos Barata  
& Ana Paula Basílio  
Gómez-Acebo & Pombo  
Avenida da Liberdade, 131  
Lisbon 1250-140  
T: +351 21 340 86 00  
E: [advogados.lisboa@gomezacebo-pombo.com](mailto:advogados.lisboa@gomezacebo-pombo.com)  
W: [www.gomezacebo-pombo.com](http://www.gomezacebo-pombo.com)

## **ROMANIA**

Mihai Macelaru  
Noerr  
Str. General Constantin  
Budişteanu nr. 28 C, Sector 1  
010775 Bucharest  
T: +40 21 312 58 88  
F: +40 21 312 58 89  
E: [mihai.macelaru@noerr.com](mailto:mihai.macelaru@noerr.com)  
W: [www.noerr.com](http://www.noerr.com)

## RUSSIA

Mikhail Kazantsev, Arkady  
Krasnikhin, Michael Copeland,  
Roman Malovitsky & Mark  
Rovinskiy  
Egorov Puginsky Afanasiev &  
Partners

40/5 Bol. Ordynka Str.  
119017, Moscow

T: +7 495 935 80 10

F: +7 495 935 80 11

E: mikhail\_kazantsev@epam.ru  
arkady\_krasnikhin@epam.ru  
michael\_copeland@epam.ru  
roman\_malovitsky@epam.ru  
mark\_rovinsky@epam.ru

W: www.epam.ru

## SLOVAKIA

Adam Hodoň & Martin Vojtko  
Kinstellar, s.r.o.

Hviezdoslavovo namestie 13  
811 02 Bratislava

T: +421 2 5929 1111

F: +421 2 5929 1210

E: adam.hodon@kinstellar.com  
martin.vojtko@kinstellar.com

W: www.kinstellar.com

## SPAIN

Fernando de las Cuevas & Iñigo  
Erláiz

Gómez-Acebo & Pombo  
Castellana, 216  
Madrid 28046

T: +34915829100

E: abogados@gomezacebo-pombo.com

W: www.gomezacebo-pombo.com

## SWEDEN

Dick Lundqvist, Carl Westerberg &  
Corinne Ekman  
Gernandt & Danielsson Advokatbyrå  
KB

Hamngatan 2

Stockholm SE-114 87

T: +46 8 670 66 00

F: +46 8 662 61 01

E: dick.lundqvist@gda.se  
carl.westerberg@gda.se

corinne.ekman@gda.se

W: www.gda.se

## SWITZERLAND

Dr Beat M Barthold, Dr Nicolas  
Iynedjian, Dunja Koch, Marco A  
Rizzi, Patrick W Vogel & Michael  
Fischer

FRORIEP

Bellerivestrasse 201

Zurich 8034

T: +41 44 386 60 00

F: +41 44 383 60 50

E: bbarthold@froriep.ch  
niynedjian@froriep.ch  
dkoch@froriep.ch  
mrizzi@froriep.ch  
pvogel@froriep.ch  
mfischer@froriep.ch

W: www.froriep.ch

## TURKEY

Onur Taktak, Özlem Tolongüç &  
Hande Aksu

KINSELLAR

Yıldırım Göker Caddesi, Maya Plaza  
Kat:4 34335 Beşiktaş – Akatlar  
Istanbul

T: +90 212 349 5000

F: +90 212 349 5050

E: onur.taktak@kinstellar.com  
ozlem.tolonguc@kinstellar.com  
hande.aksu@kinstellar.com

W: www.kinstellar.com

## UNITED ARAB EMIRATES

Bill Jefferies & Jennifer Bibbings OBE  
Trowers & Hamlins LLP

BurJuman Business Tower, Sheikh  
Khalifa bin Zayed Road (Trade  
Centre Road)

PO Box 23092 Dubai

T: +971 4 3519201

F: +971 4 3519205

E: bjefferies@trowers.com  
jbibbings@trowers.com

W: www.trowers.com

## UK

Charles Martin & Simon Perry  
Macfarlanes LLP

20 Cursitor Street  
London EC4A 1LT  
T: +44 20 7831 9222  
F: +44 20 7831 9607  
E: charles.martin@macfarlanes.com  
simon.perry@macfarlanes.com  
W: www.macfarlanes.com

## **USA**

David K Lakhdir  
Paul Weiss Rifkind Wharton &  
Garrison LLP  
Alder Castle  
10 Noble Street  
London EC2V 7JU  
T: +44 20 7367 1602  
F: +44 20 7367 1652  
E: dlakhdir@paulweiss.com  
W: www.paulweiss.com

Michael S. Hong  
Paul, Weiss, Rifkind, Wharton &  
Garrison LLP  
1285 Avenue of the Americas  
New York  
NY 10019-6064  
T: +1 212 373 3788  
F: +1 212 492 0788  
E: mhong@paulweiss.com  
W: www.paulweiss.com

David R. Sicular  
Paul, Weiss, Rifkind, Wharton &  
Garrison LLP  
1285 Avenue of the Americas  
New York  
NY 10019-6064  
T: +1 212 373 3082  
F: +1 212 492 0082  
E: dsicular@paulweiss.com  
W: www.paulweiss.com