



Mergerfilers

GLOBAL LEGAL GUIDES



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SRS Legal

Portugal Foreign Investment Guide



Portugal

National Expert

SRS Legal is a leading Portuguese full-service law firm, with over 30 years of experience, comprising more than 150 lawyers across diverse practice areas advising both domestic and international clients.

SRS Legal regularly assists international companies with merger control proceedings in Mozambique through collaboration with Bhikha & Popat Advogados, SRS Global's local partner.

The SRS Legal's EU & Competition Law team is one of Portugal's largest and most renowned competition law practices, where team members have an extensive international background.

The team's multidisciplinary approach is key for navigating the complex legal landscape in this field, which enables offering tailored and expert support for clients regardless the scale or complexity of the projects.

SRS Legal's EU & Competition Law team combines technical expertise and a problem-solving approach to legal issues and covers the full spectrum of competition law, including:

- Abuse of Dominant Position
- Competition Law Compliance
- Horizontal and Vertical Agreements
- Merger Control
- Private Enforcement
- State Aid

SRS Legal's EU & Competition Law team covers all industries and has a depth of specific expertise in consumer goods and retail sector (representing several of the largest suppliers), as well as in the energy, financial and health sectors.

The team is recognized as a top tier competition law practice by all reference legal directories.



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No new regulation adopted

Note that relevant regulations may be changed before your contemplated transaction is completed. Mergerfilers and our national experts keep information on regulations up to date and even provide alerts on adopted or proposed changes that have not come into force yet but may come into effect before the transaction is completed. When this field is green, we have no knowledge of such imminent changes to the relevant regulations.

Introduction

1) Introduction

Portugal operates a voluntary targeted foreign investment screening regime focused on safeguarding strategic assets essential to national defence and security and ensuring the continuity of critical services in the energy, transport and communications sectors.

According to the Decree Law, the Council of Ministers may oppose transactions which result, directly or indirectly, in the acquisition of direct or indirect control over strategic infrastructures or assets, by legal persons from third countries to the European Union or to the European Economic Area, where the transaction poses a real and sufficiently serious threat to national defence and security, including the security of supply of critical or strategic services.

Furthermore, the screening regime contains an ex post "call-in" mechanism under which the member of the Cabinet responsible for the relevant area, by means of a reasoned decision, may initiate an assessment procedure, with clear timelines and objective, transparent, and non-discriminatory assessment criteria.

2) Relevant authorities

The relevant authority is the Council of Ministers, acting upon a proposal from the member of the Cabinet responsible for the sector in which the relevant strategic asset might concern.

Regulations and guidelines

3) Regulations and guidelines

Foreign Direct Investment (FDI) regulations and guidelines	
Original Portuguese version	Unofficial English translation
Decreto-Lei n.º 138/2014, de 15 de setembro (regime de salvaguarda de ativos estratégicos)	Decree-Law No. 138/2014 of 15 September (safeguard of strategic assets) ("Portuguese FDI Screening Regime" or the "Decree-Law")
	(Translation into English not available.)

Transactions caught or which may be called in

4) What is considered a "foreign investment"

The regime applies to transactions of any legal form resulting, directly or indirectly, in the acquisition of control (direct or indirect) over strategic assets by a person or persons from countries outside the EU and EEA.

"Control" is defined by reference to the ability to exercise a decisive influence over the strategic asset, as per Article 36(3) of the Portuguese Competition Law (Law No. 19/2012 of May 8), according to Article 2(b) of Decree-Law No. 138/2014, of 15 September ("Portuguese FDI Screening Regime").

In turn, a "person of a third country to the EU/EEA" includes any natural or legal person whose domicile, registered office or principal and effective place of business is not in an EU or EEA Member State, pursuant to Article 2(c) of the Portuguese FDI Screening Regime.

5) Categories of activities/industries

Only assets classified as "strategic assets" under the Portuguese FDI Screening Regime are in scope. These consist of critical infrastructures and assets linked to national defence and security or to the provision of essential services in energy, transport and communications sectors, according to Article 1 and Article 2(a).

Also see topic 4.

6) Thresholds – level of ownership, amount invested etc.

There are no value, turnover, asset-value or share-percentage thresholds.

The single triggering criterion is a change of control (direct or indirect) over a strategic asset by a person from outside the EU/EEA (Articles 2(b) and (c), and 3(1)). The Decree-Law establishes objective evaluation criteria focused on security and continuity of essential services rather than financial thresholds (Article 3(2) and (3)).

7) "Call-in" – can the authority review investments that do not meet the foreign investment definitions or thresholds?

Yes. The regime has a call-in mechanism: within 30 days from the conclusion of the legal acts for the transaction, or from the date those acts become of public knowledge (whichever is later), the sectoral minister may, by reasoned decision, open an evaluation procedure (ex officio screening).

There are no quantitative thresholds; the scope is limited by (i) the nature of the asset (assets linked to national defence and security and strategic assets in energy, transport, communications) and (ii) the investor's third-country status (Article 4(1)).

If after receiving complete information from the acquirer(s), the Council of Ministers does not decide within 60 days, there is a tacit non-opposition decision (Article 4(5)(6)).

Notification requirements

8) Notification forms

There are no standardized forms in the Decree-Law.

If an evaluation is opened ex officio, the acquirer(s) must submit the relevant information and documents to the sectoral minister, which may be specified by ministerial order, including the terms and format of submission (Article 4(2) and (4)).

Alternatively, acquirers may voluntarily file a prior "confirmation request" describing the transaction (see topic 12) whose content may likewise be specified by ministerial order (Article 5).

Although the Decree-Law provides for the possible adoption of a specific form, such form has not been

approved, which means that the relevant authority should be previously contacted.

9) Fees

The Decree-Law does not establish any filing or processing fees (Articles 4-5).

10) Documents that must be submitted with notification

If an evaluation is opened, the acquirer(s) must provide the "relevant information and documents" concerning the transaction. The sectoral minister may prescribe by ministerial order the information and documents required and the terms of submission.

For voluntary confirmation requests, the Decree-Law requires a description of the transaction and permits the minister to specify required content by order (Article 4(2) and (4) and Article 5(1) and (2)).

Procedures and decisions

11) Is implementation of the investment before approval prohibited?

There is no general standstill obligation in the Decree-Law. Transactions can be completed; however, they are subject to possible ex post opposition by the Council of Ministers (see topic 7).

If a reasoned opposition decision is adopted within the statutory timeframe, all acts and legal transactions relating to the transaction are null and ineffective, including those concerning the economic exploitation of, or the exercise of rights over, the assets or the entities controlling them (Article 4(5)(7)). Accordingly, while closing before obtaining comfort is not prohibited, it carries the risk of nullity if opposition is issued.

12) May the parties get permission to implement the investment before approval?

The Decree-Law provides for a voluntary structured "confirmation request" mechanism. Acquirers may request confirmation from the relevant sectoral minister that no opposition will be adopted. If, within 30 days of receipt of the request, no evaluation is initiated, confirmation is deemed granted (tacit non-opposition to the described transaction). If an evaluation is initiated within that period, the ordinary procedure (and 60-day opposition window from complete information) applies (Article 5(1); see also Article 4(1), 4(5) and (6)).

13) Phases and deadlines

Procedure	Timing/deadlines
Initiation	Within 30 days from the conclusion of the transaction's legal acts, or from when those acts become public knowledge (whichever is later), the sectoral minister may open an evaluation by reasoned decision (Article 4(1)).
Information obligations	Once an evaluation is opened, the acquirer(s) must provide the relevant information and documents. The relevant sectoral minister may formalize information requirements by order (Article 4(2) and (4)).
Decision period	Within 60 days of submission of complete information and documents, the Council of Ministers, upon the relevant sectoral minister's proposal, may issue a reasoned opposition decision applying the statutory criteria and the principle of proportionality

	(Article 4(5)).
Tacit outcome	Absence of decision within 60 days results in a tacit non-opposition (Article 4(6)).
Voluntary confirmation route	A prior confirmation request can be filed; if no evaluation is initiated within 30 days of receipt, confirmation is deemed granted (Article 5(1)).
Administrative cooperation	Relevant ministries are notified upon opening of an evaluation; administrative entities must cooperate upon justified request (Article 4(3) and Article 6).

14) Decisions and criteria

Types of decisions:

Non-opposition (express or tacit) or opposition. An opposition decision requires reasoned findings and adherence to applicable legal principles, in particular proportionality (Article 4(5) and (6), and Article 3(1)).

Substantive criteria:

The "real and sufficiently serious" threat is appraised exclusively by reference to four objective criteria:

1. physical security and integrity of strategic assets;
2. permanent availability and operability of those assets and the controller's/acquirer's capacity to perform legal (in particular public service) obligations;
3. continuity, regularity and quality of services of general interest provided by the controller/acquirer; and
4. preservation of legally or contractually protected confidentiality of data/information and of technological assets needed to manage the strategic assets (Article 3(2)).

Illustrative risk situations:

The Decree-Law lists non-exhaustive situations likely to endanger national defence/security or security of supply, including

1. serious, objective indications of ties between the acquirer and third countries not respecting fundamental rule-of-law principles, posing risks due to alliances, or maintaining relations with criminal/terrorist organisations;
2. an acquirer's past use of control to cause serious difficulties in regular provision of essential public services;
3. failure to ensure primary allocation and, where applicable, reversion of assets at the end of concessions; and
4. alterations in the destination of the assets that threaten their permanent availability and operability for timely compliance with legal/public-service obligations (Article 3(3)).

15) Appeal

An opposition decision of the Council of Ministers is subject to judicial review by the administrative courts, under the Code of Procedure in Administrative Courts (Código de Processo nos Tribunais Administrativos) (Article 4(8)).

16) Publicity and access to the file

The Decree-Law establishes cooperation and data-protection obligations for public entities but does not prescribe publication practices for individual decisions or provide a procedural right of access to the administrative file beyond what may result from the general administrative and procedural framework. Confidentiality obligations apply to protected data and classified, or defence-related information handled by cooperating entities (Article 6(2)).

Other important features of the foreign investment regime

17) Other important features of the foreign investment regime

Relationship with other regimes:

The screening applies without prejudice to the powers conferred on grantors by concession contracts (including concession bases and approving statutes) or the powers of sectoral regulators or other public bodies under applicable legal or regulatory provisions concerning the strategic assets covered (Article 7).

International obligations:

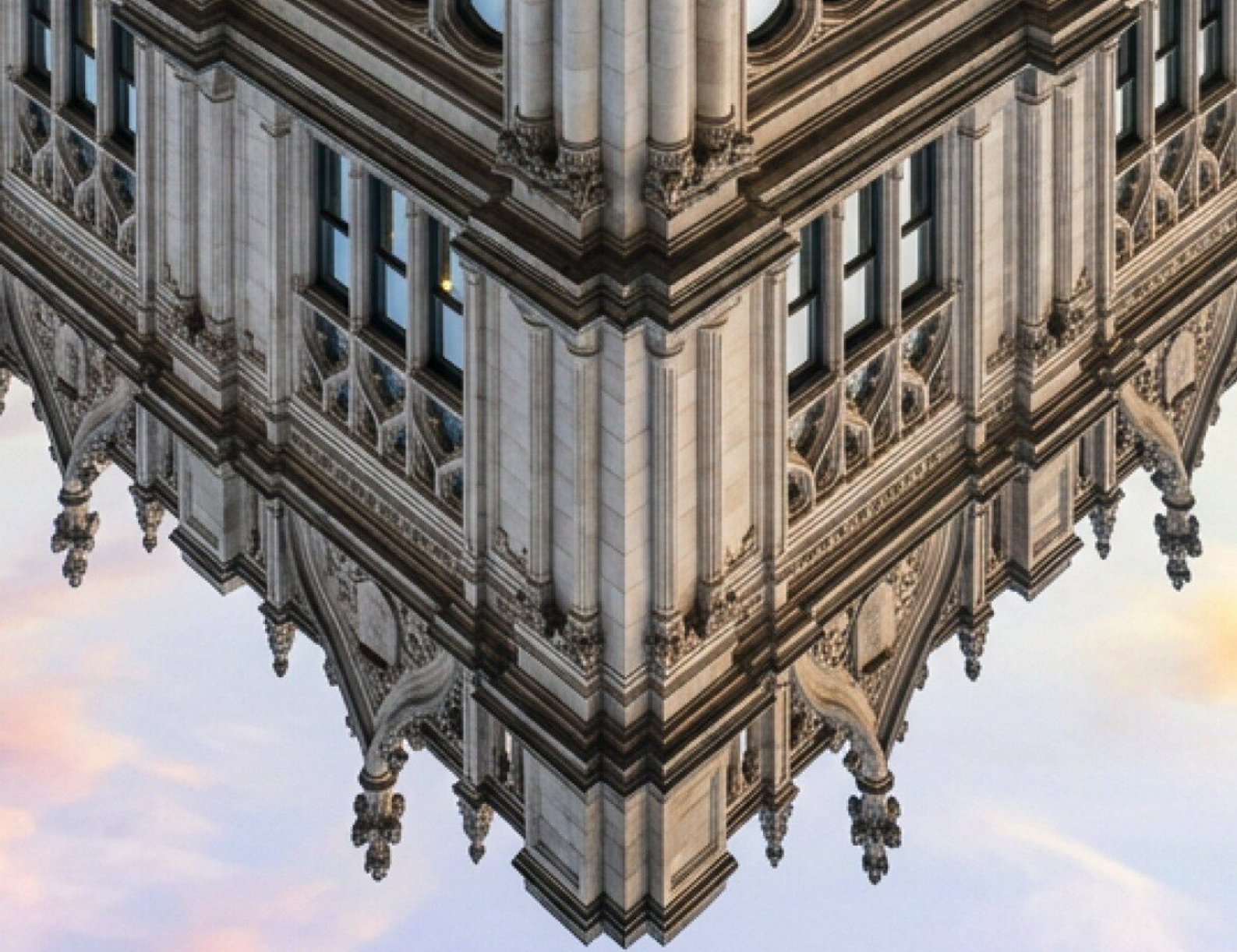
Any opposition procedure must respect Portugal's international commitments, including those under WTO instruments (Article 3(4)).

Investor scope:

Only acquisitions by persons from outside the EU and EEA are in scope (Article 2(c)). EU/EEA investors are not covered by this decree-law.

Legal effect of opposition:

Nullity and ineffectiveness extended upon all acts and legal transactions relating to the transaction, including those concerning exploitation of, or rights over, the assets or entities controlling them (Article 4(7)).



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