

LESS ROOM FOR ERROR IN DEAL NEGOTIATIONS - SÉRVULO

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Nuno Moura Roldão

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Company Directors are being much more cautious about investment decisions and this is reflected in the deal terms being concluded, says Nuno Moura Roldão, Corporate Partner with Sérvulo in Lisbon.

"This is certainly not the best time for Portugal but there are still opportunities. There is less public M&A but still a lot of private transactional activity although deals are being negotiated much harder and inevitably taking longer to close."

The key issue affecting transactions is not merely securing finance but also risk management, he believes. "The banks are not underwriting transactions in the way they were – they now have their own challenges to face – but company Directors are also being more demanding. There is less room for error, businesses do not want to commit funds unless there will be a clear return on investment." There is therefore an evident willingness to listen to lawyers' advice, greater emphasis on the importance of strategic fit and a demand for deeper analysis upfront, he says.

"A simple look at deal numbers would infer that the transactional markets are paralysed but there is activity. It is just that there is more focus on negotiating the right terms and reps and warranties are in place. Nobody wants to make a mistake."

Sellers are also being more open, he says. "Acquirers obviously want to avoid bringing problems to their balance sheets and are insisting on a much more rigorous analysis of targets' financials and potential liabilities than was perhaps the case in recent years. But similarly, vendors also do not want to waste their own resources or find themselves the subject of misrepresentation claims."

In this respect deal structures remain the same as before the boom but final contracts routinely include more protections, concludes Moura Roldão. "Previously, many of the terms that existed at the start of the negotiations were washed out in order to simply close the deal. This is no longer the case. Transactions are taking longer because the players believe that there is much more to lose."