Country Guide
Portugal

Prepared by

ALC
ADVOGADOS

member of MORAIS LEITÃO LEGAL CIRCLE

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GUIDE TO DOING BUSINESS IN PORTUGAL

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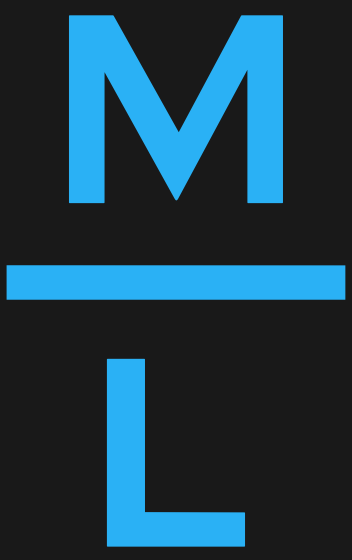

I. THE COUNTRY AT A GLANCE

A. What languages are spoken?

The official language is Portuguese, which derives mainly from ancient Latin. Portuguese is not only spoken as the official language in Portugal, but also in the former Portuguese colonies of Brazil, Angola, Mozambique, São Tome and Principe, Guinea-Bissau, Cape Verde and East Timor.

Other languages are also spoken in business circles, such as English and French, which are taught in school as part of the official educational curriculum. In general, Portuguese people also have a good understanding of Spanish.

B. What is the exchange rate for the U.S. dollar, the Euro?

The official currency in Portugal is the Euro. The Portuguese Escudo was definitively abandoned during the first half of 2002. On December 19, 2023, 1 Euro was worth USD 1,09180.

C. Describe your country's geography, proximity to other countries and climate

Portugal is located in the Iberian Peninsula, in the western part of Europe. It has only two borders – one is with its neighboring country Spain that stretches from the eastern border up to the northern border of the country and the other is a natural border with the Atlantic Ocean which meets the southern and the western borders of Portugal. Portugal occupies an area of approximately 92,000 square kilometers (35,521 square miles) including the archipelagos of Madeira and Azores.

The mainland's geography is affected by the mountains of the Iberian Peninsula. It is essentially composed of two types of landscape. In the North the terrain is more rugged with deep valleys and high rocky formations to which erosion from the weather has given a particular form. The highest mountains in northern Portugal are Serra do Gerês and Serra da Estrela, 1548 and 1993 meters high, respectively. In the South we find the broad open plains of the Alentejo and the Algarve. Portugal has a

very rich hydrographical network. The main rivers are the *Douro* in the North, the Tagus in the center of the country and the Guadiana in the South.

Continental Portugal's main cities are Lisbon, its capital and prime center for trade and business, with approximately 548,000 inhabitants, and Oporto, the most important northern city, a traditional center of the port wine and textile industries. Other coastal cities are Setúbal, situated in one of the foremost industrial regions and Aveiro, which has an important fishing harbour and center port. There are three international airports, located in Lisbon, Oporto and Faro.

Portugal's climate is strongly influenced by ocean winds, particularly along its 832 km coastline. The weather in the coastal regions is completely different from that which one encounters in the interior part of the country. The former is humid and mild, with average temperatures ranging from 10°C in the winter to 24°C in the summer, whilst in the interior part of the country the minimum temperature tends to be lower while the maximum temperature is somewhat higher. The winter and autumn are rainy seasons and the summer and spring are dry, sunny seasons.

The Azores is an archipelago located in the North Atlantic Ocean, about 1,360 kilometers (850 miles) west of continental Portugal. It is composed of nine volcanic islands, and they are divided into three groups: the Eastern Group, Central Group, and Western Group. The islands are characterized by lush green landscapes, volcanic craters, lakes, and unique geological formations. Mount Pico, on Pico Island, is the highest point in the Azores.

The Azores is relatively isolated in the North Atlantic, and its closest neighbors are other North Atlantic islands. While not particularly close to continental Europe, the archipelago has historical and strategic importance. The islands have served as a stopover point for transatlantic flights and a base for maritime exploration.

The Azores have a temperate maritime climate, characterized by mild temperatures throughout the year. Winters are mild, and summers are pleasantly warm. The climate is influenced by the surrounding Atlantic Ocean, resulting in relatively stable and moderate weather conditions. Rainfall is distributed fairly evenly throughout the year, contributing to the lush and vibrant vegetation.

Madeira is an archipelago located in the Atlantic Ocean, approximately 1,000 kilometers (620 miles) southwest of Continental Portugal. It consists of the main island of Madeira and smaller surrounding islands. The archipelago is of volcanic origin, and the landscape is characterized by rugged mountains, deep valleys, and steep cliffs. Pico Ruivo is the highest peak on the island of Madeira.

Madeira is closer to Africa than continental Europe, and its nearest neighbor is the Canary Islands. However, it is an integral part of Portugal and, as such, is part of the European Union. The archipelago has historically played a role in Atlantic trade routes.

Madeira enjoys a subtropical climate, influenced by its proximity to the Atlantic. The weather is mild and moderated by the ocean, with relatively stable temperatures throughout the year. Winters are mild, and summers are warm without being excessively hot. The island receives a fair amount of rainfall, particularly in the winter months, contributing to the lush and diverse flora.

D. Are there cultural influences or prohibitions on the way business is conducted?

There are no specific cultural influences or prohibitions on the way business is conducted in Portugal.

E. Are there religious influences or prohibitions on the way business is conducted?

Religion can have some influence on the way business is conducted in Portugal, as the country has a strong cultural and historical connection to Roman Catholicism. While Portugal is a secular state with religious freedom, and business operations are separate from religious institutions, there are a few ways in which religious influences or considerations might impact business practices, such as religious holidays. Portugal observes several religious holidays, and some of these result in business closures or altered business hours. Major Catholic holidays like Christmas, Easter, and certain saints' feast days are widely celebrated and may affect business operations.

Overall, while religious influences are present in Portuguese society, they are unlikely to be a significant impediment to doing business in the country. Portugal is generally open and welcoming to foreign business practices, and the business environment is relatively secular and diverse, particularly in urban areas.

F. Explain your country's infrastructure.

TRANSPORTATION INFRASTRUCTURE

The most important airports in Portugal are in Lisbon, Oporto and Faro (Algarve). There are also Funchal and Porto Santo airports (both in the archipelago of Madeira) and Ponta Delgada, Santa Maria, Horta, Flores and Angra do Heroísmo airports (all in the archipelago of the Azores).

The Portuguese continental territory is well served by a network of modern roads, including highways that cross the country from the northern border to the tourism region of the Algarve in the South, and also from the eastern border to Portugal's Atlantic coast.

Portugal is also well served by modern railroads that connect the cities of the Portuguese continental territory, and by a network of cargo railway lines and four international railway lines. There are two main container terminals, Bobadela and Leixões. The Bobadela terminal is located on the outskirts of Lisbon with a direct connection to the Port of Lisbon. The Leixões terminal is located inside the Port of Leixões.

PUBLIC TRANSPORTATION

All major Portuguese cities are well served by public transport. The entire country is served by bus services, and Lisbon and Oporto have subway lines.

PORTS AND MARITIME INFRASTRUCTURES

There also numerous ports on the Portuguese continental coast, and also in the Azores and Madeira. On the mainland there are nine major sea ports, all receiving international traffic, including Sines, which is located approximately 58 maritime miles south of Lisbon. It is one of the few European deep water ports. The Ports

of Sines, Leixões and Lisbon have regular cargo lines linking Portugal to North, Central and South America, Asia, Africa, Europe and the Middle East.

ENERGY INFRASTRUCTURES

Portugal has a diversified energy mix, including renewable sources such as wind, solar, and hydropower. The country has invested in renewable energy infrastructure, making it a leader in the use of renewable resources. The national electric grid is well-developed and interconnected with Spain.

TELECOMMUNICATIONS INFRASTRUCTURES

Portugal has a modern telecommunications network that includes fixed-line and mobile services. High-speed internet access, including optical fiber connections, is widely available in urban areas. The country has a competitive telecommunications market with multiple providers.

WATER AND SANITATION INFRASTRUCTURES

Portugal has a reliable supply of clean and safe drinking water. The water and sanitation infrastructures are well-developed, ensuring access to clean water and proper sanitation services for the population.

EDUCATION AND HEALTHCARE INFRASTRUCTURES

Portugal has a well-established education system, including universities, research institutions, and schools. The healthcare infrastructures include public hospitals and clinics, and also private healthcare providers.

G. Explain the communication system.

The electronic communications sector was fully liberalized in Portugal as of January 1, 2000, when it became possible for any operator or service provider to offer fixed telephony services and deploy its own network infrastructure.

The current legal framework is contained mainly in Law no. 16/2022, of August 16, as amended (the Electronic Communications Law), which transposed to Portuguese

law the European Electronic Communications Code, approved by Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018. Under this statute, network operators and service providers may enter the market under a general authorization procedure, whereby they are merely required to notify the national regulatory authority (ANACOM) in order to initiate their activity. Nevertheless, access to numbering resources and radio spectrum frequencies requires the award of individual rights of use by ANACOM and involves a specific procedure.

ANACOM is an independent regulatory body, entrusted with enforcing the legal rules governing the electronic communications and postal sectors. It is responsible for monitoring compliance with applicable legal and regulatory obligations and for managing radio spectrum frequencies and numbering resources. Furthermore, under the current regulatory framework, ANACOM is entrusted with periodically carrying out a full market analysis of various relevant markets in order to identify any undertaking with significant market power (SMP) in any of those markets. Pursuant to an SMP finding, ANACOM can impose *ex ante* regulatory obligations on the designated operator or service provider (ranging from network access to price control obligations) in order to foster competition.

Currently, the most important telecoms players in Portugal include NOS, Altice Portugal (formerly Portugal Telecom), Vodafone Portugal and Nowo. Fixed access services, including telephone, broadband access and pay-tv services, are currently provided by the above players over several competing high-speed network platforms, in many cases in the form of bundled multiple-play offers.

In mobile communications, there are three mobile network operators in Portugal – MEO, NOS and Vodafone – all of which hold GSM, UMTS, LTE and 5G licenses. There are also three active mobile virtual network operators: Lycamobile, Nowo and Onitelecom. Mobile voice, data and broadband access offers have become widespread in recent years.

In addition to the extensive coverage of high-speed next generation networks (NGNs) resulting from investments made by the main operators, the roll-out of next generation fiber optic networks in rural areas has also been the subject of public support and funding. Further to three public tender procedures concluded by the Government in 2010, the roll-out and management of NGNs covering

a significant number of rural municipalities have been awarded to separate undertakings in the northern, central and southern parts of the Portuguese territory. These entities have been entrusted with rolling out fiber local access networks and providing adequate wholesale access to service providers and operators for the purposes of their retail service offers.

H. Describe the public services – *i.e.*, water, electricity, gas. Are they publicly or privately owned?

On a general and preliminary note, Law no. 23/96, of July 26 (as amended), establishes the legal framework law for public services (water, energy, gas, communications, postal services, wastewater collection and treatment, urban solid waste management and passenger transport), providing specific mechanisms designed to protect the users of these services, regarding, among other things, information and invoicing requirements, situations in which the public service supply can be suspended (and under which terms and conditions), forbidden conduct and charges or, as an alternative, dispute resolution and necessary arbitration.

The main legislative instrument for the electricity sector is Decree-Law no. 15/2022, of January 14 (as amended), which establishes the organization and functioning of the Portuguese electricity system, implementing Directive 2019/944 of the European Parliament and of the Council of 5 June 2019, and Directive 2018/2001 of the European Parliament and of the Council of 11 December 2018.

In the Portuguese electricity framework, activities relating to generation, storage, supply and aggregation of electricity are carried out under a free market regime and only require a prior checking procedure (licensing, prior registration, prior communication) or registration process.

Last resort aggregation, last resort supply, system risk and guarantee management, issuance of origin guarantees, and the logistical operation of changing electricity supplier and aggregator are carried out by license and under an exclusive regime.

The transportation and distribution of electricity are regulated activities provided through the award of public service concessions.

Furthermore, the transmission and distribution of electricity are subject to an unbundling regime, whereby: *(i)* the transmission system operator is independent, legally and financially, from the entities that carry out, directly or through affiliated companies, activities of generation or supply of electricity and/or gas; and *(ii)* the distribution system operators must be independent from a legal, organizational and decision-making process standpoint from other activities unrelated to distribution. Distribution system operators serving fewer than 100,000 clients are not subject to the legal unbundling regime, but they must still implement accounting unbundling measures.

In relation to the gas sector, Decree-Law no. 62/2020, of August 28 (as amended), establishes the organization and functioning of the Portuguese gas system, implementing Directive 2019/692 of the European Parliament and of the Council of 17 April 2019.

The generation of renewable or low-carbon content gas and the supply of gas activities are carried out under a free market regime, subject to a prior registration or registration process, respectively; provided, however, that last resort supply is subject to licensing and regulation.

The reception, storage and regasification of liquefied natural gas, underground gas storage, and gas transportation are carried out under a public service concession regime. In the Portuguese continental territory, these activities are additionally governed by an exclusive regime. The gas distribution activity is carried out exclusively through the granting of a public service concession or a public service license, depending on whether it is, respectively, regional or local.

Furthermore, transmission and distribution of gas are subject to an unbundling regime, whereby: *(i)* the transmission system operator is independent, legally and financially, from the entities that carry out, directly or through affiliated companies, the generation or supply of electricity and/or gas; and *(ii)* the distribution system operators must be independent from a legal, organizational and decision-making process standpoint from other activities unrelated to distribution. Distribution system operators that serve fewer than 100,000 clients are not subject to the legal unbundling regime. Additionally, last recourse suppliers are required to be legally separate from all other activities in the Portuguese gas system, unless they serve fewer than 100,000 clients.

Under market conditions, both electricity and gas consumers are free to choose their supplier without any additional fees for switching suppliers.

The responsibility for the regulation of the Portuguese energy sector (electricity and gas), which is mainly privately owned, is shared between the Directorate General for Energy and Geology (*Direção Geral de Energia e Geologia*/DGEG) and the Energy Services Regulatory Authority (*Entidade Reguladora dos Serviços Energéticos*/ERSE). DGEG has primary responsibility for the conception, promotion and assessment of policies concerning energy and geological resources and has the stated aim of assisting the sustainable development and the security of energy supply in Portugal. ERSE is the national energy regulator and is a fully independent regulatory authority. ERSE is also entitled to process administrative offenses and apply the appropriate fines and penalties as a result of any breach of compliance with the obligations set out under the law and ERSE's regulations, or with measures determined by ERSE and punishable by an administrative penalty. ERSE may also order the investigation of consumer complaints or other complaints submitted to it regarding concessionaires or licensees.

Finally, the responsibility for the water sector is shared between the central government and the municipalities, where the former is responsible for multi-municipal systems (wholesale services), and the latter for municipal systems (end user services). The entities responsible for the provision of these services may choose between three different management models: *(i)* direct management; *(ii)* delegation; or *(iii)* concession, and are able to form public-public partnerships. The municipalities and municipal services constitute the main management model in the sector as regards number of entities, although not in terms of population served. However, the number of delegations to municipal or inter-municipal companies is increasing, and institutional public-private partnerships can be created through the selection of private partners to participate in the equity capital of these companies, subject to existing concessionary procedures.

Decree-Law no. 194/2009, of August 20, establishes the legal framework for municipal public water supply, wastewater and urban waste management services, which were amended in 2023 to strengthen users' rights to information on the conditions under which the entities managing the municipal service provide the services, the quality of the water supplied, the applicable tariffs, and the obligation for the entities managing the municipal systems to provide detail of the costs

involved in providing the service to users in their invoices. With the opening of the market to private participation in 1993, it became necessary to supervise this activity.

The national government therefore created a sector-specific regulator (Water and Waste Regulation Institute – IRAR, recently replaced by the Water and Waste Services Regulatory Authority – ERSAR), which has the responsibility to ensure adequate protection for consumers and users of the water supply and waste services. It is also ERSAR's responsibility to ensure that there is equality and transparency in the access to and operation of both water and waste services and in contractual relationships, and to guarantee an effective public right to general information regarding the sector and each one of the managing entities.

II. GENERAL CONSIDERATIONS

A. Investment policies

1. Does the country generally welcome investment? Are there governmental or private agencies devoted to the promotion of investment?

The Portuguese government welcomes and offers incentives to foreign investment.

Portugal offers various tax incentives and benefits to foreign investors, including a competitive corporate tax regime, double taxation treaties with numerous countries, and a favorable tax regime for foreign expatriates.

Portugal has also been actively promoting its startup and innovation ecosystem, particularly in cities like Lisbon and Porto. There are incubators, accelerators and funding opportunities for startups, making it an attractive destination for tech and innovation-focused investors.

There are both governmental and private agencies dedicated to the promotion of investment in Portugal. The most important is AICEP (*Agência para o Investimento e Comércio Externo de Portugal, E.P.E.*), the Portuguese government agency responsible for attracting foreign investment and promoting the internationalization of Portuguese companies. It provides support and information to investors, helps facilitate investment projects, and offers guidance on the business environment in Portugal. Additionally, there is InvestPortugal, a one-stop-shop that offers support and assistance to foreign investors looking to establish or expand their businesses in Portugal. It is part of AICEP and provides a wide range of services, including information on investment opportunities, legal and regulatory guidance, and assistance with administrative processes. Also noteworthy are IAPMEI – *Instituto de Apoio às Pequenas e Médias Empresas e à Inovação*, I.P. (Institute for the Support of SMEs and Innovation), Turismo de Portugal, I.P. (The National Tourism Authority) and the Committee for the Evaluation and Supervision of Projects of Potential National Importance (PIN).

2. What is the rate of inflation?

The Portuguese inflation rate in September 2023 was 3.6%.

3. Explain any sector exceptions, incentives or restrictions on foreign investment.

There are no sector exceptions to foreign investment. However, the private sector's access to certain economic areas, such as the harnessing, treatment and distribution of water for public consumption, rail transport and the running of maritime ports, is subject to concession agreements.

Despite this, foreign investment projects have to comply with special Portuguese legal requirements should the investment: *(i)* in any way affect public order, security or public health; *(ii)* involve the production of weapons, munitions or other military equipment; or *(iii)* involve the exercise of public authority.

Foreign investments are eligible for financial incentives, job-creation and training incentives and fiscal incentives, which are borne either by the European Union aid budget or by the Portuguese public budget.

4. Describe *de facto* restrictions on investment, if any, such as bureaucratic discretion.

There are no bureaucratic restrictions on foreign investment in Portugal.

5. What are the sizes of the different markets?

Portugal's economy, with a GDP of approximately 252 billion USD in 2022, features a consumer market serving its 10 million inhabitants. Tourism plays a significant role, with Portugal hosting over 22.3 million tourists in 2022. Real estate, particularly in Lisbon and Porto, has experienced substantial growth driven partly by foreign investment. The technology and startup ecosystem is burgeoning, with Lisbon emerging as a tech hub. Renewable energy, agriculture, manufacturing and financial services contribute to the country's economic diversity. Exports, including textiles and machinery, also play a vital role in Portugal's economy, subject to global trade dynamics.

6. What types of businesses are conducted in the country?

Portugal boasts a diverse business landscape, with a wide array of economic activities across multiple sectors. The thriving tourism and hospitality industry encompasses hotels, resorts, restaurants and travel services, capitalizing on Portugal's status as a sought-after tourist destination. Real estate and construction firms have flourished, particularly in Lisbon and Porto. The technology and startup scene is burgeoning, fostering innovation in software development, fintech and biotechnology. Renewable energy, including wind and solar power, has attracted investment, while a robust manufacturing sector produces textiles, automotive components, electronics and machinery. Agriculture contributes to the economy through wine production, olive oil, cork and other agricultural products. The financial services sector encompasses banking, insurance and investment firms, and the export and trade sector facilitates international commerce. These sectors, along with healthcare, education, transportation, professional services and creative and cultural industries, collectively shape Portugal's diverse business landscape.

B. Diplomatic Relations

1. Explain any established diplomatic relations your country may have.

Portugal has established diplomatic relations with countries worldwide, maintaining a robust network of embassies, consulates and diplomatic missions. These diplomatic relations serve various purposes, including fostering political, economic, cultural and social ties with other nations. Some notable aspects of Portugal's diplomatic relations include its membership in the European Union (EU) and close ties with fellow EU member states, active participation in the North Atlantic Treaty Organization (NATO), and special relations with Portuguese-speaking countries within the Community of Portuguese Language Countries (CPLP). Portugal also actively engages with the United Nations (UN) and participates in UN initiatives and peacekeeping missions. Furthermore, Portugal maintains bilateral diplomatic relations with countries across Europe, Africa, the Americas and Asia, encompassing a wide range of political, economic and cultural exchanges. These diplomatic efforts play a crucial role in promoting international trade, investment, cultural diplomacy, economic cooperation, humanitarian aid and development projects. Overall, the diplomatic relations established by Portugal reflect its commitment to engaging

with the international community, advocating for its own national interests, and contributing to global diplomacy and peace.

2. Give addresses and contact information for the embassies or consulates in your country.

Almost all recognized States have embassies or consulates in Portugal, for example:

France – Rua de Santos-o-Velho, 5, 1249-079 Lisboa, 213 939 100

Germany – Campo dos Mártires da Pátria, 38, 1169-043 Lisboa, 218 810 210

Japan – Avenida da Liberdade, 245 – 6.º, 1269-033 Lisboa, 213 110 560

United Kingdom – Rua de São Bernardo, 33, 1249-082 Lisboa, 213 924 000

United States of America – Avenida das Forças Armadas, 133C, 1600-081 Lisboa, 217 273 300

For more information, please refer to the following link for addresses and telephone numbers of embassies and consulates in Portugal: *Corpo Diplomático Acreditado em Lisboa*.

3. Are there prohibitions or restrictions on certain business dealings with the country?

There are no specific prohibitions or restrictions on business dealings, save for illegal transactions, *e.g.*, illegal gambling. Several economic/industrial activities depend on licensing, in particular in the pharmaceutical industry and healthcare industry areas.

4. Explain any travel restrictions to or within the country?

There are no internal travel restrictions in Portugal. In fact, all regions and areas of the country are in general easily accessible and no special measures or procedures need to be undertaken for travelling within the Portuguese territory, in particular for security or anti-terrorism reasons.

C. Government

1. **Explain your country's election system and schedule. Is a change anticipated to the present government?**

The basic principles and rules of Portugal's political and legal framework are contained in the Constitution of the Republic enacted in 1976, as amended from time to time, the latest amendment having been made by Constitutional Law no. 1/2005, of August 12.

Portugal is organized as a Republic and the sovereign organs are: the President of the Republic, the Parliament, the Government and the Courts.

The President is elected for a five-year term by direct universal suffrage and can only be re-elected for a single consecutive term. The Parliament is a unicameral body with up to 230 members who are elected for a four-year term.

Following the general election to the Parliament – and taking into consideration its results – the President of the Republic appoints the Prime Minister (normally, the leader of the party that received the highest number of votes in such election) who, in turn, nominates the remaining members of the Government to be appointed by the President and submits the Government's program to the Parliament for its approval.

2. **Is the present government stable? Briefly explain your country's political history in the last decade.**

Yes. The government currently in charge results from a general election held in 2022 in which the Socialist Party obtained an absolute majority in the Parliament. However, on November 7, 2023, the Prime Minister tendered his resignation to the President of the Republic, following a Public Prosecutor investigation aiming at, among others, a Minister in office, and the Chief of Staff of the Prime Minister, thus opening a political crisis. A few days later, the President of The Republic dissolved the Parliament and convoked fresh general elections for this body to take place on March 10, 2024.

Although, in the last eight years, the political landscape in Portugal has been dominated by the Socialist Party, one cannot anticipate what will be the outcome of the incoming elections or the political color of the Government which will result therefrom.

3. Explain your country's judicial system. Be sure to answer the following questions:

- **Is the judicial system generally perceived to be impartial?**

The Portuguese court system is composed of judicial courts and administrative courts (both organized in three echelons of jurisdiction). Judges acting in either of these systems are generally perceived to be impartial and there are several legal mechanisms seeking to ensure that they always remain so.

- **Are there separate tribunals depending upon the subject matter of the case?**

As stated above, the Portuguese court system is basically divided into two subsystems: the judicial courts, on the one hand, and the administrative and tax courts, on the other.

Judicial courts have jurisdiction over all matters not falling within the jurisdiction of the other courts, including civil, commercial and criminal matters. Judicial courts are divided into three echelons or instances: first instance courts, Courts of Appeal (*Tribunais da Relação*) and the Supreme Court of Justice (*Supremo Tribunal de Justiça*). First instance courts comprise several categories of courts having specific jurisdiction, namely, criminal, civil, commercial. family and labor courts.

Administrative and tax courts are also divided into three instances: first instance administrative and tax courts, Administrative Central Courts (*Tribunais Centrais Administrativos*) and the Supreme Administrative Court (*Supremo Tribunal Administrativo*).

Besides the judicial, administrative and tax courts, one should mention the Constitutional Court (*Tribunal Constitucional*), the Court of Audit and Public Accounts (*Tribunal de Contas*), the Court of Jurisdictional Disputes (*Tribunal*

de Conflitos) – deciding jurisdiction boundary disputes between judicial and administrative courts – and the Courts of the Peace (*Julgados de Paz*), which have jurisdiction over specific civil disputes of a lesser value.

- **Must disputes be resolved in the country?**

Portuguese courts have jurisdiction if so provided by national procedural rules, EU Regulations or international conventions. The jurisdiction of Portuguese courts is generally determined by Regulation (EU) no. 1215/2012 of the European Parliament and of the Council, of 12 December 2012, on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters and, where this Regulation does not apply, by Articles 62 and 63 of the Portuguese Code of Civil Procedure.

- **Is there a political method of resolving disputes?**

No, there is no political method of resolving disputes in Portugal.

- **Are alternative methods of dispute resolution permitted?**

In addition to court litigation, Portuguese law provides for alternative dispute resolution mechanisms, notably, mediation and arbitration.

Under Portuguese law, the recourse to arbitration is even mandatory in some dispute areas, as was the case, for some time, with respect to disputes involving intellectual property rights over reference or generic medicines (as per Law no. 62/2011, of December 12), and is still the case in respect of copyright and intellectual property disputes, in particular those involving: rewards for the lease of works protected by copyrights; rights to authorize or prohibit cable retransmission of works protected by copyright; compensation for the recording or reproduction of works; and technological protection measures.

Apart from cases in which recourse to arbitration is mandatory, the parties may opt for arbitration before or after their dispute has arisen. Both institutional and *ad hoc* arbitration are permitted under Portuguese law and have been gaining growing acceptance, especially among commercial parties.

There are several arbitration institutions in Portugal, the oldest, busiest and most reputable one being the Commercial Arbitration Center (*Centro de Arbitragem Comercial*) of the Portuguese Chamber of Commerce and Industry.

- **How long does it take to resolve disputes?**

It may take nine to 18 months (although, exceptionally, it may take 24 or even former more months) for a case to be decided by a first instance judicial court. On average, if the judgment is appealed, the resolution process may take another six to 12 months at the second instance court and a further six months at the Supreme Court. Since 1995, steps have been taken to reform the Portuguese judicial system. An increase in its efficiency and speed is the main goal.

Tax and administrative courts (first instance and appellate courts) are, unfortunately, much slower to decide. Acknowledging the seriousness of this situation, the Ministry of Justice of the former Government was seeking to implement several measures to mitigate it.

- **Can foreign judicial decisions be enforced in the country?**

Portugal has a long tradition of recognizing and enforcing the decisions of foreign courts, without major hindrances. It acceded to the 1968 Brussels Convention on jurisdiction and the enforcement of judgements in civil and commercial matters through the San Sebastián Convention, of May 26, 1989, and also ratified the 1988 Lugano Convention, which is a parallel convention to the 1968 Brussels Convention.

As a Member State of the European Union, the recognition and enforcement of judgments given in other Member States is currently governed by Regulation (EU) no. 1215/2012 of the European Parliament and of the Council, of 12 December 2012, on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, which provides for a system of mutual recognition of judgments among EU Member States.

Where no international treaty, convention or EU Regulation applies, the recognition and enforcement of foreign judgements is still possible in Portugal, under the applicable provisions of the Portuguese Code of Civil Procedure (Articles 978 to

985). In this case, two situations have to be distinguished: on the one hand, the case in which a foreign judgment is invoked merely for the purpose of providing evidence in pending court proceedings, without having been judicially recognized in the country, where there is no need for a special procedure of review and confirmation, and, on the other hand, the case in which a party seeks to render a foreign judgment effective (possibly through coercive means) or to enable it to have the effect of *res judicata* in Portugal, where the decision has to be submitted to a Portuguese (appellate) court to be recognized and become enforceable.

The requirements for such recognition of foreign decisions (which are slightly more exacting than those contemplated in the EU Regulation mentioned above) are set forth in Articles 980 and 983 of the Code of Civil Procedure, and may be summarized as follows:

- Authenticity and propriety: there must be no doubt about the authenticity of the document in which the foreign judgment is contained, nor of the propriety of the decision;

- Final judgment: the judgment must be final under the law of the country in which it was made, *i.e.*, it must not be subject to appeal;

- Proper jurisdiction: the decision must have been issued by a foreign court whose jurisdiction was not established in circumvention of the law and it must not relate to matters comprised within the exclusive jurisdiction of Portuguese courts;

- Absence of *lis pendens* and *res judicata*: a judgment cannot be confirmed if the same issue between the same parties is pending before or has already been adjudicated upon by a Portuguese court, unless the foreign court was the one first seized;

- Service of process: the defendant must have been duly served, in accordance with the law of the country of the court of origin, and the parties must have been given the opportunity to present their case and been treated equally;

- Public policy: the recognition of the foreign judgment at hand must not entail a result which is manifestly contrary to the principles of the international public policy of the Portuguese State;

- Domestic private law: if a foreign judgment has been rendered against a Portuguese party, the request for its confirmation may be refused if, should the Portuguese law be applicable (as the *lex causae*) under the Portuguese rules of conflict of laws, that Portuguese party would have obtained a more favorable decision under that (Portuguese) law, had it been applied by the foreign court.

In addition to the possible nonfulfillment of the abovementioned conditions, a request for recognition can only be refused on the grounds specified under sub-paragraphs a), c) and g) of Article 696 of the Code of Civil Procedure (which provides for the (rather exceptional) cases in which a definitive court decision can be revoked under Portuguese law, by means of a revision appeal): *e.g.*, when it is proved through another definitive decision that the foreign judgment to be confirmed was issued as a result of a crime committed by the judge during the performance of his official duties and/or upon the presentation of a document that was not available to the losing party during the foreign proceedings and which is in itself sufficient to modify the decision in a more favorable way to that losing party.

Although outside the scope of this question, the recognition and enforcement of foreign arbitral awards is governed by the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, to which Portugal has been a party since 1994. Where the New York Convention or any other treaty or convention to which Portugal is a party does not apply, the recognition and enforcement of foreign arbitral awards is governed by the Portuguese Law on Voluntary Arbitration (approved by Law no. 63/2011, of December 14). The Portuguese Law on Voluntary Arbitration is based on the 1985 UNCITRAL Model Law on International Commercial Arbitration, which follows closely the New York Convention regime on the recognition and enforcement of foreign awards.

- **Can decisions in the country be enforced outside the country?**

Portuguese law does not prevent the recognition and enforcement of Portuguese decisions outside the country. As such, this question should be analyzed in

accordance with the law of the country where recognition and/or enforcement is sought.

As mentioned above, Portugal is a member of the European Union and, as such, it benefits from the system of mutual recognition and enforcement of judgements established under Regulation (EU) no. 1215/2012 of the European Parliament and of the Council, of 12 December 2012, on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.

- **Are there different legal systems within the country or its political subdivisions?**

No, there are no different legal systems within the country.

The Autonomous Regions of Madeira and Azores have an autonomous political administrative status and specific governing bodies, including their own Regional Legislative Assemblies (*Assembleias Legislativas Regionais*). The Regional Legislative Assemblies of Madeira and Azores have legislative powers over matters of specific interest to the regions that do not fall within the exclusive competence of the legislative bodies of the Republic (the Portuguese Parliament and the Portuguese Government). Both Madeira and Azores are, however, subject to the same laws governing jurisdiction and recognition and enforcement of judgements applicable in the country.

- **Can an investor choose to be subject to the country's jurisdiction or not?**

Portugal is a member of the European Union and, as such, the recognition of choice of court agreements is in principle governed by Regulation (EU) no. 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters. Under the applicable provisions of Regulation (EU) no. 1215/2012, it is in principle possible for parties to agree that Portuguese courts shall have jurisdiction to settle any disputes which have arisen or which may arise in connection with a particular legal relationship, provided that certain requirements are met: *e.g.*, the claim cannot be principally concerned with a matter over which the courts of another Member State have exclusive jurisdiction by virtue of Article 24 of the same Regulation.

Moreover, as the European Union has ratified the 30 June 2005 Hague Convention on Choice of Court Agreements, Portugal, being an EU member, became bound by its provisions once its entered into force.

4. Explain your country's legislative system.

LAWS

The Portuguese legal system is a *civil law* system, which means that the law is largely contained in statutes enacted by the competent legislative powers (the Parliament and the Government) and applied by the courts.

The legal system is hierarchically structured with the Constitution at the top of the hierarchy. The Constitution provides the basic regime relating to the fundamental rights and duties of the Portuguese people, judicial guarantees, the relationship between the political bodies, the general principles and rules underlying the Portuguese court system, the territorial division of the country, the rules governing the constitution and functioning of the Constitutional Court and the procedure to amend the Constitution.

The political bodies empowered to pass legislation are the Parliament and the Government.

The Parliament has exclusive and non-exclusive legislative powers. Non-exclusive legislative powers refer to matter on which legislative competence may be delegated by Parliament to the Government, *e.g.*, tax and criminal laws.

Among the exclusive powers of the Parliament are the power to amend the Constitution, the power to ratify international treaties, and the power to approve the annual State Budget Law (*Lei de Orçamento do Estado*).

The Government has the power to legislate on all subjects that are not reserved by the Constitution for the Portuguese Parliament. The Government enacts legislation under the form of Decree-laws and its respective regulations may take the form of Ordinances (*Portarias*) or of Regulatory Decrees (*Decretos Regulamentares*).

The Autonomous Regions of Madeira and Azores, and in particular their Regional Legislative Assemblies (*Assembleias Legislativas Regionais*) have legislative powers over matters of specific interest to the regions that do not fall within the exclusive competence of the sovereign bodies (the Portuguese Parliament and the Portuguese Government).

EUROPEAN UNION LAW

All legal provisions of Portuguese law must conform to and abide by European Union law, given the principle of its primacy over the internal law of European Union Member States.

INTERNATIONAL TREATIES

Once international treaties have been ratified or approved by the Portuguese Parliament, their provisions become automatically part of the Portuguese law.

CUSTOMS AND USAGES

Usages have the force of law whenever so provided by legislative statutes and as far as they are not contrary to the "principles of good faith".

Although there is a general acknowledgement of customs as a source of law (at least in cases not involving *contra legem* custom), they do not have much practical relevance in the Portuguese legal system.

COURT DECISIONS AND DOCTRINE

Being a *civil law* system, court decisions and doctrine are not considered a primary source of law in the Portuguese legal system. Only universally binding decisions of the Constitutional Court declaring the unconstitutionality of a law, constitute genuine sources of law.

That said, court decisions and doctrine are generally described as 'secondary sources of law', in the sense that they can help in the interpretation and application of the law.

D. Environmental Considerations

1. What is the public/government attitude toward environmental regulation?

Portuguese environmental regulations derive mostly from the European Union ones and for this reason are very broad and complete. Portuguese regulations apply the internationally acknowledged environmental principles: prevention, "polluter pays", strategic integration and the precautionary principle.

Moreover, with the general public's growing environmental awareness, the Government's attitude towards environmental regulation is becoming increasingly more rigorous. A decrease in this environmental consciousness is not in sight. To the contrary, there is broad political consensus in favor of more stringent environmental regulations. This is also due to the preparation currently underway of a proposal for a Directive of the European Parliament and of the Council regarding the so-called ESG factors that companies will have to implement in their value chain.

Public entities are vested with wide powers, covering a broad range of environmental issues such as sustainable development, global warming, climate change, prevention of risks and pollution, waste management, licensing and inspection, liability for environmental damages, public health, etc. The civil and criminal courts at all levels are also involved in the enforcement of environmental law.

At the beginning of the year 2023, the Government introduced several changes to 19 legislative documents in order to streamline procedures for environmental licensing and reform environmental permits.

2. Explain any environmental regulations.

In Article 66 the Portuguese Constitution establishes a fundamental right to a healthy environment.

The said fundamental right is regulated by the Environmental Framework Law *(Lei de Bases do Ambiente)* approved by Law no. 19/2014, of April 14, and on a lower level by several specific statutes applicable to different elements, activities and

procedures (in fact, most EU Directives are being transposed into Portuguese law), namely:

- Decree-Law no. 127/2013, of August 30, amended by Decree-Law no. 11/2023, of February 10, provides the Legal Framework regarding Industrial Emissions, involving Integrated Pollution Prevention and Control, together with rules to avoid and/or reduce emissions to air, water and soil as well as waste generation, transposing Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control);

- Decree-Law no. 75/2015, of May 11, amended by Decree-Law no. 39/2018, of June 11, and by Decree-Law no. 119/2019, of August 21, establishes the "Single Environmental License", which is applicable to the different industrial activities detailed in its annexes (including, among others, the energy, metals, mineral, chemical and waste management industries);

- Decree-Law no. 102/2010, of September 23, amended by Decree-Law no. 43/2015, of March 27, and by Decree-Law no. 47/2017, of May 10, establishes the Air Quality Framework Law;

- Decree-Law no. 39/2018, of June 11, amended by Decree-Law no. 11/2023, of February 10, establishes the System for the Prevention and Control of Emissions of Pollutants into the Air by transposing Directive 2015/2193 of the European Parliament and of the Council of 25 November 2015 on the limitation of emissions to the atmosphere of certain pollutants from medium-sized combustion plants;

- Law no. 58/2005, of December 29, as amended by Decree-Laws no. 245/2009, of September 22, 60/2012, of March 14, 130/2012, of June 22, and 11/2023, of February 10, and by Laws no. 42/2016, of December 28 and 44/2017, of June 19, establishes the Water Law and foresees the administrative procedures for access to and use of different types of water resources (*i.e.*, underground water, surface water, sea water, lake water, river water, etc.);

- Decree-Law no. 102-D/2020, of December 10, amended by Law 52/2021, of August 10, and by Decree-Laws 119-A/2021, of December 22, and 11/2023,

of February 10, establishes the Waste Management legal regime and imposes that all waste is given an adequate final destination under the responsibility of its producer and/or its holder (note that besides this general legal regime there are specific statutes dedicated to the management of particular types of waste, such as used oils, packaging, batteries and hazardous waste, among others);

- Decree-Law no. 150/2015, of August 5, as amended by Laws 71/2018, of December 31, 2/2020, of March 31, 75-B/2020, of December 31, and 12/2022, of June 27, establishes the Accidents Involving Hazardous Substances Prevention legal regime, transposing Directive 2012/18/EU of the European Parliament and of the Council of 4 July 2012 on the control of major-accident hazards involving dangerous substances;

- Decree-Law no. 9/2007, of January 17, amended by Decree-Law no. 278/2007, of August 1, establishes the Noise Prevention legal regime and foresees the maximum admissible levels of noise considering each area's features;

- Decree-Law no. 140/99, of April 24, amended by Decree-Law no. 49/2005, of February 24, and by Decree-Law no. 156-A/2013, of November 8, establishes the Natural Habitats Conservation legal regime;

- Decree-Law no. 142/2008, of July 24, amended by Decree-Laws no. 242/2015, of October 15, 42-A/2016, of August 12, and 11/2023, of February 10, establishes the Wildlife and Nature Conservation legal regime and foresees different types of areas and sites for the protection of species and habitats;

- Decree-Law no. 166/2008, of August 22, amended by Decree-Laws no. 239/2012, of November 2, 96/2013, of July 19, 80/2015, of May 14, 124/2019, of August 28, and 11/2023, of February 10, establishes the National Ecological Reserve legal regime and regulates the use of the land included in such reserve;

- Decree-Law no. 73/2009, of March 31, amended by Decree-Laws no. 199/2015, of September 16, 11/2023, of February 10, and 36/2023, of May 26, establishes the National Agricultural Reserve legal regime and regulates the use of the land included in such reserve;

- Decree-Law no. 232/2007, of June 15, amended by Decree-Law no. 58/2011, of May 4, establishes the Strategic Environmental Assessment of certain plans and programs;

- Decree-Law no. 151-B/2013, of October 31, amended by Decree-Law no. 47/2014, of March 24, no. 152-B/2017, of December 11, no. 102-D/2020, of December 10, and no. 11/2023, of February 10, and by Ratification no. 7-A/2023, establishes the Environmental Impact Assessment legal regime, defining the said procedure and the works and projects which are subject to it;

- Decree-Law no. 147/2008, of July 29, amended by Decree-Law no. 245/2009, of September 22, Decree-Law no. 29-A/2011, of March 1, Decree-Law no. 60/2012, of March 14, and no. 13/2016, of March 9, establishes the Civil Liability for Environmental Damages legal regime;

- Law no. 50/2006, of August 29, amended by Law no. 89/2009, of August 31, Decree-Law no. 42-A/2016, of August 12, and Law no. 25/2019, of March 26, establishes the Environmental Infractions Framework Law;

- Decree-Law no. 38/2013, of March 15, amended by Decree-Laws no. 42-A/2016, of August 12, no. 10/2019, of January 18, and no. 12/2020, of April 6, regulating the greenhouse gas emission allowance trading scheme as of 2013;

- Decree-Law no. 102-D/2020, of December 10, amended by Law no. 52/2021, of August 10, and by Decree-Laws no. 119-A/2021, of December 2021, and 11/2023, of February 10, which establishes the legal regime for the creation, management and functioning of an organized waste market.

E. Intellectual Property

- **Describe the law for the protection of intellectual property, including trademarks, copyrights, patents and know-how.**

Over the last few decades, Portugal has taken significant steps to develop its intellectual property law and make it more effective and, above all, reduce the red tape associated with intellectual property applications. This has also been driven by European Union legislation seeking to harmonize the laws of the various Member-States and keep them in line with the new digital economy. In Portugal, particular emphasis has been given to promoting innovation and patent registration, given that Portugal's performance in this area has been fairly modest in the past, as demonstrated by international rankings.

Of all the legislation in Portugal dealing with the protection of intellectual property we highlight the Industrial Property Code, approved by Decree-Law no. 110/2008, of December 10, as amended – dealing with the protection of trademarks, patents, designs, logos, etc. – and the Copyright Code, approved by Decree-Law no. 63/85, of March 14, as amended.

Apart from these two main legal codes, there are several laws and decrees covering specific aspects which, where applicable, we will refer to below.

INDUSTRIAL PROPERTY CODE

The current Industrial Property Code, which was published in 2018 and came into force in 2019, replaced the Industrial Property Code of 2003. Prior to the 2003 Industrial Property Code, there was the short-lived 1995 Code and, before that, one from the 1940s. The 2018 Industrial Property Code already suffered a few minor tweaks in 2021 and a few more are envisaged, particularly since the entry into force of European unitary patents and the Unified Patent Court.

The Industrial Property Code contains the vast majority of the national legal rules related to all types of industrial property rights, namely patents, supplementary protection certificates (SPCs), utility models, designs, semiconductor masks, trademarks, logos, appellations of origin, geographic indications and rewards. It is also in the Industrial Property Code that the Portuguese legislator has included the

legal regimes that regulate trade secrets and unfair competition. Naturally, when analyzing a specific intellectual property issue in Portugal, it is often necessary to look at both the Industrial Property Code and other international treaties, community regulations and domestic laws.

TRADEMARKS

In general terms, the protection granted to a trademark is dependent on its registration for specific products or services, as classified in accordance with the Nice Agreement of 1957. An application for registration of trademarks must be submitted to the Portuguese Institute of Industrial Property (*Instituto Nacional da Propriedade Industrial*/INPI) and the registration process takes on average around four months when no opposition is raised by third parties and if no clarification requests are made by the INPI.

An application must contain the following:

- The complete identification of the applicant;
- An identification of the trademark and its graphic representation (should it be a device mark);
- A description of the products/services;
- An indication of any claim in relation to colors (if desired);
- A priority claim, if any; and
- A power of attorney (if the applicant is not represented by an Official Industrial Property Agent).

It is important to note that Portugal now accepts and recognizes non-traditional trademarks (*e.g.*, 3D and sound marks) and sets out specific requirements for them.

A foreign entity may register a trademark under the same terms and conditions as any Portuguese entity.

Once granted, the registration of a trademark is valid for renewable periods of 10 years counting from the application date. Currently the fees for each national registration in one class of products and services amount to approximately EUR 140, and the renewal fee is the same.

Special protection is provided for "well known" trademarks and for trademarks of "great prestige" (*i.e.*, with considerable reputation in the market). In the case of the former, the interested party has the right to oppose any registration by a third entity of an identical or similar trademark which may be confused with the well-known mark, even if it is unregistered. In order to proceed with this opposition, the trademark opposed must identify identical or similar goods as the "well-known" one and the interested party has to request its protection in Portugal. In the case of "great prestige" trademarks, the holder of these types of trademark can oppose the registration of an identical or similar trademark by a third entity in all classes of goods and services. The only thing necessary is that the holder applies for the protection of the trademark in Portugal.

In Portugal, a mark may be protected by a national (Portuguese) trademark, but it is also possible to obtain protection in the Portuguese jurisdiction by obtaining a European Union Trade Mark or an international trademark registration designating Portugal.

Portuguese trademark legislation has been substantially harmonized with the legislation of other European Union Member-States due to Directive (EU) 2015/2436 and one can expect to find the same general rules in Portugal that are found in other EU countries, both in terms of obtaining registrations and having them cancelled.

COPYRIGHTS

The current Copyright Code was approved by Decree-Law no. 63/85, of March 14, and has since been amended several times, most recently in 2023, in order to adapt it to several European Union directives and other international treaties ratified by Portugal.

Works subject to protection under the Copyright Code are any intellectual creations in the literary, scientific and artistic domains. Copyright is granted in Portugal,

irrespective of any registration (although it is often advisable to proceed with such registration).

The Copyright Code also confers protection for the first time in Portugal to performing artists, phonogram or video producers and broadcasting organizations under the category of "neighboring rights".

The content of a copyright is structured in Portugal in clearly dualistic terms. Indeed, Article 9 of the Copyright Code states that "(a) copyright encompasses rights of a patrimonial nature and rights of a personal nature, designated as moral rights" (our translation). This distinction is important on a practical level, since it relates to a separate framework, notably with regard to duration and transferability.

The patrimonial content of a copyright is mainly defined as the exclusive right to economic usage of the work. Moral rights, on the other hand, are those more closely linked to the individual author, notably the right to claim authorship of the work, the right to ensure its authenticity and integrity, the right to disclose (or not) the work, and the right of withdrawal.

The holder of the patrimonial rights to a protected work is entitled to use and exploit them by whatever means, notably through licenses, and, in general, the holder can be assigned or be subject to any encumbrance, wholly or partially. The moral rights, however, cannot be sold, renounced or extinguished.

A patrimonial copyright in Portugal is granted for a specific period of time, after which a work falls into the public domain and can be used by anybody. Currently, the general period of copyright protection is 70 years counting from the death of its author. As regards "neighboring rights", the period of protection is, in general 50 years counting from the performance (artists), fixation or broadcasting (phonogram or video producers, broadcasting organizations), although it can be longer in certain cases.

In terms of ownership of copyright, certain specific regimes are worth highlighting. On one hand, it must be noted that unlike many Anglo-Saxon countries, the copyright to films or movies is granted to the director, script-writer and soundtrack composer and not to the producer, unless previously contractually arranged.

On the other hand, the rights over a work created by an employee during an employment agreement, or work-for-hire, are granted to the author or employer, if this is agreed before the creation of the work. In the absence of such an agreement, it is assumed that the rights belong to the intellectual creator. This is the general regime laid down in Article 14 of the Copyright Code, although there are special regimes for specific works, *e.g.*, software and photographic works.

Portugal has been closely following the profound changes that have occurred in the copyright and related rights environment. As a Member State of the European Union, it has transposed to national law the several directives that have been recently enacted on copyrights and other related matters, such as electronic commerce, digital signatures, protection of databases and, more recently, the Digital Single Market Directive.

PATENTS

The Industrial Property Code also provides for the patenting of any new inventions. For a patent to be granted under Portuguese law, an invention must be novel (*i.e.*, not form part of the state of the art), must involve an inventive step, and must also have industrial applications. Software cannot, *per se*, be patented and is typically protected as copyright, although under specific provisions of copyright law. However, computer-implemented inventions may be patented if they meet the requirements that have been laid down by the European Patent Office and which have been echoed by INPI.

The application for a patent in Portugal must be submitted to the INPI and must contain the following (it should be noted that Portugal accepts Provisional Patent Applications – PPAs – whereby a priority date can be obtained by presenting a description of the invention):

- Complete identification of the applicant and the inventor, if not the same;
- Description of the invention;
- Abstract of the invention;
- Claims;

- Drawings explaining the description (if applicable);
- Title of the invention;
- Any claim to a possible priority right under Article 4 of the Paris Convention.

After publication of the application, which typically occurs 18 months after the application date, third parties have an opportunity to file oppositions, after which, the application and invention are examined by the INPI, which can either grant the patent or invite the applicant to amend the application. If the examination concludes that the invention does not meet the necessary requirements, the patent application is refused. On average the whole process can take between two and four years, and sometimes even more.

Once approved, a patent is valid for a period of 20 years from the date of the application. Currently, the official fees for each patent filing amount to approximately EUR 120 and annuities vary from approximately EUR 60 in the fifth year (the first year in which annuities are due) to approximately EUR 815 in the 20th year.

The general rule on the ownership of patents is that an inventor is entitled to it. However, Article 58 of the Industrial Property Code provides that an employer has the right to the patent in relation to any inventions created by an employee during an employment agreement, provided that inventing is expressly envisaged in the employment agreement, and the activity is specially remunerated.

KNOW-HOW AND TRADE SECRETS

As is generally recognized, know-how is non-patented technical information and knowledge. Know-how contracts are often used in Portugal as a means of importing knowledge and technology. They normally come attached to patent licensing agreements or, more informally, within group arrangements where the parent company of a Portuguese entity brings along its technical knowledge/know-how.

On the other hand, trade secrets are technical know-how that is purposefully not patented and is protected by maintaining it secret. The Portuguese legislator transposed Directive on the Protection of Trade Secrets (Directive (EU) 2016/943)

into national law in 2018 and inserted the new rules into the Industrial Property Code. This new trade secrets regime has provided a lot more legal clarity as to how trade secrets can be protected, defended and enforced.

- **Does the country subscribe to international treaties?**

Portugal is a founding member of many international treaties concerning intellectual property and is, today, party to the vast majority of the relevant international and regional treaties (such as the European Patent Convention). Additionally, as a Member State of the European Union, Portugal has been implementing the relevant directives and is bound by other obligatory intellectual property laws in force within the European Union (*e.g.*, EU Regulations).

More specifically, we highlight the following major treaties concerning intellectual property (as amended):

- Paris Convention of March 20, 1883, for the protection of Industrial Property;
- Madrid Agreement of April 14, 1891, concerning the international registration of trademarks;
- Madrid Protocol of June 17, 1989, concerning the international registration of trademarks;
- Nice Agreement of June 15, 1957, on the international classification of products and services;
- Munich Convention on the European Patent of October 5, 1973;
- Patent Cooperation Treaty of June 19, 1970;
- GATT Agreement/Uruguay Round on Trade Related Aspects of Intellectual Property (TRIPs);
- Berne Convention on the protection of literary and artistic works;
- Universal Copyright Convention;

- Rome Convention for the protection of artists, performers, phonogram and video producers, and broadcasting organizations;
- WIPO Treaty on Copyright;
- Unified European Patent Court.

Amongst the major treaties that Portugal is not a member to, we would highlight only:

- The Hague treaty regarding the international registration of designs;
- Patent Law Treaty (signed but still un-ratified).

- **Are there substantive prior approvals by national investment boards?**

National investment boards intervene in the intellectual property sector merely by providing funding to interested parties that request it or participate in prizes, competitions, etc. Typically the funding can be for R&D or for protecting the technology domestically or abroad.

Generally, investment boards have no influence on the type of intellectual property being produced or protected beyond the funding element.

- **What are the notarization requirements?**

Most acts involving the INPI or the General-Inspectorate of Cultural Affairs do not need to be notarized. However, on occasions, when it is necessary to present original, authenticated documents, notarization can be necessary. Most documents can be authenticated by notaries, lawyers or trade boards. Portuguese public authorities frequently request that foreign public documents, for example, patent or trademark priority documents, carry the *apostille* of the Hague. Private agreements, such as licensing agreements between two private companies, do not require notarization in order to be valid, but it is often advisable for a notary or lawyer to certify the signatures of those that enter into such agreements in case of disputes in the future.

Amongst the acts that do require a notarized public deed, we highlight the full assignment of copyright on a literary or artistic work. Failure to abide by these formalities will render the agreement null and void.

- **Are there regulatory guidelines for licenses?**

Portuguese intellectual property law contains some legal rules that apply to licensing agreements in order for them to be valid. For example, they must be in written form and, to be effective *vis-a-vis* third parties, the license must be registered with the INPI. Likewise, when discussing a licensing agreement, it is important to clarify in advance whether the license is exclusive or not, and also whether the licensor retains the right to directly exploit the rights licensed. In the absence of a specific clause, the law assumes that a licensor is entitled to keep the exploitation of the licensed rights. However, there are no regulatory guidelines *per se*.

Certain industries or sectors may follow highly standardized licensing terms and conditions, but there is no regulatory body or rules that apply to licenses in general.

- **Are there specific exceptions or requirements in relation to a particular product(s)?**

Portuguese intellectual property law is general and abstract and does not identify any special requirements for particular products, bar a few exceptions (for example, the need to register the name of a periodical publication in order for it to be protected or necessity of having a registered trademark for the approval of a wine label).

Far more common is for the legislation covering a particular product or sector to identify requirements related to intellectual property. By way of example, we highlight pharmaceutical products, wines and travel agencies. Likewise, certain regional and local products may only display appellations of origin or geographic indications if they prove their origin from those regulated geographic areas.

In short, when deciding to produce or sell a product or provide a service in Portugal, it is advisable to analyze the specific related law so as to make sure that there are no special intellectual property requirements that must be complied with.

- **When are royalties from licenses deemed to be excessive?**

From a substantive and formal intellectual property law perspective, there are no legal limits to the amount of royalties, since it is entirely up to the parties to agree on the royalty arrangement most suited to them.

One must note, however, that from a tax or competition perspective, some royalties may be deemed to be excessive and transfer-pricing rules must be complied with. It is always advisable to obtain tax and competition law advice before entering into any licensing arrangements in Portugal (*i.e.*, FRAND royalties may be applicable).

- **Do local antitrust or competition laws apply to licenses?**

Under Portugal's national laws, intellectual rights are subject to and must be exercised in accordance with competition law provisions. This is particularly important if we take into account that, by its very nature, an intellectual property right confers a monopoly to its holder.

The issue is usually dealt with within the European Union context. Commission Regulation (EU) no. 316/2014 of 21 March 2014, on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of technology transfer agreements (TTBER) and Commission Regulation (EU) 2023/1066 of 1 June 2023 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to certain categories of research and development agreements are two examples of the intersection between intellectual property and competition law. Competition law also plays a part in relation to "parallel imports". Today it is clear, under national laws, that intellectual property rights do not confer powers to prevent parallel imports nor can they be used to infringe or evade competition rules.

The Industrial Property Code contains specific limitations on intellectual property rights, derived from competition rules, such as the concept of exhaustion of a trademark. According to Article 253 of the Industrial Property Code, the owner of a trademark cannot prevent the use of it for products sold within the European Union with that same trademark, provided there was a previous authorization by the owner. The same concept applies to patents.

When setting up a licensing network involving Portugal, it is therefore important to check whether it complies with competition laws. If there are doubts about the lawfulness of the network, it is advisable to clarify them, even if on an informal basis, with the national competition authority.

The Industrial Property Code also includes a specific article on "unfair competition", which is defined as any act contrary to the rules and honest practices of any type of activity conducted by any entity with the intention to cause harm to any competitor and to obtain an illegitimate gain. Such acts are subject to misdemeanor proceedings. As examples of unfair competition, Article 311 of the Industrial Property Code includes, among others, the following:

- Actions capable of creating confusion with the undertakings, products or services of any competitor;
- False statements in order to discredit any competitor;
- Non-authorized claims or references;
- False indications of origin;
- Illegal possession, use or disclosure of any trade secrets belonging to a competitor.
- **What typical agreements do foreign corporations enter into with their wholly owned subsidiaries?**

Portugal remains today a net importer of intellectual property and much of it is introduced into the country via foreign corporations that either have or not wholly own subsidiaries in Portugal.

The practice of setting out the terms and conditions of the use of a parent corporation's intellectual property by a wholly owned subsidiary is still not very widespread. Often the subsidiary will, in practice, use the parent company's trademarks, copyrights, patents and know-how without a formal agreement.

Nevertheless, large and medium sized economic groups are increasingly becoming aware of the advantages of entering into licensing agreements, in particular for the protection of those intangible assets and tax efficiencies within the group.

III. INVESTMENT INCENTIVES

A. Explain any export incentives or guarantees.

- **Are there tax incentives for exports?**

There are no specific tax incentives for exports. Notwithstanding, the tax incentives aforementioned previously may apply to exporting companies aimed to export, provided that the respective requirements related with on the type and minimum amount of investment, among others, are fulfilled.

- **If so, are they limited to certain types of products?**

As mentioned in the section destined to tax incentives, the same are available to investment projects in the mining industry, manufacturing industry, tourism, agriculture, fisheries, agro-livestock and forestry, research and development and high-tech activities, environment, energy and telecommunications, information technology, audio-visual and multimedia production, and activities related with shared service centers.

- **Is export financing available from government or private sources?**

Portugal offers a wide range of investment incentives to domestic and foreign investors. Incentives are, as a general rule, provided by the central government, the regional governments of the Azores and Madeira and by municipalities that may can indirectly provide export financing, namely by providing financial incentives, job creation incentives, support for the internationalization of companies, and training and tax incentives to for activities with a significant export nature content.

- **If so, what forms of financing or guarantees are available?**

The Portuguese Institute for the Support of Small and Medium Enterprises and Innovation (IAPMEI, www.iapmei.pt), offers support for Corporate and Entrepreneurial Innovation, SME Qualification and Internationalization and Research and Technological Development. The Portuguese State also

provides vouchers in a simplified incentive scheme to support the acquisition of consultancy services in the areas of Innovation, Qualification and R&DT (Research and Technological Development) from accredited entities (https://www.iapmei.pt/PRODUTOS-E-SERVICOS/Incentivos-Financiamento/Sistemas-de-Incentivos/Arquivo/Incentivos-Portugal-2020.aspx). Also very relevant is COMPETE 2020 (Public Authority responsible for EU funds directed to companies, www.poci-compete2020.pt) is also very important and which has several incentive programs which also include credit facilities, notably for exports.

In addition, for relevant important investments equal to or more than EUR 3 million, the following tax incentives may also be provided: *(i)* tax credit from 10% up to 25% for relevant important applications (depending upon certain requirements); *(ii)* exemption or reduction of municipality tax (IMI); *(iii)* exemption or reduction of property acquisition tax (IMT); and *(iv)* exemption from stamp tax duty.

Please also see section B below.

- **Is there any governmental insurance for exports?**

Yes. The State offers support, guarantees, and incentives for exports. In that is ambit context, the State indirectly provides, through a leading private insurer in Portugal named *Companhia de Seguro de Créditos, S.A.* (COSEC), for insurance schemes for risks associated with exporting and investment, especially to politically risky countries (https://www.cosec.pt/en/cosec/about-cosec/). Such schemes are offered by COSEC and include export credit insurance, financial credits insurance, state guaranteed bond insurance and investment insurance. In particular, the export credit insurance scheme comprises covers related to of credit risks, which include several various political and commercial risks, and also to manufacturing risks, and is available both for as Buyer Credit (where a foreign contractual partner of the Portuguese Exporter is either a private buyer or a public buyer) and Supplier Credit (granted for the Portuguese Exporters before shipment – manufacturing risk cover – or after shipment – credit risk cover). The scope range of credits insured is defined on a case-by-case analysis that includes capital and remunerative interest.

- **Must there be a national participant in the enterprise in order for the latter to benefit from these incentives?**

No. Foreign nationals have the right to establish themselves in all economic sectors open to the private sector, and to benefit on a transparent and non-discriminatory basis from the incentives granted by the Portuguese State (note however some limitations below in relation to strategic sectors).

One should note, however, that private ownership (national or foreign) is limited in the following sectors: basic sanitation, railroad transport (in activities defined as a public service) and maritime ports – as a rule, in these activities private entities can only act under concession contracts.

B. Explain any grants, subsidies or funds your country offers foreign investors.

- **Are grants and subsidies restricted by the type of activity?**

There are a significant number of support instruments available in the context of Portugal 2030 (https://portugal2030.pt/), a program that provides the framework for the application of the European Structural and Investment Funds in Portugal for the 2021-2027 period. The funds are distributed in accordance with thematic and regional agendas. In particular, the Thematic Operational Agenda for Competitiveness and Internationalization (Compete 2030) includes incentives for innovation and competitiveness, the energy transition, scientific and technological development, and incentives for business modernization and digitization, and reinforcement of sustainable growth and job creation by small and medium enterprises.

INDIRECT SUPPORT

To support investment in existing companies and the creation of new businesses the Portuguese Institute for the Support of Small and Medium Enterprises and Innovation (IAPMEI, www.iapmei.pt) and *PME Sociedade de Investimentos S.A.* (which is the institution responsible for providing support to national and international projects promoting sustainability and economic development), have several credit facilities that provide access to financing as well as help in obtaining risk capital or

guaranteed credit. One of the credit facilities, designated "*Linha Capitalizar*", aims to facilitate companies' access to bank credit, including interest rate subsidies and the reduction of the risk of banking transactions through the use of a guarantee facility run by the National Mutual Guarantee System with a maximum funding of up to EUR 4 million per company.

Moreover, there are funds available for investment, exports, innovation, strengthening equity and financial support for starting a business and for startups. Regarding the latter, there are several financial instruments, including Vouchers for Startups, to support startups with projects in the green and digital areas, and multiple venture capital funds, such as "Portugal Blue" for investments in projects in the blue economy with funding up to EUR 50 million and "Portugal Tech I" with funding up to EUR 20 million).

DIRECT SUPPORT

The Professional Job and Training Institute (*Instituto do Emprego e Formação Profissional*/IEFP, www.iefp.pt) has a programme to support local employment initiatives. The IEFP also provides financing for contracting staff in professional training programs, such as that to stimulate job offers. The Portuguese Investment Agency for Trade and Investment (AICEP, www.portugalglobal.pt) can assist companies in applications for tax benefits.

Within Portugal 2030, the program COMPETE 2030, following the priorities set out in the previous program, has several forms of direct funding for companies, notably for promoting investment in research & development, technological and scientific research (I&I, R&D) and digitization.

PROJECTS OF POTENTIAL NATIONAL IMPORTANCE

There is also a fast-track system of incentives for Projects of National Importance (*Projectos de Potencial Interesse Nacional*/PINs). Projects can be classified as PINs and qualify for special support if they fulfil the following criteria: *(i)* they involve an overall investment equal to or more than EUR 25 million; *(ii)* they create 50 or more direct jobs; *(iii)* the project must be submitted by investors of recognized reputation and credibility; *(iv)* sustainable development needs to be demonstrated together with a stimulatory effect on small and medium enterprises; *(v)* there has

to be a positive impact on at least three of the following areas – *(a)* establishment of a production base that is strongly integrated into the Portuguese market and generates gross added value; *(b)* the production of innovative, tradeable goods and services that provide a clear advantage in the global market; *(c)* the introduction of innovative technological processes or cooperation with entities in the scientific and technological system; *(d)* inclusion in the strategy for smart specialization of the relevant region or contribution to the stimulus of low economic density territories; *(e)* contribution to the foreign trade balance, notably through an increase in exports or reduction in imports; *(f)* energy efficiency or favoring renewable energy sources; and *(g)* spill-over effects in upstream and downstream activities, notably in small and medium-sized enterprises.

Projects involving an investment of less than EUR 25 million or that create less than 50 direct jobs can also be recognized as PINs if *(i)* they are submitted by investors of recognized reputation and credibility and *(ii)* fulfil at least two of the following criteria: *(a)* at least 10% of the turnover of the projects relates to R&D, *(b)* a strong applied innovation component, consisting in a significant part of the activity being based on a patent developed by the company, *(c)* manifest value to the environment, *(d)* strong export orientation, with at least 50% of turnover going to the international market, and *(e)* significant production of tradable goods or services.

- **What is the process for obtaining approval for these grants or subsidies?**

The submission must be made in writing to the relevant public authority or to the designated intermediaries, such as banks or other financial institutions (in the case of some of the credit facilities). The following public agencies are, as a general rule, the most common addressees of subsidy applications:

- *Agência para o Investimento e Comércio Externo de Portugal, E.P.E.* (AICEP Portugal Global – Business Development Agency, www.portugalglobal.pt);

- *Instituto de Apoio às Pequenas e Médias Empresas e à Inovação, I.P.* (Institute for the Support of SMEs and Innovation, www.iapmei.pt);

- *Turismo de Portugal, I.P.* (The National Tourism Authority, www.turismodeportugal.pt);

- Portugal Capital Ventures – *Sociedade de Capital de Risco, S.A.* (www.portugalventures.pt).

All the information about applying for incentives under the EU 2021-2027 funding framework is also available on the website of Portugal 2030 (https://portugal2030.pt/) and that of COMPETE 2030 (https://www.compete2030.gov.pt/).

- **How long does it take to receive approval?**

The timeline for a final decision is dependent upon the complexity of the file and the rules applicable to each incentive, subsidy or credit facility. For instance, if a file involves the negotiation of the types of incentive and respective amounts, a lengthier period of time may be needed for the final approval.

- **Can an investor receive loans from the government or governmental agencies?**

Yes. The IAPMEI and PME Investimentos have several incentive programs which include credit facilities. For instance, in the "*Linha de Crédito Capitalizar*" programs the total credit facilities amount to EUR 1,000 million.

- **Must there be a national participant in the enterprise for the latter to receive these grants or subsidies?**

No. Foreign nationals have the right to establish themselves in all economic sectors open to the private sector, as well as to benefit on a transparent and non-discriminatory basis from the incentives granted by the Portuguese State.

In addition, there are several legal provisions making available, as a rule, the possibility of applying for a residence permit for pursuing investment activities ("Golden Residence Permit for Investment Activity") to those who have entered the country regularly (*e.g.*, holders of valid Schengen Visas or beneficiaries of a visa exemption) by transferring capital, creating jobs or acquiring real estate with productive periods of stay in Portugal. The holders of the Golden Residence Permit for Investment Activity have, as a rule, the right to family regrouping, and may gain access to a permanent residence permit, and also to Portuguese citizenship.

C. Explain any national tax incentives for foreign investors. Be sure to answer the following questions:

- **Are the incentives restricted by the type of activity?**
- **Are the incentives restricted by the duration of the activity?**
- **What is the application process?**

NON-HABITUAL RESIDENTS TAX REGIME

A special income tax regime is available to non-habitual resident investors. Non-habitual resident individuals are defined as those who have become residents in Portugal, provided that they had not been residents in Portugal during the previous five years. Under this regime, non-habitual residents are eligible for a 20% income flat tax rate on their Portuguese-source employment income and business and professional income, provided that they engage in scientific or highly technical activities, for 10 years, provided the residency requirements are met in each of those years.

Moreover, they should benefit from a tax exemption on several types of income obtained abroad, such as capital gains, dividends, interest and rents, provided that some requirements are met. Even although until 2020 pensions earned by non-habitual residents were exempt, the tax rate applicable is now 10%. However, taxpayers that were already under this regime prior to 2020 are still taxed at a 0% rate on their pensions.

However, the non-habitual residents tax regime was repealed as of 1 January 2024, via the State Budget Bill for 2024. Nevertheless, there are some exceptions to the end of the non-habitual residents tax regime, under which an individual can still apply for this regime.

Under such exceptions, an individual can still apply for the non-habitual residents regime until 31 March 2024 if such individual, as of 1 January 2024, was registered as a tax resident in Portugal or if such individual, as of 31 December 2023, met all the requirements to be considered a tax resident in Portugal, or if such individual was already registered as a non-habitual resident as of 31 December 2023.

A number of other exceptions were approved, allowing individuals to apply for the non-habitual residents regime until 31 March 2025, provided they become tax residents in Portugal until 31 December 2024, if:

(i) The individual entered into a promissory employment agreement or an employment agreement, or a promissory secondment agreement or a secondment agreement, to perform an activity in Portugal, until 31 December 2023;

(ii) The individual entered into a lease agreement (or other agreement for the use or possession of the property) in Portuguese territory, until 10 October 2023;

(iii) The individual entered into a purchase agreement or a promissory purchase agreement of a property in Portuguese territory, until 10 October 2023;

(iv) The individual's children (or other dependents) were enrolled in a school located in Portuguese territory until 10 October 2023;

(v) The individual has a residency visa or a residency authorization valid until 31 December 2023;

(vi) The individual has initiated the procedure to obtain a residency visa or residency authorization with the competent authorities, until 31 December 2023, namely by scheduling an appointment or requesting the scheduling of an appointment with the authorities to that effect, or by submitting the request to be granted a residency visa or residency authorization.

An individual is also able to register as a non-habitual resident if, with no deadline, if such individual is in the household of an individual that meets any of the aforementioned exceptions.

FORMER RESIDENTS TAX REGIME

A special tax regime is available to former residents in Portugal, who choose to return to Portugal (becoming Portuguese tax residents) after having left the country for a period of at least 5 years.

This special tax regime exempts from taxation 50% of the employment and business/professional income earned by a taxpayer in the year in which he is registered as a former resident for this purpose, and in the four subsequent years.

This special tax regime cannot be cumulated with the non-habitual residents tax regime.

TAX INCENTIVE FOR SCIENTIFIC RESEARCH AND INNOVATION (IFICI)

A new tax incentive was created, and is in force since 1 January 2024, for individuals who have become residents in Portugal, provided that they had not been residents in Portugal during the previous five years, and provided these individuals perform one of the following activities:

(i) University professors or academic and scientific researchers;

(ii) Qualified work positions and directors for the purpose of activities encompassed by the contractual tax incentives to productive investment rules;

(iii) Highly qualified activities, as defined by the Portuguese government, performed in companies that benefit or have benefited from RFAI (as explained herein) or companies that carry out specific activities and export over 50% of their turnover;

(iv) Other work positions in companies that are considered by the competent national agencies (IAPMEI and ACEIP) as relevant companies to the national economy;

(v) Research and development, as long as such expenses are eligible to the SIFIDE tax incentive;

(vi) Work positions or directors in start-ups;

(vii) Work positions or other activities performed in the Autonomous Regions of Azores or Madeira.

Under this regime, individuals who benefit from this regime are eligible for a 20% income flat tax rate on their Portuguese-source employment income and business and professional income, provided that they engage in scientific or highly technical activities.

Moreover, they should benefit from a tax exemption on several types of income obtained abroad, such as capital gains, dividends, interest and rents, provided that some requirements are met. Even although until 2020 pensions earned by non-habitual residents were exempt, the tax rate applicable is now 10%. However, taxpayers that were already under this regime prior to 2020 are still taxed at a 0% rate on their pensions.

CONTRACTUAL TAX INCENTIVES

Contractual tax incentives may be granted for industrial investment projects in specific activities (such as extracting and manufacturing activities, tourism, computer-related activities, agriculture, fisheries, agro-livestock and forestry activities, R&D activities, information technology, and audio-visual and multimedia production), carried out by 31 December 2027 if they involve at least EUR 3 million and are deemed to be of a strategic interest to the domestic economy and encourage job creation, technological innovation and domestic scientific research. The incentives, granted by the central government on a case-by-case basis for a maximum period of 10 years, include a 10% to 25% investment tax credit and an exemption from or reduction of municipal tax on immovable property, municipal tax on the transfer of immovable property, and stamp duty.

The companies that promote such investments have to submit their candidacy file to AICEP, the Portuguese entity responsible for the evaluation of the projects.

SIFIDE II

SIFIDE II (*Sistema de Incentivos Fiscais à I&D Empresarial*) should be applicable until 2025 and foresees a tax credit for R&D expenses, provided that some requirements are met.

The tax credit should correspond to the following amounts:

(i) 32.5% of expenses borne during the fiscal year;

(ii) 50% of the surplus of expenses borne in the fiscal year over the average of the two previous years, up to the maximum amount of EUR 1,500,000.

The percentage referred in *(i)* above is increased by 15% in the case of micro, small and medium enterprises which do not benefit from the 50% surplus, due to not having completed two years of activity.

As of 2024, SIFIDE II will restrict the applicability of the tax incentives set out therein, not allowing the tax credit to be granted to companies that are funded for the most part by investment funds, and will also tighten the rules that allow for investment funds themselves to benefit from such incentives.

RFAI

RFAI (*Regime Fiscal de Apoio ao Investimento*) applies to important investments involving fixed assets (whether the same are tangible or intangible). Under this benefit, a tax credit is granted in accordance with the eligible region in which the investments are made, ranging between a deduction of 10% and 30% (the latter in the case of investments not exceeding EUR 15,000,000) of the relevant investment from the tax base.

The deductions mentioned are limited to 50% of the corporate income tax (IRC) assessed in each tax period, except in the tax year when the activity begins and the next two tax years (provided that the company does not result from a demerger operation).

Any unused credit may be carried forward for 10 years.

Additionally, exemptions or reductions from Property Tax (IMI), Property Transfer Tax (IMT) and Stamp Duty may apply on the acquisition of real estate.

EXEMPTION OF GAINS ARISING FROM STOCK OPTION PLANS

Pursuant to this regime, gains arising from stock option plans received by start-ups/emerging companies' shareholders may be considered for only 50% of their value for Personal Income Tax purposes, irrespective of their total amount.

In order to benefit from this tax exemption at least one of the following requirements should be met: being a start-up or emerging company and either qualifying as a micro or small enterprise or operating within the innovation sector, namely companies who have invested at least 10% of their total revenue or expenses in R&D, patents, industrial designs or software.

Also, a beneficiary must hold the shares for at least one year, and will be taxed either when such shares are alienated (sold or gratuitously transferred) or when the beneficiary ceases to be a Portuguese Tax Resident.

CORPORATE RECAPITALIZATION INCENTIVES

Individual shareholders who make capital contributions to companies that have losses equal to more than half their share capital may deduct 20% of such capital contributions to the profits made available by the company or to the capital gains arising from the sale of their shares.

CORPORATE RESTRUCTURING INCENTIVES

Companies whose main activity is commercial, industrial or agricultural, and which participate in restructuring transactions involving the transfer of real estate property, may be exempted from Stamp Duty, Public Register fees and Property Transfer Tax on such transfers.

As a general rule, such exemptions are automatic, with the companies involved bound to keep a tax file containing the description of the restructuring transaction, the documents that were executed in order to conclude the same, a report demonstrating the economic benefits arising from the restructuring and the decision issued by the Portuguese Competition Authority in cases where such restructuring needs to be communicated to this Authority, pursuant to the Portuguese Competition Law.

Notwithstanding, if the restructuring transaction involves a spin-off under which the separated business activity sets up a new company, the restructuring transaction is subject to approval by the Portuguese Minister of Public Finance in order for it benefit from the tax exemptions.

INCENTIVE SCHEME FOR MADEIRA FREE TRADE ZONE

Portugal has one free trade zone, usually known as Madeira's International Business Center (IBC).

Foreign companies registered in the Madeira free zone and their shareholders/*quota* holders and bondholders are guaranteed: *(i)* freedom of repatriation of capital and profits; *(ii)* freedom from restrictions on transfer transactions; *(iii)* freedom from restrictions on the importation of capital; and *(iv)* simplification of related administrative procedures.

(a) The tax incentives

These incentives are applicable to *(i)* firms establishing business activities in the Madeira free trade zone, *(ii)* their corporate shareholders/*quota* holders, *(iii)* other qualifying situations, and *(iv)* international trade-related benefits.

(i) The Madeira IBC tax regime applicable from 2015

New companies licensed to carry on industrial, commercial and shipping activities, and other services not excluded from the tax benefits regime between 1 January 2015 and 31 December 2020 are able to enjoy a reduced rate of corporate income tax of 5% in 2015-2027.

Access to the scheme is restricted to companies that meet the specific eligibility criteria based on the number of new permanent jobs created. Companies that create more than five jobs have access to the scheme without further conditions, while those that create between one and five jobs are eligible only if they make a minimum investment of EUR 75,000 during the first two years of business. In all cases, the application of the reduced tax rate will nonetheless be limited to a ceiling placed on the tax base, which ranges from EUR 2.73 million (where less than three

new jobs are created) to EUR 205.50 million (where more than 100 new jobs are created).

Additionally, the amount of the tax benefits received is subject to the following limits:

- 20.1% of the annual gross value added; or
- 30.1% of the annual workforce costs; or
- 15.1% of the annual turnover.

Furthermore, access to the international services center is also restricted to the activities included in the list drawn up by the Portuguese authorities on the basis of the statistical classification of economic activities. This list includes a range of activities, namely, trading, holding, e-commerce transactions, transport and communications, real estate, renting and services to business and sporting activities. However, the list explicitly excludes all financial and insurance intermediary activities, financial and insurance auxiliary activities and intra-group centers, together with steel, synthetic fibers, coal, shipbuilding, agriculture, forestry, fishing, fish farming and mining activities, and, also, companies deemed to be enterprises facing difficulties, under the terms of Regulation (EU) 651/2014, of June 17, and companies subject to a pending recovery order following a decision issued by the EU Commission stating that an aid is illegal and incompatible with the internal market.

Finally, the dividends received by non-resident shareholders from Madeira companies are exempt from withholding tax in Madeira provided the income obtained by these entities derives from operations carried out within the legal framework of the IBC of Madeira. In addition, non-resident shareholders also benefit from an exemption on withholding tax on interest received from loans, bonds and advances of capital granted to IBC companies.

All entities that have been licensed under one of the previous tax regimes have been able to benefit from the new regime since January 1, 2015.

(b) International aspects

As far as international aspects are concerned, one should point out that the companies established in the IBC of Madeira benefit from the following advantages:

(i) IBC authorized by the European Commission

As mentioned above, the IBC of Madeira is firmly recognized and authorized by the European Commission. It represents a temporary regional aid scheme enacted by the Portuguese State under the authorization of the EU Commission based on the European treaties. It has made Madeira a thoroughly EU business center with increased respectability, and as such it is not included among those countries or territories regularly listed as tax havens.

This authorization is also important as far as the application of controlled foreign corporation (CFC) rules is concerned. In fact, in view of the application of the principle of supremacy of EU law over national law, the tax authorities of the jurisdiction of the EU investor in Madeira may not, in principle, apply CFC rules to neutralize the effects of the IBC tax measures on an investor's income. In effect, given that they are authorized by the EU Commission on the grounds of EU law, any attempt to override the tax incentives granted by the IBC of Madeira through the application of CFC rules should be considered a violation of EU law (namely a violation of the supremacy of EU law over national law), not to mention the violation of international tax law (*e.g.*, Article 7 of the Double Tax Treaty may apply).

(ii) Madeira is part of Portugal

Madeira is an autonomous region of Portugal and, through Portugal, has the advantage of having full member status within the European Union. This places Madeira in a unique position: it is a recognized International Business Center but falls within the European Union.

In fact, companies licensed to operate in the IBC of Madeira have the advantage of free circulation of goods, services, people and capital that apply to any EU company and should also benefit from the applicable EU directives, namely the Merger

Directive (2009/133/EC), the Parent Subsidiary Directive (2011/96/EU), and the Interest/Royalties Directive (2003/49/EC).

In addition, IBC companies are also subject to VAT (Directive 2006/112/EC, and other applicable VAT directives) like are other EU companies and can also benefit from the advantages of using the European single currency – the EURO.

(iii) Madeira companies benefit from the Double Taxation Treaties entered into by Portugal

Madeira is an integral part of Portuguese territory and accordingly Madeira companies are eligible for tax treaty benefits, for all purposes, in most of the Double Taxation Treaties entered between Portugal and third countries.

In fact, all treaties specify that "Portugal" includes the continental part of the territory and the islands of the Azores and Madeira. Until now, Portugal has signed 79 tax treaties and almost all of them allow Madeira companies to benefit from the treaties' provisions.

Companies established in the IBC of Madeira may therefore take advantage of substantial tax reductions on interest, royalties and dividend payments granted by Double Taxation Treaties, as well as tax sparing clauses.

D. Explain any regional tax incentives open to foreign investors. Be sure to answer the following questions:

- **Are there tax incentives for investors that exist only in certain regions of the country?**

The autonomous region of Azores has a reduced general corporate income tax (IRC) rate. The general tax rate of 21% is reduced to 16.8% in Azores.

- **Does an investor need to receive approval to be eligible for these incentives?**

Any company with a legal seat, place of effective management or permanent establishment in the autonomous region may benefit from the reduced tax rate.

- **Are the incentives restricted by the type of activity?**

No.

- **Are the incentives restricted by the duration of the activity?**

No.

- **What does the process of application involve?**

Not applicable.

IV. FINANCIAL FACILITIES

A. Banking and Financial Facilities

- **What kind of financial institutions exist?**

The main legal instrument regulating financial institutions is Decree-Law no. 298/92, of December 31, as amended from time to time, also known as the Legal Framework for Credit Institutions and Financial Companies (LFCI). The LFCI segregates financial institutions into two main categories: *(i)* credit institutions and *(ii)* financial companies. The first category includes: *(i)* banks; *(ii)* savings banks; *(iii)* the Central Bank for Mutual Agricultural Credit and other mutual agricultural credit institutions; *(iv)* credit financial institutions; and *(v)* mortgage credit institutions. The second category – financial companies – includes: *(i)* credit financial companies; *(ii)* investment companies; *(iii)* financial leasing companies; *(iv)* factoring companies; *(v)* mutual guarantee companies; *(vi)* regional development companies; *(vii)* exchange agencies; and *(viii)* microcredit financial companies.

Under Portuguese law there is a *numerus clausus* for credit institutions and financial companies, and also for their respective corporate purpose, scope and permitted activities. Accordingly, in order to be able to carry out any activities regulated by the LFCI, an undertaking has to be incorporated in one of the legal categories shown above and be granted a respective authorization by the competent authority, *in casu*, the Bank of Portugal.

- **Must an investor maintain a bank account in the country?**

There is no general legal requirement making it mandatory for an investor to maintain a bank account in Portugal. Nevertheless, when he owns any legal entity (or other similar forms of business) in Portugal he must have a bank account in order to register with the tax authorities (although this bank account does not have to be in Portugal, in practical terms it is highly recommended, and specifically, as regards payments for social security, these must be made through a Portuguese bank account (although this service may be outsourced to accountants or corporate services providers)).

- **What are the requirements for opening a bank account?**

In order to open a bank account in Portugal, in person or online, and with regard to each of the account holders or persons allowed to manage the accounts, the following minimum legal elements are required:

(i) In the case of natural persons (residents or non-residents) – full name and signature, date of birth, nationality, identification document, taxpayer number (if applicable), profession and employer (if applicable), full address and other nationalities not mentioned in the identification document;

(ii) In the case of legal entities – corporate denomination, corporate purpose, address of the registered office (and of the branch, if applicable), corporate registration number, identity of the members of the board of directors or equivalent management body (including, at least, the full name, date of birth, nationality, identification document and tax number), country of incorporation and business sector code (in accordance with Portuguese law).

If the bank account is being opened in Portugal on behalf of another person or legal entity, the elements described above should also be provided in relation to that person or legal entity which is the beneficiary of the bank account. Note however that Portuguese banks may have (and usually do have) their own specific additional KYC (Know Your Client) requirements.

- **What are the restrictions, if any, on the investor's use of an account?**

Without prejudice to a possible misuse of an account (potentially leading to criminal offenses), there are no legal restrictions on its use. However, certain reporting, whistle-blowing and KYC obligations for credit institutions and other financial institutions pertaining notably to the EU anti-money laundering regulations (as transposed to national law) may apply.

- **What is the type of financial system in the country?**

The Bank of Portugal supervises the Portuguese financial system. As with other EU Countries that have been integrated into the European System of Central Banks (ESCB), the Bank of Portugal's powers and responsibilities have been substantially

reduced and no longer include powers such as the definition and implementation of the country's monetary and exchange rate policies, management of official currency reserves, improving the efficiency of payment systems, or issuing legal tender bank notes, which are now controlled by the ECB, to which the Bank of Portugal belongs.

However, the Bank of Portugal has kept some important legal powers and functions, in particular as it is the national authority responsible for the authorization and prudential supervision of credit institutions and investment firms, and is also the national resolution authority, with powers to apply recovery and resolution measures to these entities.

The legal framework of the financial system has been influenced by the applicable EU legislation. Dating from 1992, upon enactment of Decree-Law no. 298/92, of December 31, Portugal has begun to adopt the EU's main banking co-ordination principles.

Under these EU principles, credit institutions and investment firms of other EU Member States benefit from the "European Passport" and are allowed to perform banking and investment activities, respectively, in Portugal either through the freedom to provide services (FPS) or the right to establish a branch or subsidiary, which allow them to be present in the Portuguese market, provided only that such companies are authorized in their home-Member State. Non-EU credit institutions or investment firms are subject to an administrative authorization procedure to be able to operate in the Portuguese market.

- **How is the banking system structured?**

The Portuguese banking system is mainly dominated by Portuguese banks, which adopt a universal banking system, including both commercial and investment services. The largest banks operating in Portugal are Caixa Geral de Depósitos (state-owned), Banco Comercial Português, Novo Banco, Santander Totta, Banco BPI, Montepio and Crédito Agrícola.

- **Is there a stock market?**

The Lisbon stock exchange is the official stock market and is managed by Euronext Lisbon – *Sociedade Gestora de Mercados Regulamentados*, S.A.

- **Can an investor receive bank loans?**

Yes, there are no restrictions on national or foreign entities receiving loans.

V. EXCHANGE CONTROLS

A. Business Transactions with Nationals, Residents or Non-Residents

- **How are nationals, residents and non-residents defined?**

For exchange control purposes, the definition as national, resident and non-resident is not relevant as all of the above are given equal treatment.

- **Are there restrictions on conducting business with nationals, residents or non-residents?**

Under Portuguese law there are no restrictions based on the definition as nationals, residents or non-residents, so that the same set of rules applies irrespective of such categorization.

- **Are there reporting requirements?**

Foreign investment operations do not need to be registered with, or authorized by, the Portuguese central or local authorities. There are no legal restrictions on international capital movements and foreign exchange transactions, except in the case of international embargos. Nevertheless, for statistical purposes only, transactions with foreign entities made with Portuguese resident entities for an amount equal to or exceeding EUR 100,000 must be reported to the Bank of Portugal by either the Portuguese resident counterparties or by the Portuguese bank intermediary, in accordance with the relevant Bank of Portugal's instructions.

- **Can an investor receive loans from nationals, residents or non-residents?**

Yes. There is no differentiation between nationals, residents or non-residents.

B. Investment Controls

- **Are there restrictions on direct investment in the country?**

Under general Portuguese law, direct or indirect investment is not restricted. Notwithstanding, there are regulated sectors, for instance, telecoms, postal services, energy, water and waste management, railways, commercial aviation and financial services, in which administrative authorization from the competent regulator is mandatory and certain specific requirements may apply. There are also exceptional embargo situations, which by nature are temporary. These would only apply to persons or entities residing in certain sanctioned non-EU states. Additionally, restrictions may be imposed under the anti-money laundering laws and regulations.

- **Are there restrictions on indirect investments in the country?**

Please refer to the answer above.

- **Must an investor make declarations regarding the nature of his/her investment?**

An investor does not have to make any declaration as to the nature of his/her investment, provided it is valid under Portuguese law (in particular, but not limited to, it is not in a regulated sector or a sector that has been awarded to a private party under a concession agreement).

C. Money Transfer

- **Is there free determination of exchange rates?**

Authorized entities may freely negotiate applicable exchange rates and the fees to be charged on any transactions with their clients or amongst themselves.

- **Are there restrictions on the transfer of money into or out of the country?**

No. For this purposes, we have assumed *(i)* the expression "transfer of money" is not referring to hard cash, as such cases are expressly contemplated below, and *(ii)* such

transfers do not fall under the scope of any prohibition provided for in anti-money laundering law.

- **Are there restrictions on the remittance of profits abroad?**

No.

- **Are there reporting requirements?**

The reporting requirements imposed by the Bank of Portugal must be observed by the entities authorized to carry out exchange activities in accordance with the terms and conditions set out in the regulations issued by the Bank of Portugal. The information gathered serves statistical purposes only.

- **Can hard currency be taken out of the country?**

Any person who, whilst entering or leaving Portuguese territory, from or to a non-EU territory, wishes to carry hard currency in an amount equal to or above EUR 10,000 must declare it to the customs' authorities, by filling out the relevant form. It should be noted that payments in hard cash in Portugal are limited to a maximum amount of EUR 3,000, and payments of higher amounts must be made via other payment methods, such as cheques, credit or debit cards or bank transfers.

VI. IMPORT/EXPORT REGULATIONS

A. Customs Regulations

- **Is the country a member of the EEC, GATT, or party to a regional free trade agreement?**

Portugal signed the Act of Accession to the European Economic Community (EEC), now the European Union (EU), on June 12, 1985, and became a member on January 1, 1986. Furthermore, as a Member State of the EU, Portugal joined the World Trade Organization (WTO) as a founding member on January 1, 1995, and the plurilateral Agreements on Trade in Civil Aircraft and on Government Procurement. The EU trade agreements with individual members of the European Free Trade Association (EFTA), concluded in the early 1970s, remain in force for Iceland, Liechtenstein, Norway and Switzerland. The European Economic Area (EEA) established in 1994 extends the internal market to Iceland, Liechtenstein and Norway.

Portugal has the following bilateral trade, investment and economic cooperation agreements in place:

– Albania, Algeria, Angola, Argentina, Azerbaijan, Belarus, Benin, Bosnia and Herzegovina, Brazil, Bulgaria, Canada, Cape Verde, Chile, China, Colombia, Congo, Côte d'Ivoire, Croatia, Cuba, Czech Republic, Ecuador, Egypt, Gambia, Gabon, Germany, Guinee Bissau, Hungary, India, Indonesia, Iraq, Israel, Ivory Coast, Jordan, Latvia, Libya, Lithuania, Macau, Mauritius, Mexico, Morocco, Mozambique, Pakistan, Paraguay, Peru, Philippines, Poland, Qatar, Romania, Russia, Sao Tome and Principe, Senegal, Serbia, Seychelles, Slovakia, Slovenia, South Korea, Spain, Tanzania, Timor, Tunisia, Turkey, UK, Ukraine, United Arab Emirates, Uruguay, Kuwait, Uzbekistan, Venezuela, Zambia, Zaire and Zimbabwe.

As a Member State of the EU, Portugal is part of the following regional trade or preferential trade agreements:

a) Euro-Mediterranean Association Agreements: Israel, Morocco, Palestine, Tunisia, Jordan, Egypt, Algeria and Lebanon;

b) Cooperation Agreements: EU-UK Trade and cooperation agreement;

c) Deep and Comprehensive Free Trade Areas (DCFTAs) concluded between the EU and Georgia, Moldova and Ukraine;

d) Free-Trade Agreements: Canada, Central America, Chile, Colombia-Peru-Ecuador, Japan, Mexico, Singapore, South Korea, Vietnam, Switzerland and Western Balkans;

e) Partnership and Cooperation Agreement with Armenia, Azerbaijan, Kazakhstan, Kyrgyzstan, Russia, Uzbekistan and Turkmenistan;

f) Customs Unions: Andorra, San Marino and Turkey;

g) Association of Overseas Countries and Territories (OCT): Aruba, Curação, French Polynesia, French Southern and Antarctic Territories, Greenland, New Caledonia, Saint Barthélemy, Sint Maarten, St. Pierre and Miquelon, Bonaire, Sint Eustatius and Saba and Wallis and Fortuna Islands;

h) EU-African, Caribbean and Pacific (ACP) Partnership: Antigua and Barbuda, Bahamas, Barbados, Belize, Benin, Botswana, Burkina Faso, Burundi, Cameroon, Cape Verde, Central African Republic, Chad, Comoros, Congo, Cook Islands, Democratic Republic of Congo, Ivory Coast, Djibouti, Dominica, Dominican Republic, Equatorial Guinea, Eritrea, Ethiopia, Federated States of Micronesia, Fiji, Gabon, Gambia, Ghana, Grenada, Guinea, Guinea-Bissau, Guyana, Haiti, Jamaica, Kenya, Kiribati, Lesotho, Liberia, Madagascar, Malawi, Mali, Marshall Islands, Mauritania, Mauritius, Mozambique, Namibia, Nauru, Niger, Nigeria, Niue Islands, Palau, Papua New Guinea, Rwanda, St. Christopher and Nevis, St. Lucia, St. Vincent and the Grenadines, Samoa, São Tome and Príncipe, Senegal, Seychelles, Sierra Leone, Solomon Islands, Somalia, South Africa, Sudan, Suriname, Swaziland, Tanzania, Timor-Leste, Togolese Republic, Togo, Tonga, Trinidad and Tobago, Tuvalu, Uganda, Vanuatu, Zambia and Zimbabwe;

i) Generalized System of Preferences (GSP) only: Afghanistan, Angola, Bangladesh, Burkina Faso, Burundi, Benin, Bhutan, Bolivia, Congo, Central African Republic, Democratic Republic of Congo, Cook Islands, Cambodia, Chile, People's Republic of China, Cape Verde, Djibouti, Ecuador, Eritrea, Ethiopia, Micronesia, Gambia, Guinea, Guinea-Bissau, Haiti, India, Indonesia, Kenya, Kiribiti, Comoros, Laos, Liberia, Lesotho, Madagascar, Mali, Maldives, Moldova, Mongolia, Myanmar, Mauritania, Malawi, Mozambique, Niger, Nigeria, Nepal, Niue, Pakistan, Philippines, Rwanda, Solomon Islands, Sudan, Sierra Leone, Senegal, Somalia, South Sudan, São Tomé and Príncipe, Syria, Chad, Togo, Thailand, Tajikistan, Timor-Leste, Tuvalu, Tanzania, Uganda, Uzbekistan, Vanuatu, Yemen and Zambia.

Pan-Euro-Mediterranean Convention (PEM).

- **How are goods cleared through customs?**

The Portuguese tax and customs authority applies the provisions of the new Union Customs Code (UCC), laid out in Regulation (EU) 952/2013 of the European Parliament and of the Council of 9 October 2013, which became applicable on 1 May 2016, replacing the former Community Customs Code of 1992, with the last amendment introduced by Regulation (EU) 2022/2399, of 17 April 2019[1]. The UCC simplifies and modernizes customs procedures, bringing the rules into line with the EU treaties, and moves towards more harmonized IT processes.

The main features of the UCC include improvements to the Authorized Economic Operator program; simplification of the systems for customs warehouses, free zones, and temporary storage; improving the common risk management framework; reducing the validity of binding tariff information to three years and making it binding on the importer; phasing in electronic systems for customs by 2020; and streamlining and reorganizing origin and customs valuation rules.

The UCC applies uniformly to imports and exports of goods throughout the customs territory of the EU, including Portugal. The changes deriving from the

[1] Since its creation, the Union Customs Code has been amended by the following legislation: Regulation (EU) 2016/2339, of 14 December 2016; Regulation (EU) 2019/474, of 19 March 2019; Regulation (EU) 2019/632, of 17 April 2019; Regulation (EU) 2022/2399, of 23 November 2022

UCC to various customs procedures and processes are numerous. One of the main changes is a simplification of the customs declaration so that only three options are possible: *(i)* release for free circulation; *(ii)* special procedures (*i.e.*, transit, storage, specific use and processing); or *(iii)* (re-)export.

Except in cases of simplified procedures, imports into the EU are based on certain elements such as: commercial invoice, a customs value declaration, freight documents, a packing list, EU declaration of conformity (DoC), certificate of origin, in line with the Single Administrative Document (SAD) for imports into the EU. The submission of these elements may be waived at an initial stage and will be mandatory whenever customs so requests.

Portugal, as part of the EU, also maintains a system of free zones and warehousing as part of its customs procedures. Free zones are special areas designated within the EU customs territory where import duties, charges, etc. are not applied until goods are formally imported into the territory. With the changes introduced by the UCC, there is now only one type of free zone, with a physical boundary supervised by the customs authorities. Authorization to set up a free zone in Portugal rests with the national authorities.

As concerns warehousing, the EU customs legislation provides for public and private customs warehouses. With the introduction of the UCC, the types of warehousing have been simplified and there are now three: public warehouse type I, public warehouse type II, and private. The warehouse managers and the traders have different responsibilities depending on the type of warehousing arrangement. Like free zones, customs warehousing allows non-EU goods to be stored in a designated warehouse within the customs territory, while not being subject to import duties, charges, etc.

Applicants need to provide a guarantee, demonstrate economic need and be established in the EU in order to be approved for warehousing.

Portugal, as part of the EU, also has an Authorized Economic Operator (AEO) program. This consists of two different statuses, Authorized Economic Operator, Customs (AEOC) for economic operators authorized for simplification of customs procedures, and Authorized Economic Operator, Security and Safety (AEOS), for those entitled to facilitations relating to security and safety. An operator may hold

both authorizations at the same time. AEOC status can be granted to any economic operator established in the EU territory who has not committed any serious or repeated infringement of customs or taxation rules, is financially solvent, has appropriate record-keeping and complies with the new criterion of proven practical or professional competence; an AEOS needs to also comply with appropriate security and safety standards. In principle, applications for AEO status should be submitted to the customs authority in the Member State where the economic operator's main accounts for customs purposes are kept. The benefits for traders can include access to customs simplifications, fewer controls, priority treatment, prior notification, choice of place of control, etc.

The UCC also provides for reciprocity in granting the status to economic operators outside the EU who comply with similar legislation of other countries that are recognized by the EU. As of September 2016, the EU had five such mutual recognition agreements covering the AEOS status in force with China, Japan, Norway, Switzerland and the United States.

Portugal, as an EU Member State, also has a common customs risk management framework in its customs legislation, which is based on the recognition of a need to establish an equivalent level of protection in customs controls for goods brought into or out of the EU, and to ensure a harmonized application of customs controls by the Member States. The customs risk management framework (CRMF) was introduced in the previous customs legislation and is now covered by Article 46 of the UCC. In short, the CRMF comprises identification and control of high-risk goods, identification of priority control areas, systematic exchange of risk information, contribution of AEO partners, and pre-arrival/pre-departure security risk analysis.

Any decision taken by the customs authorities may be appealed. Appeals are first taken to the customs authorities or a judicial authority or any other body designated for that purpose, and if necessary, subsequently, to a higher independent body, which may be a judicial authority or an equivalent specialized body. However, if issues of tariff classification, origin or customs value are at stake, the judicial process must be preceded by an administrative process.

- **Are there tariffs applicable? Does the Customs Department value goods?**

Yes. The EU's Council Regulation (EEC) no. 2658/87, of 23 July 1987, establishes the Combined Nomenclature (CN) as the EU's common customs tariff for imports and exports, and for statistical purposes. It is updated yearly and provides the tariff nomenclature and description, and the rates of duty applied by the customs union to external trade. The latest version of the nomenclature has been published with Commission Implementing Regulation (EU) 2023/2364 of 26 September 2023. As the EU is a signatory to the International Convention on the Harmonized Commodity Description and Coding System (Harmonized System), the CN is based on the Harmonized System (HS) nomenclature (6-digit level).

B. Exports

- **Are there restrictions on exports? Are export licenses required?**

Export restrictions are allowed on grounds of public morality, the protection of health and life of humans, animals and plants and national cultural treasures. These restrictions are under the responsibility/jurisdiction of the Portuguese State.

At the European Union level, there are also restrictions and prohibitions on exports to some countries and/or regions on the basis of foreign and security policy, and on some goods on the grounds of safety, the environment, public morality, public policy or public security, or of the protection of the health and life of humans, animals and plants or of national treasures possessing artistic, historic or archaeological value, of industrial and commercial property, or of compliance with international conventions. In addition, capital and payment transactions with some economic regions and specific persons, organizations or institutions may be restricted, based on EU law.

From 16 April 2015, Regulation (EU) 2015/479 on common rules for exports codified and replaced Regulation (EC) no. 1061/2009. It applies to all products, whether industrial or agricultural. In terms of procedure, if an EU country considers that protective measures could be necessary due to unusual developments in the market, it must notify the European Commission, which then advises the other EU countries. The Committee on Safeguards comprising EU member State

representatives (set up under Regulation (EU) 2015/478 on common rules for imports) assists the European Commission in implementing the Regulation.

Salient export restrictions in force refer to: the banning of the exports of metallic mercury and certain mercury compounds; the prohibition or restriction of the export of certain hazardous chemicals; and restrictions on the export of waste.

Export prohibitions, export authorization requirements and other restrictions are imposed by means of specific legislation, such as Council Regulation (EC) 428/2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items.

Export prohibitions can also be adopted by the EU and its Member States as part of the Common Foreign and Security Policy (CFSP) and to implement UN Security Council Resolutions.

Applications for export licenses are submitted, as a general rule, to the Portuguese Tax and Customs Authority.

- **Are there applicable export duties?**

Portugal, as a member of the European Union, does not apply taxes, charges or levies on exports.

C. Foreign Trade Regulations

- **Are there foreign trade regulations on the import or export of goods involved in the business?**

Please refer to section B of the current chapter.

D. Imports

- **Are import licenses required?**

Import licenses are required for products subject to quantitative restrictions, safeguarding measures or import monitoring and surveillance. This system cannot

be abolished without legislative approval. European Union regulations generally contain provisions relating to the duration and expiry of a licensing regime.

The import licenses may be subject to fees or not, depending on the product in question; as a rule they are not transferable, constitute an authorization and have a fixed period of validity. There is no penalty for non utilization of an import license or portion of it. However, when a security is required for a license covering agricultural products, it is forfeited in whole or in part if imports do not take place or are only partly carried out.

Import surveillance applies, among others, to certain textiles, steel products, and agricultural products including cereals, rice, sugar, olive oil and table olives, flax and hemp, milk and milk products, beef and veal, fruit and vegetables, and processed fruits and vegetables.

Import licenses are issued by the competent Portuguese authorities at the request of operators. Imports of timber and timber products from countries that have entered into the Forest Law Enforcement Governance and Trade (FLEGT) "Voluntary Partnership Agreement" (VPA) with the EU are subject to licensing. As part of these agreements, timber-producing countries voluntarily agree to set up a national scheme to verify the legality of their shipments of timber and timber products to the EU and, consequently, to Portugal, as a Member State. FLEGT VPAs have been ratified with Ghana (September 2009) and the Republic of Congo and Cameroon (February 2011); a VPA with the Central African Republic was signed in November 2011.

Quantitative restrictions and controls on imports are also in place to implement sanctions imposed by United Nations resolutions and provisions under international treaties or conventions.

- **Are there applicable import duties?**

Yes. Please refer to the answer to the question "Are there tariffs applicable? Does the Customs Department value goods?" above.

- **Are there applicable import quotas?**

Portugal, as an EU Member State, does not maintain quantitative restrictions on imports from WTO Members to protect domestic producers.

- **Are there applicable import barriers?**

Portugal has implemented United Nations Security Council Resolution no. 1343, setting out measures to be imposed against Liberia, which include the prohibition of direct or indirect imports of all rough diamonds, and round logs and timber products into Portugal. In addition, there is a ban on the importation of rough diamonds from the Ivory Coast.

Portugal also applies the European Union regulations on trade in wild fauna and flora to implement the provisions of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), including prohibitions and licensing requirements – Commission Implementing Regulation (EU) 2023/2770 of 12 December 2023.

Other measures for species protection include a prohibition on imports of whales and other cetacean products for commercial purposes (Council Regulation (EEC) no. 348/81), a prohibition on skins of sea pups and products derived therefrom except those harvested by Inuit using traditional techniques (Council Directive 83/129/EEC, as amended). and a ban on imports of Atlantic blue fin tuna and swordfish (Council Regulation 249/2014) from countries that the Commission for the Conservation of Antarctic Marine Living Resources has identified as fishing in a manner prejudicial to conservation of this species.

Portugal also complies with Council Decision 93/98/EC, which implements the Basel Convention on control of the export, import and disposal of hazardous wastes and control, by prohibitions and licensing requirements applicable to the movement of radioactive waste, and with Regulation (EC) no. 1005/2009, of substances that deplete the ozone layer.

Furthermore, Portugal, as an EU Member state, has signed two treaties that can impose restrictive trade measures: the World Health Organization Framework

Convention on Tobacco Control and the Convention on the Conservation of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean.

In addition, the EU has adopted legislation (Regulation (EU) no. 995/2010 of the European Parliament and of the Council, of 20 October 2010) that prohibits placing illegally harvested timber and timber products containing such timber on the EU market. In accordance with Regulation no. 995/2010, operators who place domestically produced or imported timber and timber products on the EU market for the first time must exercise "due diligence" to minimize the risk that such products contain timber harvested in contravention of the applicable legislation in the country of harvest and persons trading timber and timber products within the EU, other than those placing such products for the first time on the EU market, must keep records of their suppliers and customers.

Portugal also monitors and licenses imports of drug precursors under Council Regulation (EC) no. 111/2005, Commission Delegated Regulation (EU) no. 2015/1011 and Commission Implementing Regulation (EU) no. 2015/1013.

E. Manufacturing Requirements

- **Must the product contain ingredients or components, which are found or produced only in the country?**

As a general rule no. If, however, a product is qualified as part of a Portuguese Protected Designation of Origin (PDO) or Protected Geographical Indication (PGI) – usually applicable to wines, cheeses, butters, and other agricultural products – the product must contain ingredients or components which are found or produced only in Portugal. This system ensures that only products genuinely originating in a specific Portuguese region are allowed to be sold with such designations.

The relevant legal rules on the protection of geographical indications and designations of origin for agricultural products and foodstuffs and respective implementing legislation are provided in Council Regulation (EU) no. 1151/2012, Commission Delegated Regulation (EU) no. 664/2014, with regard to the establishment of the Union symbols for protected designations of origin, protected geographical indications and traditional specialties guaranteed and with regard to certain rules on sourcing, and Commission Implementing Regulation (EU)

no. 668/2014, which lays down rules on quality schemes for agricultural products and foodstuffs.

- **Will the importation of certain component parts be permitted only if they are to be ultimately incorporated in a final product?**

As a general rule there are no restrictions, as mentioned in the answer to the preceding question "Are there import barriers applicable?"

F. Product Labelling

- **Are there labelling or packaging requirements applicable (*e.g.*, multi-lingual notices, safety warnings, listing of ingredients, etc.)?**

Portugal has mandatory packaging and labelling requirements for, *inter alia*, tobacco products, alcoholic beverages, cosmetic products, household appliances, food, food ingredients from genetically modified organisms and medicinal products.

As a general rule, labelling must be provided in the Portuguese language. Law no. 24/96, of July 31, as amended, establishing the Portuguese Consumer Law, as amended, establishes in Articles 7(3) and 8(1), that all information regarding goods and services marketed in the national territory shall be set out in plain intelligible language for consumers and that the information to the consumer shall be rendered in Portuguese. Equally, Decree-Law no. 238/86, of August 19, regarding the obligation by economic agents to use the Portuguese language when providing goods or services to consumers, determines that all references, namely, on the nature, features and guarantees of goods and services offered to the public in the national market must be provided in Portuguese, particularly in labelling and advertising.

Furthermore, for a product to be placed on the Portuguese market, it must comply with the relevant regulations, when applicable. Product regulations are applicable in Portugal, *inter alia*, in the following sectors: low voltage equipment, safety of toys, construction products, personal protective equipment, active medical implant devices, appliances burning gaseous fuels, medical devices, equipment for use in explosive atmospheres, lifts, energy efficiency requirements for household electric

refrigerators, freezers and combinations thereof, marine equipment, pressure equipment and radio equipment and telecommunications terminal equipment.

VII. STRUCTURES FOR DOING BUSINESS

A. Governmental Participation

- **Will the government seek to participate in the ownership or operation of the entity (*e.g.*, depending on the type of activity involved)?**

According to past practice and the applicable legal regime, the Portuguese State does not seek to partially own or operate any entities, whatever the type of activity. However, Portugal has a track-record of state-owned companies which may be useful to know.

After the Revolution of April 25, 1974, the Portuguese state nationalized more than a thousand companies, including a few large industrial enterprises in strategic sectors of the Portuguese economy. However, since the end of the 1980s and the beginning of the 1990s, Portugal started to adopt a more market-oriented economy, which included a long process of reprivatization of many strategic national companies. More recently, between 2011 and 2013 a new wave of privatizations took place, most of them in the telecommunications sector, utilities and public transportation services.

The present economic market approach of the Portuguese State does not exclude a state-owned enterprise sector, in which the Portuguese State pursues activities of general interest. The state-owned enterprise sector is mainly regulated by Decree-Law no. 133/2013, of October 3, which distinguishes two types of public enterprise (*Empresa Pública*).

The first type refers to limited liability companies set up under private commercial and company law in which the State is considered to have dominant influence by means of having *(i)* the majority of the share capital, *(ii)* the majority of the voting rights, *(iii)* the right to designate or to dismiss the majority of the board members or the majority of the company's supervisory members, or *(iv)* a qualified holding or preferred special shares that allow it to decisively influence the decision-making process of the company or its subsidiary. These are therefore private law entities.

The second type of public enterprise refers to public entities in the form of state emtities (*Entidades Públicas Empresariais*) which are wholly owned by the State through the supervision of the Ministry of Finance and Public Administration. These entities are generally incorporated by a decree-law – which establishes and approves the by-laws – and are therefore not governed by private commercial and company law. They constitute real public law entities.

- **If so, to what extent?**

Please see answer to the question above.

Also noteworthy is Law no. 88-A/97, of July 25, as amended, which defines the economic activities barred to private companies and entities of the same nature (except if subject to a concession agreement): for example, railways, maritime harbors and collection, treatment and distribution of water for public consumption.

- **What is an investor's potential liability to partners, investors or others?**

Please see sections C and D below of the current chapter related to different types of companies and their specific characteristics.

- **Are there restrictions on capitalization?**

Concerning the minimum requirements for share capital in different types of companies, please refer to section C of the current chapter.

B. Joint Ventures

- **Are joint ventures permitted?**

Portuguese law allows the creation of joint-venture companies using any of the different types of companies legally permitted (please see sections C and D below of the current chapter relating to different types of companies and their specific characteristics).

Parties may also contractually agree to share interests in a business venture without creating an autonomous legal entity.

In addition, and despite the fact that these are not as common, there are other typified legal structures available that can be used for the creation of joint-ventures. The Consortium (*Consórcio*) and the Association in Partnership (*Associação em Participação*) are contractual mechanisms regulated by Decree-Law no. 231/81, of July 28, which do not involve the creation of a separate legal entity. On the other hand, the Complementary Group of Companies (*Agrupamento Complementar de Empresas*) regulated by Law no. 4/73, of June 4, as amended, or the European Economic Interest Grouping (*Agrupamento Europeu de Interesse Económico*) established by Regulation (EEC) no. 2137/85, of July 25, and further adapted to Portuguese law by Decree-Law no. 148/90, of May 9, are both necessarily autonomous legal entities.

- **If so, what is the registration or incorporation procedure?**

Please refer to section C below.

- **How long do these procedures take?**

The setting up of a joint venture through the incorporation of a company or other kind of legal entity takes the same time as is needed to register or incorporate a new company (or other legal entity). For more details, please refer to section C below.

- **What costs and fees are involved?**

There are no special costs and fees related to joint ventures. For companies, please refer to section C below.

- **Must a national of the country or a related state (*e.g.*, in the EEC) be a participant, manager, or director?**

Portuguese nationality is not required for any participant, manager or director. Moreover, in the case of a European Economic Interest Grouping, at least two members of it must have their central administration (legal persons) or carry out their principal activities (single persons) in different Member States.

In addition, any foreign citizen wishing to be a manager or director of a Portuguese company, even if not remunerated, must obtain a Portuguese tax identification number (which is required, for example, for registration with the Commercial Registry). If the director/manager is a non-EU citizen, he should also appoint a tax representative (someone with Portuguese residence) for tax purposes.

- **What is the investor's potential liability?**

An investor's liability depends upon how a joint venture is structured and upon the kind of investment made.

If a joint venture gives rise to a new legal entity like one of those described in section C and an investor acquires a stake in said company, the potential liability is determined in accordance with company law: Please refer to sections C and D below.

In the case of Complementary Groups of Companies the rule is that the companies that are a part of such complementary group have subsidiary responsibility towards such entity's creditors and are jointly liable, except if otherwise agreed with each of the creditors. Instead, in a European Economic Interest Grouping the rule is unlimited joint and several liability among its members and the European Economic Interest Grouping.

If a joint venture originates from a contractual agreement to share interests in a business venture without creating an autonomous legal entity, however, any investor financing the venture through debt will bear only the risk of a creditor. If the investor is one of the parties in the business venture, liability will be determined according to the contractually determined exposure.

- **Are there restrictions on capitalization?**

Concerning the minimum requirements of share capital for different types of companies, please refer to section C below.

As to Complementary Groups of Companies, the existence of share capital is not mandatory.

- **What are the investor's tax consequences?**

The answer depends, once again, upon the structure adopted for the joint venture. If it involves the creation of a new legal entity, then the new company or grouping will be subject to corporate income tax. The investor will, depending on whether he is a legal or a natural person, be subject to corporate income tax or personal income tax, respectively, on income related to his stake (such as dividends, capital gains deriving from the sale of share capital, etc.). Please refer to chapters XII and XIII.

C. Limited Liability Companies

- **Are limited liability companies permitted?**

Yes. There are two different types of limited liability company in Portugal: *(i)* the limited liability company by shares (*sociedade anónima* or S.A.) and *(ii)* the limited liability company by *quotas* (*sociedade por quotas* or Lda.). The main characteristics of each one are described herewith.

LIMITED LIABILITY COMPANY BY SHARES (S.A.)

A limited liability company by shares (*sociedade anónima*) is a legal person whose capital is divided into shares and the shareholders' liability for the company's debts is limited to the amount of their investment (represented by the number of shares subscribed).

As a rule, a *sociedade anónima* must be incorporated by a minimum of five founding shareholders or one corporate founding shareholder. However, only two founding shareholders are required where either the State or a public company owns more than 50% of its share capital.

A minimum share capital of EUR 50,000 will be required for the incorporation of a *sociedade anónima* and it must be composed of contributions in cash or in kind (non-pecuniary assets). A *sociedade anónima* may not accept labor as a form capital contribution. However, in a *sociedade anónima*, the share capital does not have to be fully paid up at the time of subscription, provided that a minimum of 30% of each share's nominal value is paid up at that time. Within five years of incorporation the remaining share capital must be fully paid up.

In a *sociedade anónima*, the capital is divided into shares, which must be nominative shares. Since 2017 bearer shares are not allowed. Shares can either be represented by share certificates or kept in book-entry form. Shares in a *sociedade anónima* are freely transferable, except where its by-laws place restrictions on their transferability.

The identity of shareholders (except for at the time of incorporation) is not public,[2] even though the share capital is represented by share certificates (*ações tituladas*) or in book-entry form (*ações escriturais*).

A *sociedade anónima* has a complex organizational structure, with an intricate system of checks and balances between the three main governing bodies – Board of Directors, Shareholder's General Meeting and Audit Board or Sole Auditor. The purpose of this system is to guarantee that the directors have the necessary power and autonomy to represent and manage the company, but, conversely, do not overstep any applicable law, do not act for the company's final benefit, or go against the opinions and interests of the shareholders.

In a *sociedade anónima*, the board of directors is thus given full powers to manage and represent the company, while shareholders only decide on a few issues which are

[2] Please bear in mind that pursuant to the legal framework that establishes the registration procedure of a company's UBO (Ultimate Beneficial Owner), there are three levels of access to the information contained in the UBO declaration submitted by it. The first level of access corresponds to the information that is accessible to the public in general, through the mere insertion, on the online database, of a company's taxpayer number. The information accessible at this level is the UBO's name, date of birth, nationality, country of residence, and economic interest held in the company. The information accessible at this level regarding the company is taxpayer number, jurisdiction, name, legal nature, headquarters and registered office, e-mail address, code of economic activity and legal entity identifier when applicable.
The second level of access corresponds to the information regarding the company and the UBO that is accessible by so-called «obligated entities» (financial entities such as banks and investment funds, and non-financial entities, which includes law firms, companies relating to gambling, real estate, auditing and accounting, among others).
The third level of access corresponds to the information that is accessible by judicial, police and tax authorities, and encompasses all the information contained in the declaration and thus includes the holders of the company's share capital. These entities are allowed to access, process and change this information for the purposes of and solely in the context of their attributions in the field of prevention and investigation of money laundering and financing of terrorism.

material to the company's governance (*e.g.*, share capital increases and decreases, appointment of company bodies, amendment of by-laws, among others).

This particular type of company always requires the presence of a statutory auditor, who is part of the company's audit body [*e.g.*, commonly the sole auditor (*fiscal único*) or as part of an audit board (*conselho fiscal*)].

LIMITED LIABILITY COMPANY BY *QUOTAS* (LDA.)

A limited liability company by *quotas* (*sociedade por quotas*) is a legal person whose capital is divided into equity participations (the "*quotas*") that cannot be represented by transferable certificates or kept in book-entry form. *Quotas* are subject to registration by the Commercial Registry Office.

The *sociedade por quotas* has traditionally been the investment vehicle used in Portugal for small businesses, usually of a family nature, but it may also be used by corporate investors if their business in Portugal does not justify recourse to a *sociedade anónima*. *Quota*-holders are jointly and severally liable for the paying up of the company's entire capital, but their liability extends no further than that.

Quota-holders may freely stipulate the amount of a *sociedade por quotas*' capital, the minimum nominal value of each *quota* being equal to EUR 1.

Quota-holders may defer the payment of cash contributions of capital provided that they have contributed with the minimum mandatory nominal value of *quotas* (EUR 1) on incorporation or up until the end of the first financial year. However, the payment of such deferred contributions must be effected on defined dates or whenever certain events or facts occur.

Thus, on incorporation, *quota*-holders must declare that they have delivered the value of their cash contributions to the company's account or that they undertake to do so until the end of the first financial year. In the latter case, the *quota*-holders must declare, at the first annual shareholders' meeting following the end of the financial year – generally, the annual *quota*-holders' meeting where the financial accounts are approved – that their contribution in the company's account has been duly made.

A *sociedade por quotas* must be incorporated by a minimum of two founding *quota*-holders. However, it is also possible to incorporate a *sociedade por quotas* with just one *quota*-holder (*Sociedade Unipessoal por Quotas*/SUQ).

A *sociedade por quotas* has a simple structure. It rarely comprises more than two bodies – the management (*Gerência*) and the Shareholder's General Meeting (*Assembleia Geral*) – and while traditionally management holds powers to represent and manage the company, there is a greater involvement of the equity holders in certain decisions. Notwithstanding, the legal regime of limited liability companies by quotas is also flexible and many aspects can be altered or determined by the respective by-laws. That is to say that nothing forbids the Articles of Association from altering the allocation of these powers, thus further weakening or otherwise reinforcing the management's presence in the decision-making process of the company.

In principle, this type of company requires only the appointment of a chartered accountant (*técnico oficial de contas*) to certify the accounts. However, if the company succeeds in exceeding at least two of the following limits for two consecutive financial periods, the presence of a statutory auditor (*revisor oficial de contas*) becomes mandatory: *(i)* assets equal to or higher than EUR 1,500,000 *(ii)* EUR 3,000,000 of total net sales and other revenues and *(iii)* average of 50 workers.

MAIN DIFFERENCES BETWEEN *SOCIEDADE ANÓNIMA* AND *SOCIEDADE POR QUOTAS*

A table highlighting the main differences between *sociedade anónima* and *sociedade por quotas* may be found below:

	Limited liability company by shares (*sociedade anónima*)	**Limited liability company by quotas (*sociedade por quotas*)**
Shareholders	Minimum of five founding shareholders or 1 corporate founding shareholder.	Minimum of two founding shareholders (or a minimum of one founding shareholder for a *sociedade unipessoal por quotas*).
Minimum share capital	Minimum of EUR 50,000 (represented by shares, which are mandatorily nominative and qualify as negotiable securities). Shares may or may not have a nominal value (minimum value EUR 0.01).	Minimum of EUR 1 per shareholder (represented by an equity participation called *quotas*, only registered in the commercial registry certificate).

	Limited liability company by shares (*sociedade anónima*)	**Limited liability company by quotas (*sociedade por quotas*)**
Form	The articles of association must be in writing and are subject to registration at the company registrar services (done online).	
Types of contributions	In cash or in kind (property, real estate, securities and other financial instruments, patents, trademarks, etc.)	
Payment of share capital	Contributions in kind must be transferred up to the company's incorporation date. Regarding contributions in cash, payment of up to 70% of the share capital may be deferred with the remaining 30% having to be mandatorily deposited in a Portuguese bank account opened in the name of the company, prior to incorporation[3].	Contributions in kind must be made up to the company's incorporation date. Regarding contributions in cash, these can be deferred until the end of the first financial year after the company's registration.
Shareholding transfer	Shares are freely transferable, except if otherwise set forth in the articles of association (within the limits established by law) notably through the granting of pre-emption rights to the non-selling shareholders.	The transfer of a *quota* must be previously approved by the company (although the articles of association may waive this requirement) and is subject to registration at the company registry. The transfer of shares has several limitations: notably it must always be done in writing and only after the prior consent of the company, which must be decided by the equity holders. If the company refuses the transfer of shares, it shall make an offer for the acquisition of such shares. Nevertheless, the Articles of Association may, on the one hand, completely exclude the transfer of shares (in this case equity holders still have a right to leave the company after ten years) or, on the other hand, disregard the need for the company's prior consent.
Legal reserve	5% of the distributable profits up to 20% of the company's share capital.	5% of the distributable profits up to 20% of the company's share capital (always with a minimum amount of EUR 2,500).
Corporate books	Company's books of minutes (in particular, Shareholders Meeting and Board of Directors) plus shares ledger.	Company's books of minutes (in particular, Shareholders Meetings and Management Board meetings, the latter not being mandatory).

[3] In case a *sociedade anónima* is incorporated in one stop-shop (*empresa na hora*) or online, the share capital may be deposited within 5 business days following incorporation.

	Limited liability company by shares (*sociedade anónima*)	**Limited liability company by quotas (*sociedade por quotas*)**
Managing structure	The most common managing structure for a limited liability company by shares is a board of directors ("*conselho de administração*") and an internal auditing board ("*conselho fiscal*") or an internal single auditor ("*fiscal único*"). The management of a limited liability company can be assigned to a single director if the company's share capital stock is lower than EUR 200,000.	Limited liability companies by *quotas* may be managed either by a single manager ("*gerente*") or, if expressly set forth in the company articles of association, by a board of directors ("*gerência*"). Furthermore, only under the circumstances set forth in the law, must limited liability companies by *quotas* appoint either an internal auditor ("*fiscal único*") or an internal auditing board ("*conselho fiscal*")
Powers of the company bodies	The Board of Directors has full powers to represent and manage the company, with the exception of a few structural decisions which are exclusively reserved for the General Shareholders' Meeting. Notably, the General Shareholders' Meeting has the exclusive power to decide on the nomination and dismissal of the directors (but please note that in the case of resignation or definitive impediment of a director during the course of his mandate, the Board of Directors will coopt a new member, who is subject to the approval of the first subsequent general meeting), to annually appraise the company's performance, to change the Articles of Association, to decide any mergers, divisions or transformations, and to decide the issuing of bonds, the withdrawal of shares or the acquisition and sale of own shares.	The Management has powers to represent and manage the company, so that it can perform all acts that are necessary or suited to the pursuit of the company's scope and goals. It must conform to the decisions of the General Shareholders' Meeting. The latter has exclusive power to decide on subjects which are material to the company's governance, like changing the Articles of Association or excluding equity holders from the company. The General Shareholders' Meeting furthermore has a subsidiary power to decide on all matters regarding the company and some academic literature even accepts that *quota*-holders can decide on management matters without being requested to do so by management. However, the Articles of Association may determine that all powers which are non-exclusive to quota-holders are, in whole or in part, delegated to the management.
General observations	Limited liability companies by *quotas* have traditionally been the investment vehicle used in Portugal for small businesses, usually of a family nature, but may also be used by corporate investors if their business in Portugal does not justify recourse to a limited liability company by shares.	

- **How are they registered or incorporated?**

There are three possible ways to incorporate and register a Portuguese company: *(i)* the conventional method; *(ii)* the on-the spot firm (*empresa na hora*); and *(iii)* the online company incorporation (*empresa online*).

(i) The conventional method

Anyone who wishes to incorporate a company must apply for the approval of the company's proposed name (which must include the corporate purpose) with the

National Registry for Corporate Entities (*Registo Nacional de Pessoas Colectivas*/RNPC). With such approval, the RNPC attributes a tax identification number to the company. The name approval is valid for a period of three months and consequently the company must be incorporated during such period. The name approved entitles the subscriber to use such corporate name exclusively.

The company's incorporation does not require the execution of a public deed (unless real estate assets are transferred to the company by way of capital contributions). As such, the incorporation of the company is formalized through the signature by the shareholders/*quota*-holders of a private written document *(documento particular)* which includes the company by-laws, and where the signatures are certified in the presence of a lawyer, a notary or any other person/entity authorized for such effect. It means that the physical presence of the shareholders/*quota*-holders or their representatives (duly empowered by means of a power of attorney) is required.

If a company's capital consists of contributions in kind, the relevant assets should be subject to prior evaluation by an external auditor, who has to prepare a report.

Once the private written document is executed, the registration of the incorporation of the company and its members must be requested to the Commercial Registry Office. Upon this registration, the company becomes a separate legal entity capable of having its own assets, rights and obligations.

The Commercial Registry Office is open to the public. Hence, the public has access to all its records and can obtain certificates disclosing everything that has been registered under a given company's name.

It is the Commercial Registry's duty to have the company's incorporation published on the Ministry of Justice website http://publicacoes.mj.pt/.

Within ninety days of the granting of a tax identification number by the RNPC or fifteen days counting from the request of the company's registration of incorporation, the company must register its business activities before the tax authorities. The accountant (*Técnico Oficial de Contas*/TOC) who shall henceforth be responsible for the company's accounts must sign this application.

The registration of the company and the registration of the board of directors/management board members for Social Security purposes occur *ex officio* by exchange of information with the Commercial Registry Office and the tax authorities, based on the registration of the company's incorporation and on the tax statement submitted by the company for the registration of its business activities. Social Security then requests additional information/documentation from the company about the members of the corporate bodies in order to proceed with their inclusion (or exclusion) from the Social Security regime.

(ii) and (iii) *Empresa na Hora* and *Empresa* online

In the *Empresa na Hora* procedure (http://www.empresanahora.pt) a company is incorporated and registered immediately in one visit by the investor to a single registry office.

In the *Empresa online* procedure the company is incorporated and registered by accessing the official Portuguese business website (https://www.portaldaempresa.pt) using a digital certification number.

If an investor decides to incorporate a company via one of these two procedures, he has to choose a pre-approved company name, which is a fantasy name created and reserved by the Portuguese authorities for the purposes of incorporating a company. The pre-approved company name can also be associated with a preregistered trademark. The assignment of the pre-approved company name is made at the moment of the company's incorporation. A reference to the company's object can be added by the company founder to the pre-approved company name.

If the investor decides not to use one of the pre-approved company names, it is possible in the *Empresa online* procedure *(i)* to request the automatic approval of a company name composed of the names of the company founders (individuals) or *(ii)* to request the approval of a company name. In both *Empresa online* and *Empresa na Hora* it is also possible to present a certificate of approval of the company's name previously obtained from RNPC.

As regards the by-laws, an investor has to choose one of the pre-approved by-laws available (in *Empresa na Hora*) or may choose to adopt one of the pre-approved by-laws or to submit the by-laws drawn-up and signed by him with the signatures

certified in the presence of a lawyer, a notary or by any other entity authorized for such effect (on *Empresa online*).

The investor must indicate the company's registered head office, the corporate purpose, and amount of share capital, and identify the board of Directors/Management Board members and how to bind the company (by signature).

The company's shareholders must first deposit the amount of the share capital in the company's bank account or declare that the amount will be deposited in cash or delivered to the company's coffers within the timeframe set out in the memorandum and *By-Laws*.

In these two procedures, *Empresa na Hora* and *Empresa online*, the declaration to the tax authorities of start of activity can be immediately submitted. For such purpose, the company founders have to indicate the accountant of the company (*Técnico Oficial de Contas*/TOC) or choose one from an official list available. If the tax declaration of start of activity is not immediately submitted, it should be submitted by the TOC (by internet or in paper) to the tax authorities within 15 days after incorporation; otherwise a fine is payable.

Whichever incorporation method is chosen once the company is registered:

(i) A permanent, constantly updated online certificate of the company is issued and remains available for consultation during a three months period at https://www.portaldaempresa.pt/CVE/Services/Online/Pedidos.aspx?service=CCP&lang=PT;

(ii) The registrar communicates the incorporation to the competent authorities, in particular to the tax authorities and social security;

(iii) A constantly updated electronic taxpayer card is issued and is available for consultation at https://www.portaldaempresa.pt. Subsequently a physical card is sent to the company's head office;

(iv) Proof of a trademark acquisition is issued if an investor requests a pre-approved company name with an associated pre-registered trademark.

The company has to register its Ultimate Beneficial Owner (UBO) at rcbe.justica.gov.pt within 30 days.

- **How long do these procedures take?**

It depends on the incorporation procedure adopted. From one day with *Empresa na Hora* and two days with *Empresa online* up to three weeks with the conventional method.

- **What costs and fees are involved?**

This depends on the incorporation procedure adopted.

Empresa na Hora: EUR 360.

Empresa online: (i) EUR 360, if not incorporated with pre-approved by-laws, or *(ii)* EUR 220, if incorporated with pre-approved by-laws, plus the cost of the certification of the investor(s) signature(s).

In addition, the incorporation with a pre-registered trademark for a single class of products or services is EUR 200 with *Empresa na Hora* and EUR 100 with *Empresa online*. For each additional class: EUR 44.

In the conventional method the fixed costs involved in the incorporation and registration of a company with contributions paid in cash are approximately EUR 550.

- **Must a national of the country or a related state be a participant, manager or director?**

Directors and managers are not required to have Portuguese nationality. However, any foreign citizen domiciled abroad, wishing to be a manager or a director of a Portuguese company, even if not remunerated, must obtain a Portuguese tax identification number. If the directors/managers to be appointed are non-EU citizens, they should also appoint a tax representative (someone with Portuguese residence) for tax purposes.

- **Are there restrictions on capitalization?**

The minimum share capital needed to incorporate an S.A. company is EUR 50,000 divided into shares with a minimum nominal value of EUR 0,01.

As mentioned above, *quota*-holders of a Lda. may freely stipulate the amount of the company share capital, with a minimum of EUR 1 per *quota*.

- **What are the investor's tax consequences?**

Please refer to the answer provided in chapters XII and XIII.

D. Liability Companies, Unlimited

- **What are the forms of liability companies?**

There are three types of unlimited liability entity, which are *(i)* the general partnership *(sociedade em nome coletivo)*, *(ii)* the simple commandite, or limited liability partnership *(sociedade em comandita simples)* and *(iii)* the stock commandite, or partnership limited by shares *(sociedade em comandita por ações)*.

These types of entity are very rare in Portugal, the most common form being the limited liability companies mentioned previously. These entities on the other hand have proven to be less flexible and adjustable to modern business needs, although combinations of one of them and a limited liability company may prove useful for some purposes.

(i) The General Partnership (*Sociedade em Nome Coletivo*)

The firm's name must end with the phrase "*e companhia*" or "*& C.ia*", or another collective term, indicating the fact that the partners' liability is unlimited. Contributions of labor or services are allowed. This type of company is frequently used by professional individuals associated in firms, such as lawyers, accountants and auditors, because the law so requires. The *inter vivos* transfer of a partner's participation can only be effective with the express consent of the other partners. Unanimous approval is also required, *inter alia*, for the admission of a new partner.

(ii) The Simple Commandite, or Limited Liability Partnership (*Sociedade em Comandita Simples*)

The simple commandite is a hybrid partnership and corporation in which at least one of the partners must have unlimited liability (full partner, or *sócio comanditado*), whereas the liability of the other partners (the dormant partners, or *sócios comanditários*) is limited to the amount of capital each of them has subscribed. A full partner may be a natural person or a limited liability company. Only full partners can be directors of the company. The combination of these two features can transform this type of company into an instrument for exercising control/management power within a company (see the German example of the Gmbh & Co). The company's name must contain the words "*em comandita*" or "*& comandita*".

(iii) The Stock Commandite, or Partnership Limited by Shares (*Sociedade em Comandita por Ações*)

Like the simple commandite, a stock commandite also has one or more full partners and one or more dormant partners, but the latter's participation is represented by shares. The company's name must contain the words "*sociedade em comandita por ações*" or "*& comandita por ações*".

The observation made above, about the fact that a full partner may be a limited company and has sole management powers, may render this type of company a useful instrument for consolidating power within a stock company.

In Portugal, the commandite – whether simple or by shares – is a particularly rare type of entity, and as a result the relevant legal provisions have scarcely ever been the subject of judicial or academic analysis.

- **How are these companies registered or incorporated?**

Please refer to section C above.

- **How long do these procedures take?**

Please refer to section C above.

- **What costs and fees are involved?**

Please refer to section C above.

- **Must a national of the country be a participant, manager or director?**

Please refer to section C above.

E. Partnerships, General or Limited

- **Are partnerships recognized or permitted?**

Please refer to section D above.

F. Partnerships, Undisclosed

- **Do undisclosed partnerships exist?**

No.

G. Sole Proprietorships

- **Can the investor be a sole proprietor?**

Yes. As mentioned above, a *sociedade anónima* can be incorporated by one corporate founding shareholder.

A *sociedade por quotas* can also have a sole *quota*-holder (either a natural or a corporate person) in which case the *sociedade por quotas* is a *Sociedade Unipessoal por Quotas* (SUQ), to make the sole proprietorship of the company known to the public.

A SUQ cannot be the sole *quota*-holder of another SUQ, and a natural person cannot be a *quota*-holder of more than one SUQ.

- **How is the sole proprietorship registered or established?**

The incorporation procedure of a *sociedade anónima* with one corporate shareholder or of a SUQ is the same as referred to above in section C of the current chapter.

The sole proprietorship of a *sociedade anónima* or of a *sociedade por quotas* may result from the acquisition of all the shareholding in one person/entity. As a rule, in the case of a *sociedade anónima*, a sole shareholder has to communicate the acquisition of his shares to the company. In the case of a *sociedade por quotas*, if a sole *quota*-holder intends to maintain his sole proprietorship, he has to convert the company into a SUQ with a declaration expressing his will to undertake such conversion. The conversion into a SUQ is subject to registration with the Commercial Registry Office.

- **How long does this process take?**

Please refer to section C above.

- **What costs and fees are involved?**

Please refer to section C above.

- **What is the investor's potential liability?**

The sole shareholder/*quota*-holder is liable for the paying up of the company's entire capital.

If a company with a sole shareholder/*quota*-holder is declared insolvent, that sole shareholder/*quota*-holder shall be primarily and unlimitedly liable for the obligations assumed by the company from the time when that single ownership of shares or quotas took place (acquisition of the entire share capital by one person) if it is proven that, during that period, there has been a breach of the legal provisions on the allocation of the company's assets to fulfill its own obligations.

Furthermore, but only in the case of a SUQ, an agreement between the sole *quota*-holder and the SUQ must be authorized in the company's by-laws, executed in the legally prescribed written form and attached to the annual

accounts. Otherwise, such agreements will be declared null and void, and the sole *quota*-holder will be unlimitedly liable for them.

- **Are there restrictions on capitalization?**

The sole *quota*-holder of a SUQ may freely stipulate the amount of the company's capital. In the case of a S.A. the minimum share capital is EUR 50,000.

H. Subsidiaries/Branches/Representative Offices

- **Can the investor establish a branch, subsidiary or representative office?**

Companies with no registered office in Portugal may perform their activity in Portuguese territory for a period of less than a year without the need to establish any permanent representation in Portugal. Any foreign company wishing to carry out business activities in Portugal for more than one year without opening a subsidiary is legally required to establish a Portuguese branch (*sucursal*) or representative office (*escritório de representação*) and to comply with the appropriate registration requirements under Portuguese law.

The branch is a form of permanent representation within the country or abroad which has no legal personality and carries out, whether in whole or in part, the activity of the "parent" company. Given that branches are non-autonomous legal entities and do not have individual corporate personality, the foreign company will always be liable for its actions and debts.

A non-EU company wishing to conduct business in Portugal may do so through the establishment of a subsidiary in Portugal. A subsidiary is an autonomous legal entity with separate corporate personality and must assume the form of one of the types of company outlined above. A company having its registered office in the EU can operate in any EU country without having to form a subsidiary for such purpose (specific requirements are applicable to regulated activities, such as banking and insurance).

- **If so, how long does registration or incorporation take?**

Many of the requirements and procedures for opening a secondary establishment are common to those applicable to starting up a business (please see the chapter on types of companies above).

Since the creation of the "Branch on the Spot" (*Sucursal na Hora*) by Decree-Law no. 73/2008, of April 16 (as amended), it is possible for foreign companies to establish permanent representations in Portugal in just one day. The website http://www.portaldaempresa.pt/cve/services/balcaodoempreendedor/Licenca.aspx?CodCategoria=47&CodSubCategoria=1&CodActividade=1106&CodLicenca=655&IdUnico=0 provides information on this very time-saving and cost-efficient system.

As regards the incorporation of a subsidiary, please refer to section C above. As mentioned above, in the case of regulated activities, such as banking and insurance the incorporation of a subsidiary or the establishment of a branch is subject to specific requirements.

- **What costs and fees are involved?**

The costs for opening a branch or a representative office in Portugal, including the appointment of the respective representative, are of approximately EUR 200. As regards subsidiaries, please refer to section C above.

- **What is the investor's potential liability?**

As regards the liability framework in different types of companies, please see sections B, C and D of the current chapter above.

- **Must a national of the country be a participant, manager or director?**

Portuguese nationality is not required for any participant, manager or director. However, any foreign citizen wishing to be a manager or director of a Portuguese subsidiary or branch, even if not remunerated, must obtain a Portuguese tax identification number (which is required for registration with the commercial registry). If the director/manager is a non-EU citizen, he should also appoint a tax representative (someone with Portuguese residence) for tax purposes.

- **Are there restrictions on capitalization?**

Please refer to section C above.

- **What are the investor's tax consequences?**

Subsidiaries are considered independent Portuguese resident corporations for corporate income tax purposes. An investor will therefore only be subject to tax (corporate income tax, when the investor is a corporation or personal income tax, when the investor is an individual) on income related to his stake (such as dividends, capital gains derived from the sale of share capital, etc.). Profits attributable to branches and representative offices of non-resident investors, when considered permanent establishments, are subject to withholding tax in Portugal (the investor himself is not therefore, in principle, subject to taxation in Portugal).

- **Are these tax consequences different from those of a local company?**

The tax treatment of subsidiaries and branches is very similar to the one given to a local company (although limited to the income resulting from the activity performed in Portuguese territory).

I. Trusts and other Fiduciary Entities

- **Are trusts recognized?**

As a rule, Portuguese law does not recognize the creation of trusts as such. Despite being present at the fifteenth session of The Hague Conference on Private International Law held on October, 1984, Portugal has not yet signed the Hague Convention on Trusts.

As an exception, the Portuguese Government created a specific trust regime (off-shore trust) in the International Business Center of Madeira ("Madeira IBC") through Decree-Law no. 352-A/88, of October 3. However, restrictions apply; namely it is stated that «[...] this law thus relates to the recognition of the institution of trusts only as far as it operates offshore, *i.e.*, based on extraterritorial criteria, without any interference in the judicial system, and it exclusively applies to corporate persons – trust companies – that shall be subject to the same statute».

In fact, although these Madeira trusts are recognized under Portuguese law, they are governed by a law valid abroad (namely as regards validity, interpretation, effects and management) and there must be no contact with Portuguese territory in particular as regards the settlor, the beneficiary and the trusts' assets.

- **How are the Madeira Trusts defined?**

In accordance with Decree-Law no. 352-A/88, of October 3, Madeira trusts have three key elements: *(i)* the settlor, who transfers the assets to the control and administration of a third party; *(ii)* the trustee, who is such third party who administrates the assets; and *(iii)* the beneficiary, who can be the settlor, the trustee or another third party.

The specific regime can be summed up by the following:

– the settlor, a non-resident entity, incorporates the trust, which shall not be composed of assets located in Portuguese territory, and indicates the law applicable;

– on the creation of the trust, the trustee (duly authorized to operate in the Madeira IBC) is automatically the holder of the assets;

– the trustee has the power and duty to administrate and dispose of the assets allocated to the trust;

– the Madeira trust is registered at the Commercial Registry Office;

– income generated by the Madeira trust must be distributed to the beneficiaries.

- **What are the legal consequences of a transfer of assets to a Madeira trust?**

In accordance with Article 2 of Decree-Law no. 352-A/88, of October 3, the main legal consequences of operating a Madeira trust are: *(i)* the assets constitute a separate estate and do not constitute part of the trustee's estate; *(ii)* the titles concerning the assets from the trust are registered on behalf of the trustee; and

(iii) the trustee is granted the power and is subject to the obligation to administrate, manage and dispose of the assets in accordance with the trust's incorporation document and the rules of law applicable.

- **Can the investor be the grantor, trustee or beneficiary of Madeira Trusts?**

According to the specific regime for trusts incorporated in Madeira IBC, the grantor ("settlor") and the "beneficiary" must be non-resident entities or entities operating within the Madeira IBC. The "trustee" must be a company or a branch authorized to operate within the Madeira IBC, provided that particular restrictions contained in the said decree-law, such as specific minimum share capital and creating a deposit to pay for the fulfilment of the respective obligations, are complied with.

- **Foreign Trusts related with Portuguese residents.**

Firstly, and as already emphasized, Portugal is a civil law jurisdiction that did not sign The Hague Convention of 1 July 1985 on the Law Applicable to Trusts and their Recognition. Trusts therefore remain an alien concept under Portuguese law. In the absence of such recognition, significant difficulties continue to be encountered in dealing with trusts.

Secondly, considering that trusts cannot be created in Portugal and that Portuguese law does not distinguish or allow for the division of rights *in rem*, trusts, as a rule, are not created with Portuguese assets. Furthermore, it is not the current practice for foreign trustees to register Portuguese assets directly in the name of a trust[4]. The vast majority of instances of contact between Portuguese residents and trusts relate to trusts created abroad by foreigners or Portuguese nationals that live/lived abroad and/or have/had assets abroad. Globalization, emigration and the ever-increasing cross-border movement of persons (incentivized, for instance, by the Portuguese "golden visa" and "non-habitual resident" regimes), together with the ingenious

[4] Usually the trustees of foreign trusts or Madeira trusts register Portuguese assets in their own name – making reference to the specific trusts to which they correspond. Moreover, the principal of autonomy, on which civil law is based, allows one to conceive of a fiduciary framework imposing specific obligations upon different parties in a manner that is similar, but not identical, to a trust.

flexibility of trusts with respect to both civil and commercial matters, have served to make trusts a more common feature.

Thirdly, in this context, the aim of the Portuguese legislator is to tax income held in or obtained through these structures, while avoiding the use of the specific terms "trust, settlor, trustee or beneficiary", opting instead for the use of broader concepts used by continental civil law jurisdictions, such as "fiduciary structures" or references to the entities or persons that either create, modify or extinguish them, or receive some income therefrom. Echoing the same type of language used to enlarge the scope of CFC rules, specific provisions have been enacted for the purpose of defining the tax treatment of distributions of income by trusts, including at the time of their winding-up, liquidation or revocation.

Fourthly, the tax approach to such fiduciary structures is quite pragmatic; the new provisions do not try to regulate the taxation of the different types of trusts (*inter vivos* or testamentary, revocable or irrevocable, discretionary or non-discretionary, etc.), or impose taxation at different moments in the lifespan of a trust. Instead, the focus is on the moment individuals or entities *(i)* receive or are deemed to receive income; *(ii)* realize capital gains; or *(iii)* benefit from gifts.

Fifthly, very few reporting and ancillary tax obligations exist for settlors or beneficiaries of foreign trusts and none specifically for trustees. There is therefore still significant room for improvement in this area through further analysis, practice, time and any tax law and other legal amendments.

In addition, apart from specific agreements and fiduciary contracts based on freedom of contract, and provided there is no violation of any principal or express legal provision, the specific legal frameworks of have been set out by legal acts, such as the one concerning the fiduciary sale in guarantee.

FIDUCIARY STRUCTURE

In the absence of specific legislation on a fiduciary regime, the concepts enshrined in the civil code continue to apply, in particular those with some resemblance to Anglo-Saxon trusts despite the differences in sources of law. Under a mandate without representation, for instance, the assets that the mandatee acquires and that are transferred to the mandator at a later stage, are not bound by the obligations

and debts assumed by the mandatee provided the mandate is written prior to any pledge of such assets and the acquisition is not registered whenever this is mandatorily subject to registration (*e.g.*, acquisition of real estate).

VIII. REQUIREMENTS FOR THE ESTABLISHMENT OF A BUSINESS

A. Alien Business Law

- **Is the business subject to any alien business law? Are there registration or reporting requirements?**

No. In the Portuguese jurisdiction there are no rules which specifically restrict the business activities of aliens or non-Portuguese legal persons, although certain transactions involving investors from non-EU countries may be subject to the acts outlined below.

REGIME FOR THE SAFEGUARDING OF STRATEGIC ASSETS

Decree-Law 138/2014, of 15 September 2014, establishes the legal regime for the safeguarding of strategic assets essential for national defense and security or for the provision of essential services in the energy, transport and telecommunications sectors.

Decree-Law no. 138/2014 allows the Portuguese government to scrutinize any transaction resulting directly or indirectly in the acquisition, by an investor from a country outside the EU or EEA, of (sole or joint) control, within the meaning of competition law, over strategic assets in the defense & security, energy, transport and telecommunications sectors.

The Government may initiate an *ex officio* investigation into transactions within the scope of Decree-Law no. 138/2014 within 30 business days counting from the date of the signing of the relevant transaction agreements, or the date a transaction is publicly known (if later). A decision opposing a transaction can only take place if it is found to threaten, in a genuine and sufficiently serious way, national security or security of supply in services that are fundamental to the national interest.

There is no obligation to file any notice under Decree-Law no. 138/2014, but the acquirer does have the option to voluntarily request the Government to issue a

confirmation of non-opposition to a transaction. If within 30 business days of the aforementioned request being submitted the Government does not inform that it intends to initiate an investigation, a confirmation of non-opposition is deemed to have been tacitly issued.

FOREIGN SUBSIDIES REGULATION

Regulation (EU) 2022/2560 of the European Parliament and of the Council of 14 December 2022 on foreign subsidies distorting the internal market (Foreign Subsidies Regulation, FSR) entered into force on 12 July 2023, establishing mechanisms to screen transactions in the EU involving investors who have received financial support from non-EU countries that may distort the internal market of the EU.

The FSR establishes three mechanisms, all enforced by the European Commission:

- an *ex-ante* obligation to notify concentrations (full mergers, acquisitions of sole or joint control, and full-function joint ventures) in which *(i)* the EU turnover of the acquired party, of at least one of the merging parties or of the joint venture was at least EUR 500 million in the preceding financial year and *(ii)* the parties to the transaction were granted combined aggregate financial contributions of more than EUR 50 million in the three years preceding the signing of the relevant transaction agreements.

- an *ex-ante* obligation to notify foreign financial contributions in public procurement procedures in which (i) the estimated value of the contract is of at least EUR 250 million and (ii) the bid involves a foreign financial contribution of at least EUR 4 million per non-EU country over the past three years. If the value of the contract is above EUR 250 million, but no reportable financial contribution was granted to the companies concerned in the past three years, a declaration to that effect must be submitted to the awarding authority.

- the power for the Commission to start *ex officio* investigations when it suspects the involvement of a foreign subsidy, including the possibility of requesting ad-hoc notifications concerning concentrations and public procurement procedures which do not meet the thresholds for mandatory filing. The FSR

applies to all sectors and economic activities, but the Commission may also carry out market investigations regarding specific sectors, types of economic activity or types of subsidy types to identify specific distortions.

In the two *ex-ante* notification instruments, the companies concerned are subject to a standstill obligation, meaning a transaction cannot be implemented, or a public contract cannot be awarded, until the end of the Commission's investigation or until the end of the applicable waiting period.

The FSR endows the Commission with extensive investigative and sanctioning powers for non-compliance, which are broadly comparable to those applicable in EU competition law cases. In particular, failing to notify a concentration or a participation in a public procurement procedure subject to mandatory filing, or implementing a transaction or contract without waiting for the Commission's clearance (gun-jumping), may lead to a fine of up to 10% of annual aggregate turnover.

If the Commission finds that a foreign subsidy exists and is distortive, it should balance the negative effects of the subsidy, in terms of the distortion, with the positive effects of the subsidy when determining appropriate redressive measures, accepting commitments (which may include a range of structural or non-structural remedies), or ultimately blocking a transaction or contract. The Commission's review procedure under the FSR is broadly similar to that under the EU Merger Regulation, with an initial review, which can be followed by an in-depth investigation if there are sufficient indications that a company has been granted a foreign subsidy that distorts the internal market.

B. Competition Law

- **Do the entity's operations comply with anti-trust laws?**

A company active in the Portuguese jurisdiction must comply with national and EU competition law rules – Law no. 19/2012, of May 8, as amended, which approves the Portuguese Competition Act, and Articles 101 and 102 of the Treaty on the Functioning of the European Union and respective implementing legislation.

The Portuguese Competition Authority (www.concorrencia.pt) is the public body responsible for ensuring the enforcement of competition law rules in the national territory and has enforcement powers over all sectors of economy, including regulated sectors, the latter in coordination with the relevant sector regulators.

The Competition Authority exercises its power of enforcement in two main substantive areas: prohibited practices and merger control.

PROHIBITED PRACTICES

The Competition Act prohibits agreements and concerted practices between competing undertakings (horizontal practices), agreements and practices between undertakings and their suppliers and customers (vertical practices), as well as decisions by associations of undertakings, which have the object or effect of appreciably impeding, distorting or restricting competition in the market.

The Competition Act also prohibits the abuse of a dominant position in the national market or in a substantial part of it by one or more undertakings, and the abuse of a situation of economic dependence in cases where a company is economically dependent on a supplier or client through not having an equivalent alternative.

The Competition Act contains an extensive non-exhaustive list of prohibited practices.

Prohibited agreements may nevertheless be exempted if they lead to economic efficiencies, if they allow consumers a fair share of the resulting benefit, do not impose restrictions that are not indispensable to attaining those objectives and do not provide the possibility of eliminating competition in a substantial part of the markets concerned.

MERGER CONTROL

Concentrations between undertakings meeting the jurisdictional thresholds of the Portuguese Competition Act cannot be implemented before being notified to, and cleared by, the Portuguese Competition Authority.

The concept of concentration includes mergers between two or more undertakings, acquisitions of control over one undertaking or parts of an undertaking (as a result of the acquisition of a majority of the share capital or of veto rights conferring a decisive influence over the commercial strategy of the target company) and the creation of a full-function joint venture.

A concentration between undertakings is subject to notification to the Competition Authority if one of the following thresholds is met:

(i) as a consequence of the concentration, a market share equal to or greater than 50% of the domestic market in a specific product or service, or in a substantial part of it, is acquired, created or reinforced;

(ii) as a consequence of the concentration, a market share equal to or greater than 30% but smaller than 50% of the domestic market in a specific product or service, or in a substantial part of it, is acquired, created or reinforced if the individual turnover in Portugal in the previous financial year, of at least two of the undertakings involved in the concentration, is greater than EUR 5 million, net of taxes directly related to such turnover; or

(iii) the undertakings that are involved in the concentration achieved an aggregate turnover in the previous financial year greater than EUR 100 million, net of taxes directly related to such turnover, as long as the individual turnover in Portugal and in the same period of at least two of these undertakings is above EUR 5 million.

There is no deadline for filing, although the parties cannot implement a transaction without the express or tacit approval of the Competition Authority. Notification is made in accordance with Competition Authority Regulation no. 993/2021, of December 2, which foresees a regular or short form according to the criteria defined by the Regulation.

The notification is subject to the payment of a fee which, depending on the turnover of the companies involved in the transaction, can range between EUR 7,500 and EUR 25,000 – see Competition Authority Regulation 1/E/2003, of July 3.

SANCTIONS

The violation of the provisions regarding prohibited practices, as well as the early implementation of a concentration subject to mandatory filing before clearance, subjects the infringing undertakings to fines of up to 10% of the annual turnover of the economic group of each undertaking concerned in the year prior to the infringing decision.

Not notifying a concentration subject to mandatory filing, provision of false, incorrect or incomplete information and refusal to cooperate with the Competition Authority in the context of its investigative powers are punishable with fines of up to 5% of annual turnover.

The Competition Act also provides for periodic penalty payments as well as ancillary sanctions with potentially serious consequences, such as exclusion from participating in public tenders for up to two years.

C. Environmental Regulations

- **Is the business of the investor subject to environmental regulation?**

Depending on an investor's area of activity, his business may be subject to environmental regulations, notably to the statutes described above in Chapter II (General Considerations) Section D, question 2 (Explain any environmental regulations), among others.

- **If so, are there added costs involved (*e.g.*, audit requirements)?**

Again, depending on an investor's area of activity and on its specific characteristics, as well as on the characteristics of his facilities, compliance with environmental regulations may or may not involve added costs. However, such costs are only determinable before a given situation and are not possible to estimate in abstract.

D. Government Approvals

- **Are government approvals required for the anticipated business?**

There is no such thing as general government approval as a requirement for the establishment of a business in Portugal. However, depending on the specific activities that an investor intends to perform he may or may not need to obtain a license or to previously communicate his business to the Administration. For further information on licensing procedures please refer to Section F below.

E. Insurance

- **Must the enterprise carry insurance?**

In Portugal companies are not, only as a consequence of incorporation, required to carry insurance. However, there are some insurance obligations which apply to a wide variety of companies. We highlight the obligation to carry workers' occupational injury insurance, generally applicable to any company with a working presence in Portugal, and the obligation to carry motor vehicle insurance, generally applicable to any company that owns or uses motor vehicles in Portugal. Moreover, the carrying out of certain activities renders a company subject to specific mandatory insurance requirements (for instance, professional liability insurance).

- **If so, what kind of risks must be insured?**

Not applicable. Please refer to the answer above.

- **Is there a state monopoly on insurance?**

There is no state monopoly on insurance in Portugal. However, insurance is a regulated activity. The local regulator is the Portuguese Insurance and Pension Funds Supervisory Authority (*Autoridade de Supervisão de Seguros e Fundos de Pensões*/ASF). It supervises the taking-up and pursuit of insurance activity in Portugal, such supervision being especially strong in the context of insurers offering mandatory insurance policies to the public. In these situations, insurers must register their insurance policies with ASF, where compliance of the policies with the applicable rules will be checked. ASF may also require certain amendments to be

made in the terms of such policies and imposes uniform policies in certain instances of mandatory insurance (in the cases, for instance, of workers' occupational injury insurance, motor vehicle insurance and crop insurance).

F. Licenses/Permits

- **Are licenses or permits required for the anticipated activity?**

There is no general government approval required for the establishment of a business in Portugal. However, certain and specific activities may require a license or some other form of authorization issued by the Administration.

- **If so, how does an investor apply for and receive the necessary license or permit?**

In most cases, an investor must present an application to the Administration, requesting a license or permit, and present all the documents required by law with the application. In other situations, it is only necessary to provide a declaration or registration.

- **How long does it take to receive the license or permit?**

Depending on the type of business, an investor may have to procure licenses or authorizations. There are four main types of license that may be required: *(i)* industrial licensing; *(ii)* commercial licensing; *(iii)* tourism licensing; and *(iv)* environmental licensing. Please bear in mind that there may be other licenses or authorizations that may be required.

INDUSTRIAL LICENSING

Decree-Law no. 169/2012, of August 1,[5] establishes the legal regime for *industrial activity* and defines the licensing procedure for the installation and operation of industrial facilities listed in the statute.

[5] As amended by Decree-Law no. 165/2014, of November 5, Decree-Law no. 73/2015, of May 11, Decree-Law no. 39/2018, of June 11, Decree-Law no. 20/2019, of January 30, Decree-Law no. 9/2021, of January 29, and Decree-Law no. 11/2023, of February 10.

According to the said statute there are three different types of industrial facilities:

(i) Type 1 – those of the highest risk, namely those that are subject to at least one of the following legal regimes or circumstances: *(i)* Environmental Impact Assessment legal regime; *(ii)* Integrated Pollution Prevention and Control legal regime; *(iii)* Serious Accidents Involving Hazardous Substances' Prevention legal regime; *(iv)* Waste management operations that require mandatory inspection prior to the start of operation, in accordance with the waste management legal regime; or *(v)* Agri-food activity using raw materials of unprocessed animal origin, or involving the handling of animal by-products, or animal feed manufacturing activity. These need to be assigned a veterinary control number or an individual identification number, in accordance with the applicable legislation.

(ii) Type 2 – those of medium size and medium environmental risk, that are not included in Type 1 and that are covered by at least one of the following legal regimes or circumstances: *(i)* Legal framework for European greenhouse gas emission allowance trading; *(ii)* Waste management operation that do not require prior inspection, in accordance with the waste management legal regime, excluding establishments identified by part 2-A of annex i to the legal regime for *industrial activity*, provided they carry out non-hazardous waste recovery operations.

(iii) Type 3 – those facilities that are not included in Types 1 and 2.

The licensing procedure depends on the type of facilities that the investor intends to operate. Type 1 facilities are subject to a *procedure with conducting of prior inspection* (which includes firstly an authorization of the installations and secondly their operation). Type 2 facilities are subject to a *procedure without performing prior inspection*, which is a simpler procedure than the previous one, whereas Type 3 facilities are subject to a mere *prior communication* procedure.

Depending on the activity to be performed, applications for the above mentioned approvals are submitted either to the *Direção-Geral de Energia e Geologia* (part of the Ministry of the Economy) or the regional departments of the *Ministério da Agricultura, do Desenvolvimento Rural e das Pescas* (Ministry of Agriculture, Rural Development and Fishing) or for Type 3 facilities, registration takes place at the

Municipal Council of the area where the industrial unit is to be located. Moreover, if the industrial facilities are located in a Responsible Business Area (ZER) the licensing authority is the area's managing company.

Although Decree-Law no. 169/2012 does not establish an overall maximum period for the duration of each different type of procedure, it does set out several partial deadlines for issuance of opinions and inspections. As such, saving time for both private parties and the Administration was one of the main concerns of this statute (notably by establishing tacit approvals in the event of non-compliance by the Administration with the time limit established for each phase of the various licensing procedures).

COMMERCIAL LICENSING

Commercial licensing is generally covered by the legal regime for *Construction and Land Development* (RJUE, approved by Decree-Law no. 555/99, of December 16,[6] and it therefore generally falls under a municipality's jurisdiction to issue commercial use authorizations to investors' premises. However, there is one other statute that must be taken under consideration as regards commercial activity. Decree-Law no. 10/2015, of January 16,[7] contains the Legal Framework for the Access and Operation of Commercial, Services and Restaurant Activities (RJACSR). RJACSR covers a wide range of commercial activities, including the operation of commercial establishments and warehouses for food products, operation of retail establishments with a sales area equal to or greater than 2 000 sqm, inserted in commercial units, operation of large commercial spaces and commercial complexes, and operation of food & beverage establishments, among many others.

RJACSR provides for the following procedures: *(i) mere prior communication* (procedure in which an applicant completes a specific form, the electronic proof of submission of which, accompanied by proof of payment of the respective fees, allows the applicant to immediately start the concerned activity (or its

[6] As amended by Decree-Law no. 136/2014, of September 9, Decree-Law no. 214-G/2015, of October 2, Decree-Law no. 97/2017, of August 10, Law no. 79/2017, of August 18, and Decree-Law no. 121/2018, of December 28.

[7] As amended by Decree-Law no. 102/2017, of August 23, Law no. 15/2018, of March 27, Decree-Law no. 9/2021, of January 29, and Decree-Law no. 21/2023, of March 24.

modification)); *(ii) authorization procedure* (procedure that consists in obtaining an administrative permit granted by the competent municipality, the request for which must be made through the completion of a specific form); and *(iii) joint authorization procedure* (procedure that starts with an application by the applicant, through the completion of a specific form, and leads to the granting of an administrative permit, which is the product of a decision taken jointly by the mayor of the competent municipality, the president of the competent Regional Coordination and Development Committee (CCDR) and the Director General for Economic Activities, and is issued by the General Directorate of Economic Activities (DGAE)).

All procedures covered by RJACSR are processed in the electronic platform "Entrepreneur's Desk" ("*Balcão do Empreendedor*").

Before starting any commercial activity, an investor is advised to contact the municipality of the area in question in order to ascertain if the envisaged business activity is subject to any special licensing procedure. In any case, without prejudice to the powers of other interested parties (namely within the scope of the above-mentioned Decree-Law no. 10/2015), the municipality is generally responsible for monitoring the commercial licensing procedure.

As regards the average time it takes to obtain a commercial license, it varies from one municipality to another and also depends on the specific features of the facilities and the activities conducted there. However, the RJUE foresees that certain requests are tacitly approved when the municipalities exceed their decision-making time limits.

TOURISM LICENSING

Decree-Law no. 39/2008, of March 7, amended by Decree-Law no. 80/2017, of June 30, and Decree-Law no. 9/2021, of January 29, establishes the legal regime for the *Installation, Exploitation and Operation of touristic facilities*. This statute does not preclude the application of the legal regime for *Construction and Land Development* (RJUE). The installation of a tourism project is also subject to a construction license or to the submission of a prior communication procedure (when the project's installation involves construction works) and/or an authorization of use for tourism purposes, all of them issued by the local municipal council pursuant

to the RJUE. However, the general rule applicable to building works is the prior communication procedure with a deadline. In these situations, a communication is submitted to the Municipality with all mandatory and relevant documents and the latter has a deadline of 20 business days (or 60 should there be the need to consult other entities) to decide. Should there be no decision, the applicant can pay the administrative fees and begin construction works.

Allotment projects for the installation of tourism ventures are subject to an opinion to be issued by the Portuguese Tourism Institute *(Turismo de Portugal, I.P.)*.

ENVIRONMENTAL LICENSING

Decree-Law no. 127/2013, of August 30, amended by Decree-Law no. 11/2023, of February 10, sets out the legal regime for integrated pollution prevention and control and establishes the *Environmental License*. The said statute is applicable to different industrial activities detailed in its annexes including, among others, energy, metals, minerals, chemicals and waste management. It also establishes various measures for preventing or reducing emissions in the air, water and soil resulting from such activities.

An environmental license is required for industrial establishments described in the above-mentioned annexes to Decree-Law no. 127/2013, in order to operate, although such license is not required for constructing the facilities (which must be licensed or previously communicated in accordance with the legal regime for *Construction and Land Development* – RJUE).

An environmental license is issued by the Portuguese Agency for the Environment (APA) and conforms to the specific authorization regime applicable to each facility's activities (see *industrial licensing*, above). However, it must be stressed that the environmental license legal regime does not overlap with other statutes applicable in the licensing of such activities, nor does it override the compliance with certain statutes like the *Environmental Impact Assessment legal regime*.

The legal regime regarding *Environmental Impact Assessment* is regulated in Decree-Law no. 151-B/2013, of October 31, amended and republished by Decree-Laws no. 152-B/2017, of December 11, no. 102-D/2020, of December 10, no. 11/2023, of February 10, and by Ratification no. 7-A/2023, and identifies the

projects that have to follow this procedure. The latter includes the following stages: *(i)* project selection and determination whether it is subject to or exempt from an environmental impact assessment in accordance with annexes I, II and III to Decree-Law no. 152-B/2017. Bear in mind that the licensing authority for a project has to send certain documents to the environmental authority for the latter to assess whether or not the project is subject to an environmental impact assessment, even if the project is exempted in the annexes and is below the thresholds defined there; *(ii)* definition of the scope of the assessment (optional); *(iii)* carrying out of the environmental impact study, which must contain a description of both the positive and negative environmental aspects of the project, together with any measures anticipated for avoiding, reducing or compensating any negative aspects; *(iv)* technical assessment by the Portuguese Agency for the Environment (APA) or by the local Regional Coordination and Development Committee (CCDR) of the environmental impact study; *(v)* declaration of environmental impact, which contains the ministerial decision on the project's rejection, conditional approval or approval; and *(vi)* post assessment, in order to verify the compliance of the project's execution and operation with the declaration of the environmental impact's terms and conditions and also to monitor the real environmental impact of the project.

The time limit for the Administration to decide on the issuance of the declaration of environmental impact is generally 100 (one hundred) days, 90 (ninety) days for projects subject to the access and exercise of industrial activity regime and projects of potential national interest, or 70 (seventy) days whenever the accredited entity has intervened to verify the conformity of the Environmental Impact Study, all counting from the submission of the project and of the environmental impact study by the investor to the relevant body. Note that, where the above-mentioned deadlines are not complied with, the declaration of environmental impact is considered tacitly approved.

IX. OPERATION OF THE BUSINESS

A. Advertising

- **Are there restrictions on advertising?**

The Advertising Code (*Código da Publicidade*) provides the general legal framework applicable to advertising in Portugal, although for certain specific products and services (*e.g.*, health products), it may be necessary to occasionally consult other statutes. The most important of these is the Unfair Commercial Practices Regime (*Regime das Práticas Comerciais Desleais*), which also regulates misleading advertising.

Rather than restrictions, the Advertising Code stresses the need for advertising to abide by certain principles that an advertiser must observe when creating an advertisement, namely that the latter must be lawful, identifiable, evident and truthful. Subliminal advertising is forbidden and product placement is tightly regulated, as is comparative advertising.

Failure to abide by the advertising rules may give rise to misdemeanor procedures that impose fines and suspend an advertiser's right to advertise his products or services. Urgent procedures can be adopted to pull an advertising campaign off the market or the air.

It is necessary to note that direct marketing, particularly when done through the Internet, is subject to additional rules that, *inter alia*, seek to create some order in this field and prevent spamming and other aggressive commercial practices.

It is also worth pointing out that a self-regulating advertising body *(Auto Regulação Publicitária)* exists in Portugal, which was created to solve advertising disputes in a swift and just manner. Many major firms belong to this self-regulating body and it is, today, the most common forum for discussing advertising issues between major corporations.

B. Attorneys

- **Is it necessary to have local counsel?**
- **How can local counsel be found?**
- **How much are attorneys' fees?**

It is advisable to contact an attorney prior to entering into a business agreement so that all legal aspects are covered or taken into consideration.

Most Portuguese lawyers practice on an individual basis or in small informal groupings. However, the number of organized law firms has been growing. These can be accessed through a variety of sources.

The internet offers one of the most effective means to discover local counsel. Some of the main internet sites on an international level where Portuguese law firms can be found are the following:

(i) www.legal500.com;

(ii) www.worldlegalforum.com;

(iii) www.portugaloffer.com;

(iv) www.portuguese-chamber.org.uk;

(v) https://chambers.com/.

Apart from the Internet, local law firms can be found through information provided by the Portuguese Embassies all over the world.

In Portugal law firms are also listed in every telephone directory under the title *Advogados*, a helpful research tool.

Attorneys' fees in the major law firms are generally as follows:

Average hourly billing rate – Senior Partner: EUR 280-395, Junior Partner: EUR 225-290, Senior Associate: EUR 200-280, Associates: EUR 160-215, Trainees: EUR 125-160.

Most firms offer alternative fee arrangements.

C. Bookkeeping Requirements

- **Must the investor keep local books of accounts?**

Portuguese law imposes requirements to keep accounting records and to prepare and disclose accounts.

- **In what form must the investor keep accounts (*e.g.*, IAS/IFRS, in what language, etc.)?**

Since January 1, 2010, Portuguese companies have to keep accounts in accordance with the Accounting System Standards (*Sistema de Normalização Contabilística*/SNC). The SNC's main purpose was to transpose, to Portuguese jurisprudence, Regulation (EC) no. 1606/2002, of July 19, which established the adoption and use, within the European Community, of the International Accounting Standards (IAS), the International Financial Reporting Standards (IFRS) and the International Reporting Interpretations Committee (SIC/IFRIC).

A Portuguese company therefore has to keep accounting records which are sufficient to show and explain the company's transactions so as to *(i)* disclose with reasonable accuracy at any time the financial position of the company at that time and *(ii)* enable the directors to ensure that the accounts comply with the legal requirements.

Every year, directors must prepare the financial statements (balance sheet, profit and loss accounts, among others) and the annual report (concerning the company activity) and submit them for approval by the competent bodies of the company – no later than three months following the end of each financial year or within five months for companies that submit consolidated accounts or use the equity method. All books, accounting and support documents must be properly conserved for a 10 year period.

A Portuguese company must also file an IES declaration (annual statement concerning tax and accounting information), which should be submitted by Internet by the company accountant – no later than July 15 each year.

Documents and books of accounts must be prepared in the Portuguese language, but a translation can be attached to them.

D. Business Ethics/Codes

- **Are there certain business ethics or codes, which the investor must follow (*e.g.*, GAAP for accountants, etc.)?**

Business ethics manuals/codes must comply with the relevant rules of competition law and should ensure full compliance with competition rules. In particular, companies must not engage in any form of agreements or commercial conduct that might appreciably distort competition in the market.

Nonetheless, with recent EU legislative developments regarding ESG (Environmental, Social and Governance), companies are being encouraged to put in place codes of conduct that comply with ESG standards. Topics covered include human rights and employment relations, business procedures to address climate change (*e.g.*, supply chain, production processes, sustainable packaging...), and the setting up of a structure in order to address these issues. There are no specific business ethics or codes of a fiscal nature that investors have to follow.

E. Consumer Protection Laws

- **Are there consumer protection laws, which apply to the investor's operations?**

Technological and scientific development, along with the mass production of goods, market complexity, distance between producer and consumer, constant consumption, aggressive sales methods, misleading publicity and, most recently, the changes introduced by globalization and the Internet revolution, have introduced major transformations in western countries since the 1960s, which have led to the appearance of a new phenomenon referred to as the "consumer society". This new

phenomenon has led to a greater need to protect consumers and simultaneously has given rise to very active consumer lobbying associations and social initiatives.

Although consumption started to escalate in the 1960s as Portugal joined EFTA and the OCDE, legislative and others measures in the area of consumer protection only became visible in the 1970s. The signature of the agreements between Portugal and the European Economic Community (EEC) on 22 July 1972 represented a significant contribution towards this process. Thereafter, the Portuguese Constitution of 1976 imposed on the State the primary task of "protecting the consumer, notably through supporting the creation of consumer cooperatives and associations" (Article 81/m, in its original version) and forbade misleading advertising.

In Portugal, consumer protection is one of the priority tasks of the State, safeguarded both through domestic legislation, enacted by the Portuguese Parliament and Government, and by European legislation, enacted by the competent European Union institutions. Consequently, it is important to start with a reference to European Union law and Portuguese Constitutional law, since both define the legal framework of consumer protection in Portugal and precede the creation of all statutory laws and other regulations introduced in this area.

EUROPEAN UNION LAW

Originally, the Treaty of Rome did not contain specific rules concerning consumer policy. Notwithstanding, in 1975 the EU Council adopted the first consumer protection program, entitled "The preliminary program of the European Economic Community for a consumer protection and information policy", following Resolution no. 543 (1973), on May 17, by the Consultative Assembly of the European Council, which contemplated consumer rights for the first time.

In terms of primary law, consumer protection became an autonomous objective for the European Community with the Single European Act of 1986, even though it was only with the Treaty of the European Union (Maastricht Treaty) in 1992 that the Community adopted a clear will to «contribute to the strengthening of consumer protection» as stated in Article 3(s). Together with the Treaty of the European Union (with its subsequent amendments over the years), the Treaty on the Functioning of the European Union (TFEU) and the Charter of Fundamental

Rights of the European Union also represent important contributions to the development and extension of consumer protection in the European Law.

In summary, the European Community's orientation, expressed in the above-mentioned programs and treaties, established five main objectives for consumer protection policy:

(i) Protection of consumers' health and safety;

(ii) Protection of consumers' economic interests;

(iii) The right to reliable information and education;

(iv) Consumer redress;

(v) Consumer representation at the national and Community levels.

Over the years that followed, a particular emphasis was placed on strengthening consumer protection standards across the European Union (EU), and on aligning the diverse national laws of Member States (legislative harmonization). This alignment has been largely achieved through the adoption of numerous directives, which each Member State must implement, together with several regulations that apply directly to all Member States. We highlight the following:

(i) Directive 85/374/EEC, as amended by Directive 1999/34/EC, regarding product liability (Product Liability Directive), which is currently under revision;

(ii) Directive 93/13/EEC on unfair terms in consumer contracts (Unfair Contract Terms Directive), as amended by Directive 2019/2161;

(iii) Directive 2000/31/EC, on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce);

(iv) Directive 2001/95/EC, as amended by Regulation (EC) 596/2009, on general product safety (General Product Safety Directive);

(v) Directive 2002/58/EC, as amended by Directive 2009/136/EC, concerning the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications);

(vi) Directive 2002/65/EC, as amended Directive 2015/2366/EU, concerning distance marketing of consumer financial services;

(vii) Regulation (EC) 261/2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights;

(viii) Directive 2005/29/EC, concerning unfair business-to-consumer commercial practices in the internal market (Unfair Commercial Practices Directive), as amended by Directive 2019/2161;

(ix) Directive 2006/114/EC, concerning misleading and comparative advertising;

(x) Directive 2008/48/EC, on credit agreements for consumers (Consumer Credit Directive) as amended by Directive 2019/1243;

(xi) Directive 2008/122/EC, on the protection of consumers in respect of certain aspects of timeshare, long-term holiday product, resale and exchange contracts (Timeshare Directive);

(xii) Regulation (EU) 1169/2011, on the approximation of the laws of the Member States relating to labelling, presentation and advertising of foodstuffs, as amended by Directive 2022/2561;

(xiii) Directive 2011/83/EU, on consumer rights, as amended by Directive 2019/2161;

(xiv) Directive 2013/11/EU, on alternative dispute resolution for consumer disputes;

(xv) Regulation (EU) 524/2013, on online dispute resolution for consumer disputes;

(xvi) Directive 2015/2366/EU, on payment services in the internal market;

(xvii) Regulation (EU) 2016/679, on the protection of natural persons with regard to the processing of personal data and on the free movement of such data;

(xviii) Regulation (EU) 2018/302, on addressing unjustified geo-blocking and other forms of discrimination based on customers' nationality, place of residence or place of establishment within the internal market;

(xix) Regulation (EU) 2018/644, on cross-border parcel delivery services;

(xx) Directive (EU) 2019/770, on certain aspects concerning contracts for the supply of digital content and digital services;

(xxi) Directive (EU) 2019/2161, commonly known as the 'Omnibus Directive', as regards the better enforcement and modernization of Union consumer protection rules;

(xxii) Directive (EU) 2020/1828, on representative actions for the protection of the collective interests of consumers;

(xxiii) Regulation (EU) 2022/1925 on contestability and fairness in digital markets;

(xxiv) Regulation (EU) 2022/2065, commonly known as the 'Digital Services Act', on a single market for digital services.

In particular, the rapid rise of e-commerce and the growing interest in cross-border shopping within the EU have increased concerns about consumer protection in the digital world. As consumers interact more frequently with businesses outside their home countries, it is crucial to ensure they benefit from consistent and robust protection. Directives 2019/770 and 2019/771 represent significant steps in this direction, establishing rules for the supply of digital content, digital services and tangible goods, guaranteeing that consumers get what they pay for, with remedies available if they do not. Along with this, the Digital Services Act seeks to hold online platforms accountable and advocates enhanced transparency. Together, these initiatives highlight the EU's commitment to safeguarding consumer rights and building trust in the digital marketplace.

In accordance with the rules on the division of competences between the EU and the Member States, the increase in EU legislative actions in the area of consumer protection will involve a progressive compression of the Member States' attributions in this field. Notwithstanding, the fact is that the EU grants the Member States some margin of maneuver in the implementation of these Directives, as they are mandatory mainly as regards the objectives defined, with the form and the means used for such implementation freely established by the Member States.

PORTUGUESE CONSTITUTIONAL LAW

Under Article 81, section i), of the current version of the Portuguese Constitution, the protection of consumers' rights and interests is a priority duty of the Portuguese State on an economic and social level.

Subsequently, the Constitutional revision of 1982 defined consumers' fundamental rights, and the successive constitutional revisions progressively crystallized the position of consumers and revealed the legislator's growing attention to consumer protection issues, which were finally promoted to the category of fundamental rights and included in the respective Title in the Chapter of economic, social and cultural rights and duties with the Constitutional revision of 1989.

Because of its importance, note should be made of the current version of Article 60 of the Portuguese Constitution, which *(i)* defines, in section 1, the general framework of consumer protection (*i.e.*, quality of goods and services consumed, education and information, protection of health protection, security and economic interests, consumer redress), *(ii)* prohibits, in section 2, all forms of hidden, indirect or misleading advertising and determines that the advertising activity must be disciplined by law, and *(iii)* refers, in section 3, to the role of consumer associations and consumer cooperatives in consumer protection issues.

Among many others, also noteworthy is the current version of section 3 (a) in Article 52 of the Portuguese Constitution, which expressly mentions the right to class action in consumer protection matters.

THE PORTUGUESE CONSUMER PROTECTION REGIME

The Portuguese regime for consumer protection, even if it has become increasingly fragmented, with multiple internal statutes depending on the particular business and aspect at issue, demonstrates growing harmonization with other member states of the European Union. This harmonization is primarily a recent outcome due to the transposition of several EU directives. These directives either establish new frameworks or modify existing ones, ensuring a constant evolution in consumer protection in Portugal. Below we highlight the main Portuguese legal instruments that should be taken into account:

(i) Law no. 24/96, of July 31, as amended by Law no. 28/2023, of July 4, establishes the Portuguese Consumer Protection Act (*Lei de Defesa do Consumidor*);

(ii) Decree-Law no. 7/2004, of January 7, as amended by Law no. 26/2023, of May 30, establishes the legal framework for Electronic Commerce in the Internal Market and Personal Data Handling (*Comércio Eletrónico no Mercado Interno e Tratamento de Dados Pessoais*);

(iii) Decree-Law no. 24/2014, of February 14, as amended by Law no. 28/2023, of July 4, establishes the legal framework for Contracts Concluded at a Distance and Outside of Business Premises (*Contratos Celebrados à Distância e Fora do Estabelecimento Comercial*);

(iv) Decree-Law no. 84/2021, of October 18, establishes a New Consumer Regime (*Novo Regime do Consumo*) and regulates consumer rights in the purchase and sale of goods, digital content, and services, repealing the previous regime set forth in Decree-Law no. 67/2003. This new Decree-Law transposes the above mentioned Directives (EU) 2019/771 and (EU) 2019/770;

(v) Decree-Law 109-G/2021, of December 10, and Law no. 10/2023, of March 3, transpose the above mentioned 'Omnibus Directive' (Directive (EU) 2019/2161), pertaining to consumer protection.

The Consumer Protection Act sets forth the general rules and principles of consumer protection in Portugal and, thus, starts by defining consumers as any and

all individuals to whom goods are supplied, services are rendered, or any rights are transmitted for private (*i.e.*, non-professional) use, by someone who professionally pursues an economic activity with profitmaking purposes (Article 2/1).

This Consumer Protection Act introduced some significant changes to the previous consumer protection regime, namely *(i)* by extending the definition of "consumer products", so as to include all goods, services and rights supplied, rendered and transmitted by public entities, *(ii)* by deeming null and void all waivers or limitations to consumer's rights, *(iii)* by granting consumers a new right towards an anticipatory termination of contract within a minimum period of 7 days after a product's purchase, *(iv)* by allowing consumers to prevent, correct or terminate commercial practices considered to be detrimental to their interests, by applying for injunctions, *(v)* by recognizing the Portuguese Consumer Institute (currently, after Law no. 47/2014, of July 28, called *Direcção-Geral do Consumidor*) as a public authority with procedural legitimacy regarding the protection of consumers' collective and diffuse interests, and *(vi)* by creating the National Consumer Council (*Conselho Nacional de Consumo*) with powers to promote dialogue between the Government, commercial establishments and consumers.

Decree-Law no. 24/2014, of February 14, grants consumers supplementary protection when concluding a contract with a professional at a distance and outside of business premises (including through the Internet). Besides adding information obligations and restricting some sales methods, this statute grants consumers a right of withdrawal from the contract within a period of 14 days from the conclusion of the contract (or 30 days, in the event of contracts that are concluded at the consumer's domicile or during an excursion organized by the seller or service provider outside of its business premises). The main reason for this right is the fact that the consumer is not able to see and inspect the goods/services before concluding the contract.

The New Consumer Regime, approved by Decree-Law no. 84/2021, addresses contracts between consumers and professionals, and introduces significant changes to the previous regime, notably by broadening of the term "goods" to include digital content (e.g. software, applications, audio and video files, e-books, and any data or files in digital format) and digital services incorporated in or linked with consumer goods (e.g. storage, cloud computing services, streaming platforms, and online games). In case of non-compliance, the New Consumer Regime outlines the

responsibilities of sellers, producers, and online marketplaces, together with the rights of consumers, introducing several notable updates. One of the key changes in this domain is the extension of the warranty period. For movable goods, the warranty is now three years from delivery, while for continuous digital content or services lasting more than three years, a seller's liability persists for the duration of the contract. The regime also establishes severe economic sanctions, with oversight by the Food and Economic Security Authority (ASAE) and the Public Markets, Real Estate and Construction Institute (IMPIC, I.P.).

In its transposition of the 'Omnibus Directive', Decree-Law no. 109-G/2021 brings a multitude of amendments to the Portuguese consumer protection laws, aligning them with the advancements in digital commerce. Specifically, this law updates various legal regimes, notably those governing contractual terms, price indications for retail goods, and commercial practices related to price reductions. The revised legal provisions are more inclusive, ensuring that they apply to contracts involving digital elements, contents and services. There is a clear focus on enhancing the transparency of online platforms and on strengthening the penalties for violations of consumer rights. Additionally, professionals are subject to increased information duties, particularly in the context of distance and off-premises contracts, ensuring consumers are adequately informed before entering into agreements. Lastly, the law prohibits professionals from implementing planned obsolescence techniques that deliberately shorten a product's lifespan in order to stimulate its replacement.

In turn, Law no. 10/2023 resulted in amendments to several regimes, including regulations concerning contractual clauses, retail price displays, commercial practices involving reduced prices, unfair commercial practices and distance contracts. In terms of sanctions, Law no. 10/2023 introduces a new category of infringements: generalized infractions or infractions that are widespread at the European Union level. The penalties for such breaches can now reach up to 4% of an offender's annual business volume. Moreover, specific criteria for determining penalty measures were introduced, notably based on the nature of the infraction, remedial actions taken and prior offenses. Special attention is given to changes relating to Decree-Law no. 24/2014, emphasizing the obligations of goods or service providers concerning digital content, ensuring adherence to data protection standards and clarifying rules on user-generated content.

OTHER RELEVANT LEGISLATION

Consumer protection matters are also developed in a plethora of other legislation, of which we highlight the following:

(i) Unfair Standard Contract Terms (Abuse clauses) – Decree-Law no. 446/85, of October 25, as amended by Law no. 10/2023, of March 3;

(ii) Information in Portuguese – Decree-Law no. 238/86, of August 19, as amended by Decree-Law no. 42/88, of February 6;

(iii) Product liability – Decree-Law no. 383/89, of November 6, amended by Decree-Law no. 131/2001, of April 24;

(iv) Advertising Code – Decree-Law no. 330/90, of October 23, as amended by Law no. 30/2019, of April 23;

(v) Display of prices – Decree-Law no. 138/90, of April 26, as amended by Decree-Law no. 109-G/2021, of December 10;

(vi) Time sharing – Decree-Law no. 275/93, of August 5, as amended by Decree-Law no. 9/2021, of January 29;

(vii) Class Action Law – Law no. 83/95, of August 31, as amended by Decree-Law no. 214-G/2015, of February 2;

(viii) Operation period of commercial establishments – Decree-Law no. 48/96, of May 15, as amended by Decree-Law no. 9/2021, of January 29;

(ix) Protection of public services users – Law no. 23/96, of July 26, as amended by Law no. 51/2019, of July 29;

(x) Procedures for Compliance with Financial Obligations Arising from Contracts – Decree-Law no. 269/98, of September 1, as amended by Decree-Law no. 117/2019, of September 13;

(xi) Injunction actions for consumer protection – Law no. 25/2004, of July 8;

(xii) Safety of products and services – Decree-Law no. 69/2005, of March 17, as amended by Decree-Law no. 9/2021, of January 29;

(xiii) Complaints Book – Decree-Law no. 156/2005, of September 15, as amended by Decree-Law no. 9/2021, of January 29;

(xiv) Distance contracts relating to financial services – Decree-Law no. 95/2006, of May 29, as amended by Decree-Law no. 242/2012, of November 7;

(xv) Commercial Practices with Price Reduction – Decree-Law no. 70/2007, of March 26, as amended by Law no. 10/2023 of March 3;

(xvi) Consumer Credit Agreements – Decree-Law no. 133/2009, of June 2, as amended by Law No. 57/2020, of August 28;

(xvii) Extrajudicial consumer dispute resolution (out-of-court-settlement procedures) – Law no. 144/2015, of September 8;

(xviii) Food Labelling – Law no. 26/2016, of August 22, as amended by Law no. 68/2021, of August 26;

(xix) Package travel – Decree-Law no. 17/2018, of March 8, as amended by Decree-Law no. 9/2021, of January 29.

F. Construction

- **What are the costs of construction?**

It is not possible to calculate, in abstract, the amount of the costs of construction. It would depend on several factors, such as property location, kind of construction and landscape characteristics and applicable municipal regulations.

However, under Portuguese law, the government annually sets the average value of construction land per square meter for the Portuguese territory. Thus, pursuant to Decree Order no. 7-A/2023, of January 3, the average value per square meter of construction land in Portugal during 2023 was fixed at EUR 532.

- **Are permits required for construction?**

Yes, permits are required for construction.

- **How is authorization to construct obtained?**

Authorization to construct is required from the municipality where a construction project is located and may take a form of either a license or acceptance of a prior communication. To obtain an authorization, a developer must comply with the relevant procedure (licensing procedure or prior communication procedure), both described below.

- **How long does it take to receive authorization?**

It depends on the urban planning operation procedure carried out.

As a rule, municipality decides construction licenses procedures within 95 business days. After this period has elapsed, the developer has one year to request the issue of a construction license title (called "*Alvará*") from the municipality, which may be extended only once. This is an essential step, as it is with this title that the license is granted. This framework was amended by Decree-Law no. 10/2024, establishing new rules for decision deadlines and providing greater certainty for developers. Therefore, depending on the project typology, the final decision must be issued within a period ranging from 120 to 200 days from the application's submission. Additionally, it is established that the non-decision within the mentioned deadlines results in the tacit approval of the request.

In the cases of a prior communication procedure, submitted with the necessary and mandatory documents, the developer may commence construction after eight business days (a deadline extended to 15 business days as of 3 March 2024), upon payment of the corresponding fees.

LEGAL REGIME

The legal regime for urban construction is described in Decree-Law no. 555/99, of December 168 which is designated "Legal Regime for Construction and Land Development" (RJUE). Decree-Law no. 10/2024, of January 8, was recently approved, introducing significant changes to RJUE. Most provisions are set to take effect on 3 March 2024, while done have already been in force since 1 January 2024.

Besides the above-mentioned legislation, applicable to the whole Portuguese territory, there are local provisions, approved by individual municipalities.

These provisions can be divided into three groups:

(i) municipal land use plans *(planos diretores; planos de urbanização; planos de pormenor);*

(ii) municipal regulations on urban construction; and

(iii) municipal regulations for fees and compensations (payable for the approval of urban planning operations by a municipality).

Finally, as regards the applicable legal regime, there are land use plans on a national level, prepared by the government, still applicable in certain areas such as the coastline and natural reserve areas.

The above-mentioned land use plans and regulations are foreseen in Decree-Law no. 80/2015, of May 14, regulating the drawing up, approval and execution of land use plans, including the four different levels of intervention: national, regional, inter-municipal and municipal, which must be taken into account not only by private entities when investing in real estate, but also by the municipalities that have the authority to approve construction licenses and authorizations.

[8] As amended by Decree-Law no. 136/2014, of September 9, Decree-Law no. 214-G/2015, of October 2, Decree-Law no. 97/2017, of August 10, Law no. 79/2017, of August 18, Decree-Law no. 121/2018, of December 28, Decree-Law no. 66/2019, of May 21, Decree-Law no. 118/2019, of September 17, Law no. 56/2023, of October 6, and Decree-Law no. 10/2024, of January 8.

CONSTRUCTION PROCEDURES

The RJUE currently provides for two different levels of permit or procedure for the licensing of urban planning operations:

(i) license procedure; and

(ii) prior communication procedure.

Each type of procedure is used for different purposes, according to the type of work that is being carried out and the location of the construction.

As a rule, the criteria in the RJUE for determining the type of procedure applicable take into account the higher and lower level of pre-existing parameters (total construction area, number of floors, construction volume, etc.) and the legal protection given by land use plans or previous municipal decisions. The fewer regulations and definitions regarding the site, the more complex and complete the procedure for licensing a given urban planning operation will be.

The license procedure is the most complex procedure. It must be followed in cases where there are no land use plans, allotment plans, or execution units (all duly densified) approved. In such cases it is necessary for the competent authorities to have greater control over what is being constructed and to determine the limits for construction where they are not yet defined in previous land use regulations.

On the contrary, the prior communication procedure is usually applied to urban planning operations where previous regulations (including land use plans, allotment plans, or execution units duly densified) concerning the area where the urban planning operation is going to take place have been approved, and specific rules for the works to be carried out have therefore been set out.

Please note that, in accordance with the RJUE as amended by Decree-Law no. 10/2024, of January 8, the developer cannot opt for the licensing procedure for urban planning operations subject to prior communication procedure.

Preservation works, defined by the RJUE as those designed to maintain a building under the conditions existing at the time of its construction, reconstruction,

expansion or alteration, namely restoration, repair or cleaning works, are exempted from any licensing or prior communication procedures, except in buildings that have been, or are on the verge of being classified (for instance, as a public monument or of public interest) and buildings located on sites that have been classified or are about to be classified. However, works in buildings or units that improve, do not harm, or do not affect the structural stability, that do not involve changes to the floor heights, the shape of facades, the shape of roofs or coverings, and that do not involve the removal of facade tiles, regardless of their facing the public road or courtyard, are also exempted from municipal licensing. In addition to internal works, there are also others of small urban importance (*obras de escassa relevância urbanística*), which are not subject to any prior control procedure.

The deadlines set out for each of these procedures will be addressed below.

LEGAL REQUIREMENTS FOR OBTAINING A CONSTRUCTION LICENSE

(a) Licensing procedure

The main stages for obtaining a construction license in Portugal are:

(i) initial application;

(ii) preliminary approval of the application by the municipality;

(iii) consultation of public entities outside the municipality;

(iv) approval of the architectural project;

(v) final approval; and

(vi) issue of the construction license title – "*Alvará*".

The licensing procedure starts with the presentation of an application by the developer, made in writing to the municipality, attaching all the documents required by law, including architectural projects, with several drawings and specifications.

The municipality then proceeds with a preliminary review of all the documentation presented in order to decide whether the request be approved or not. The municipality has a general term of 8 business days to proceed with the preliminary review of the initial request. As of 3 March 2024, this deadline will be extended to 15 business days. This deadline may, however, be extended (for a single time for a period of 15 business days) if the municipality requests any additional or missing information from the developer.

The municipality must, at the same time through the respective electronic platform, and if the application is not denied, request statements from any external entities that have, by law, to issue their opinion on the project, such as environmental authorities or health and safety authorities. These entities have, in general, 20 business days to issue their opinion. If they do not issue an opinion within this period, the project is deemed to have been approved by such entities. In cases in which the opinions from certain public entities are mandatory, due to the location of the project, the consultation period may pass from 20 to 40 days or the deadline may be specifically set under a special legal regime.

After the external entities have been consulted, or after the deadline for their opinion has elapsed, the municipality has a 30 business day period for the approval of the architectural project presented by the developer.

Once this is approved, the municipality asks the developer to present the engineering projects, which must include electric, water and sewer connections. The developer has a deadline of 6 months to present this project, which may be extended on a once-only basis for a period of 3 months. If the engineering projects are not presented within these deadlines, the procedure is suspended for a maximum of six months. After this period, the procedure may be declared expired (which may only occur after the developer's hearing).

Alternatively, the engineering projects may be presented at the same time as the architectural project, with the initial request. This is an option for the developer in the licensing procedure, which should shorten the deadlines and make the licensing procedure faster.

Pursuant to the submission of the engineering projects, the municipality must decide on final approval within a 45 or 30 business day period, depending on the

type of operation. Decree-Law No 10/2024 amended this framework by establishing new rules for final approval deadlines, providing greater certainty for developers. Depending on the project typology, the final decision must be issued within a period ranging from 120 to 200 days from the application's submission. This amendment takes effect on 3 March 2024. The non-decision within the mentioned deadlines results in the tacit approval of the request. Currently, it is possible to obtain a certificate attesting to its occurrence through a dematerialized electronic platform, under the competence of the Agency for Administrative Modernization, I.P.

Once the license is approved by the municipality, the developer has one year to pay the corresponding fees and request the issuance of the construction license title (called "*Alvará*") from the municipality, which may be extended only once. This is an essential step, as it is only with this title that the license comes into effect, allowing the commencement of the construction and initiating the deadline to complete the construction works. The deadline to complete the construction works may also be extended, upon a reasoned request from the developer, only once and for a period not exceeding half of the initial period, in cases where it is not possible to complete the works within the timeframe specified in the license. Failure to request the "*Alvará*" within the above-mentioned term may lead to the municipality declaring the expiration of the license (which can only occur after the developer's hearing).

Starting on 3 March 2024, the described regime will undergo significant changes. With the enactment of Decree-Law no. 10/2024, *(i)* "*Alvarás*" are completely eliminated, and *(ii)* limitations on the possibility of extending the deadline for the completion of the work are removed. Thus, once the license is issued, and the respective fees are paid (within one year from its issuance, with no possibility of extension), the deadlines to complete the construction works commence. However, extensions are allowed (without limitations) when it is not feasible to complete the work within the specified timeframe, subject to a reasoned request from the developer.

Please note, however, that, at the request of the developer, the municipality may issue a partial license allowing work to begin on the structure of the building immediately after the filing of all the detailed plans. In this situation, the

architectural project must be approved and a deposit is to be made to cover possible demolition should the municipality deny the request for construction.

(b) Prior communication procedure

As referred to above, the prior communication procedure is another form of municipal control over urban planning operations. The applicable law provides that this procedure be applied to urban planning operations where a previous regulation, concerning the parameters to be complied with, has been approved, whether through municipal land use plans, or by previous municipal decisions.

The works must follow this procedure, which consists of a statement sent by the developer to the municipality, with the description of the works to be carried out, attaching the drawings and specifications required by law. The Municipality has a period of 8 business days, that as of 3 March 2024 will be extended to 15 business days, to assess the completeness of the prior communication. After that deadline and should there be no notification regarding the lack of documentation in the prior communication, the developer may start the works upon payment of the necessary fees. The prior communication title is constituted by the notice presented to the respective municipality and the proof of payment of the applicable fees.

(c) Prior Information

This procedure allows a developer to request a preliminary assessment from the municipality regarding the feasibility of certain urban planning operations, before presenting the licensing/prior communication procedure.

The prior information procedure covers a wide range of issues, including types of procedures to follow (licensing, prior communication, or even exemption from prior control – the latter will apply to certain typologies of projects after the entry into force of Decree-Law no. 10/2024), feasibility of the operation, existence of public restrictions or servitudes, estimates for municipal fees and taxes to be paid, or any conditions to be applied to the envisaged operation.

The main advantage of the prior information procedure, among many others, is that the decision from the municipality is binding during a one-year period, counting from a favorable decision during the prior information procedure. This one-year

period may be extended for an additional year if the Municipality approves such an extension. With the enactment of Decree-Law no. 10/2024, the duration of validity for favorable prior information will be extended to two years, maintaining the possibility of an additional extension for one-year period. Other advantages are shorter approval deadlines and doing without the consultation of external authorities if they have been consulted during the prior information procedure.

- **What fees are involved?**

It is not possible to calculate, abstractly, the amount of fees for a construction project. The fees are calculated in accordance with the dimension of the project as a whole. According to the law, Municipalities must determine the amount of the fees for construction in accordance with the applicable legal criteria, and in accordance with municipal regulations (referred to above). These taxes and fees can therefore vary from municipality to municipality.

G. Contracts

- **Can the investor freely enter into local contracts?**

In broad terms, an investor can freely enter into local contracts.

- **Can the law of another country govern the contracts?**

Contracts entered into in Portugal can be governed by the law of a foreign jurisdiction. The relevant law is Regulation (EC) no. 593/2008, of June 17, applicable to relations between European Union Member States and the 1980 Rome Convention on the law applicable to contractual obligations, applicable to relations with other states.

Both laws mentioned stipulate that a contract can be governed by the law chosen by the parties. However, when all other elements relevant to the situation at the time of the choice are located in a country other than the country whose law has been chosen, the parties cannot prevent the application of any mandatory provisions in that other country's law. Notwithstanding, there are some specific provisions that cannot, in any case, be derogated from by the parties, such as provisions concerning employment contracts and consumer contracts.

H. Price Controls

- **Are there applicable price controls?**

As a general rule, Portugal has abolished most price controls. However, they remain in effect in certain activities, including: *(i)* supply of electricity and gas to end consumers by last resource suppliers; *(ii)* postal services, under the universal postal service; *(iii)* "social" funeral services;[9] *(iv)* medicines for human use; *(v)* taxi services; *(vi)* water supply for human use; (vii) telecommunication services under the universal service remit; and *(vii)* school manuals for primary and secondary education.

I. Product Registration

- **Must the entity register its product?**

In general terms, there is no need to register products in Portugal in order to market and sell them. Many products have associated legislation that regulates their characteristics and quality and labelling, packaging, storing, transportation and so forth, but, as a rule, there is no registration obligation, *per se*.

Naturally, there are several exceptions to the above general rule, which are warranted due to the special and specific nature of the product in question. The prime example of this would be pharmaceutical drugs or cosmetics that need to be registered with the Portuguese Pharmaceutical Authority (INFARMED), before they can be sold in Portuguese territory. Likewise, some dangerous chemical products, explosives and pesticides also need to be registered, as do some products that benefit from a special status (*e.g.*, traditional local agricultural produce such as Port wines).

It is important not to confuse the registration of a product with the registration of the ownership of a product, as is the case, for example, for cars, motorcycles, boats, planes and guns.

[9] Basic funeral service at a low price.

- **If so, how is registration obtained?**

For a product that does need to be registered (when taking into consideration the vast universe of products in the market), registration typically involves providing a public, regulatory or overseeing authority with a complete file on it and, occasionally, samples of the same. The said authority then analyzes the file in order to see if it complies with the law and can be placed on the market. If authorized, the company must then typically keep precise records of the batches of products produced and the buyers to whom they are sold.

- **How long does the process take?**

The time taken to analyze a product and the cost of this procedure typically depend on the product in question and whether it has already been authorized to be sold in another European Union Member State.

- **Are there fees involved?**

There are normally fees, especially at the preliminary analysis stage. It is advisable to seek information on this on a case by case basis.

J. Reductions or Return on Capital

- **Can capital be repatriated while the corporation is still ongoing?**

Yes.

K. Sale of Goods

- **Are there restrictions on the manner, time or place of sale of goods?**

In general there are no restrictions on the sale of goods. However, the sale of certain goods such as alcohol, tobacco, weapons and pharmaceutical products, is subject to specific licensing, which governs the manner, time and place of sale.

L. Trade Associations

- **Are there trade associations an investor can or must join?**

There are trade associations which an investor can freely join, although this is not mandatory. The major Portuguese trades associations are the Lisbon Trade Association/Portuguese Chamber of Commerce and Industry, which provides a wide range of services, such as issue of international documents, promotion of commercial relationships, database, technical support (economic-financial, legal, customs, information on setting up companies and investment projects), professional training, publications, room hire, commercial arbitration center and mediation center, and the Portuguese Business Confederation (CIP – *Confederação Empresarial de Portugal*), a business organization that represents the interests of Portuguese businesses. It provides a platform for businesses to engage in dialogue with the government, participate in policy discussions, and stay informed about regulatory changes.

- **If so, are there fees involved?**

Yes, the associates must pay an annual fee.

- **Are there mandatory trade practices?**

There are no mandatory trade practices in Portugal.

X. CESSATION OR TERMINATION OF BUSINESS

A. Termination

In Portugal, a business can be terminated without government approval or intervention.

The termination of the legal existence of a company is a two-step procedure: dissolution and liquidation. Dissolution consists in a change in a company's legal situation in which it enters into a termination process, which then leads to the company's entering into liquidation. Liquidation aims at the cessation of a company's business and involves the payment of its debts, the collection of its credits, the conversion of its assets into cash if necessary, and a proposal for distribution of any remaining assets in cash or in kind, as applicable, to the shareholders.

DISSOLUTION

Under Portuguese Law a company can be dissolved in any situations foreseen in its by-laws and also *(i)* at the end of the term of its duration; *(ii)* following the complete fulfillment of its corporate purpose; *(iii)* due to a supervening illegality of its corporate purpose; *(iv)* if it is declared insolvent; or *(v)* by a shareholders resolution.

Shareholders may resolve on a company's dissolution *(i)* at their own discretion; *(ii)* to acknowledge any of the events referred to in items *(i)* to *(iii)* above or *(iii)* when *(a)* for more than one year the number of shareholders is lower than the minimum legally required, except if one of the shareholders is a public legal entity or an entity that is legally comparable thereto; *(b)* the corporate purpose becomes impossible to fulfill; *(c)* the company has not carried out any activity for two consecutive years; or *(d)* the company is carrying out an activity not included in its corporate purpose.

These last causes of dissolution also constitute, together with other causes specified in the Legal Framework of the Administrative Procedures for Dissolution and Liquidation of Commercial Entities approved by Decree-Law no. 76-A/2006, of

March 29, a basis for a company's shareholders and creditors, amongst others, to request the administrative dissolution of it to the Commercial Register.

In addition to this voluntary dissolution procedure, the law foresees an *ex officio* procedure to be carried out by the Commercial Register whenever, amongst other causes, *(i)* a company has not filed its financial statements for a period of two consecutive years, and the tax authorities inform the registrar that it has not filed its income tax return for the same period; *(ii)* the tax authorities inform the registrar of the lack of activity of a company, as verified in accordance with the provisions of the applicable tax legislation; *(iii)* the tax authorities communicate to the registrar that a company's activities have ceased *ex officio*, as defined by the provisions of the applicable tax legislation.

If a dissolution is triggered by a shareholder's resolution, the company, as a rule, enters a liquidation process and the directors (or the liquidators) should request the registration of the dissolution by the Commercial Register.

The Portuguese Companies Code allows for a simplified procedure to be adopted for the termination of companies which have no debts or liabilities and only assets, referred to as dissolution with immediate distribution of assets (*partilha imediata*). Tax liabilities that are not due and payable on the date of the dissolution are not a restriction to adopting this procedure. However, in this case, the Portuguese Companies Code establishes that shareholders will be joint, severally and unlimitedly liable for any possible tax debts. This simplified procedure provides for a simple liquidation, which consists of a mere distribution of assets between the shareholders, the terms of which should be drawn-up in the relevant resolution. The registration of this resolution with the Commercial Register will thus be sufficient to terminate the company.

If a company does not own any assets or have any debts or liabilities, an even more simplified procedure for termination may be adopted – immediate dissolution (*dissolução na hora*). This procedure is filed with the Commercial Register and allows for an immediate dissolution and liquidation of the company, provided that a request for dissolution and liquidation is filed by all shareholders or by any shareholder or member of the board of directors holding the relevant unanimous resolution of the shareholders making express reference to the non-existence of assets and debts or liabilities to liquidate. Once the request is filed, the Registrar

declares the dissolution and the termination of the liquidation of the company and makes the relevant registration.

LIQUIDATION

(i) General Aspects

As a general rule, a company which has been dissolved and which has debts (or debts and assets) immediately enters into liquidation. From then on the liquidators handle all liquidation formalities and the distribution of the company's assets among the shareholders.

Prior to the beginning of the liquidation operations, the company's financial statements, up to the date of the dissolution, must be prepared by the management within 60 days from the dissolution and approved by the shareholders.

During the liquidation process all debts for which the company's assets are sufficient are to be paid or guaranteed. After all debts have been paid or guaranteed, the remaining assets can be distributed to the shareholders. The assets can be distributed in kind if the by-laws allow for such distribution or if the shareholders unanimously decide to do so.

The company's liquidation has to be completed and the distribution of assets approved within two years following the date of the dissolution, although a shorter period of time can be defined in the company's by-laws or by a shareholder resolution. The two-year term can only be extended by a shareholder resolution and for a maximum of one year. If at the end of this period the registration of the termination of the liquidation has not been filed, the competent Commercial Register shall initiate *ex officio* the administrative liquidation procedure.

The Portuguese Companies Code allows for a simplified procedure of liquidation to be adopted – liquidation by global assignment (*liquidação por transmisssão global*) – by which the shareholders may resolve that all the company's assets and liabilities are assigned to one or some of them, with the remaining shareholders paid in cash, provided that the assignment is preceded by written consent of all the company's creditors.

(ii) Liquidators

Unless the by-laws or a shareholders' resolution provide otherwise, the company directors are the liquidators. Nevertheless, the shareholders may replace the liquidators at any time or appoint other liquidators. If there is no agreement concerning the appointment, any shareholder, the board of auditors or any company creditor can request the relevant Commercial Register to appoint a liquidator.

The liquidators have the duties, powers and responsibilities of the company's directors. Additionally, the shareholders can authorize the liquidators to: *(i)* temporarily carry on with the company's activity; *(ii)* enter into any loan agreements necessary to progress with the liquidation of the company; *(iii)* proceed with the total disposal of the company's assets; *(iv)* transfer the undertaking as a going concern.

In accordance with the Portuguese Companies Code, liquidators must *(i)* conduct any pending business of the company; *(ii)* fulfil all the company's obligations; *(iii)* claim the company's credits; *(iv)* convert any residual assets into cash, except if otherwise stated in the by-laws or unanimously decided by the shareholders; and *(v)* present a proposal for the distribution of the company's assets.

Within the first three months of every year, liquidators must present a statement of the liquidation accounts, including a detailed report of the status of the liquidation for the shareholders' approval. Liquidators must also submit for the shareholders' approval the final accounts of the liquidation with a complete report describing the liquidation and the results of the liquidation operations, together with a plan for the distribution of the remaining assets. In this report the liquidators must also state and guarantee that all creditors' rights have been fulfilled or guaranteed, and that all the respective receipts or evidentiary documents are available for examination by the shareholders.

When the company's liquidation is concluded, the liquidators must request the registration of the termination of the liquidation by the Commercial Register, indicating a tax representative and depository of the company books. The company ceases to exist with such registration and the Commercial Register notifies *ex officio* the National Register of Legal Entities (*Registo Nacional de Pessoas Coletivas*), the tax authorities, and social security of its termination.

(iii) Administrative Liquidation Procedure

This liquidation procedure takes place at the Commercial Register and is initiated by the request of an interested party (the company, its creditors, etc.) or *ex officio* by the registrar amongst other causes *(i)* following an administrative dissolution carried out *ex officio*, or *(ii)* when the deadline for the termination of the liquidation has expired.

The Registrar appoints one or more liquidators in cases where a company has not made such appointment and sets out a deadline of no more than one year for the liquidation, extendable only once for an equal period.

Within 30 days after conclusion of the liquidation, the liquidators must present their final accounts and plan for distribution of the remaining assets. The Registrar notifies the interested parties and invites them to comment on the final accounts and on the plan for distribution of the remaining assets within 10 days. Once the accounts are duly approved, all liabilities are liquidated, and the remaining assets are distributed according to the rules applicable, the Registrar declares and registers the termination of the liquidation.

The law provides for a special *ex officio* liquidation procedure, whereby the Registrar immediately declares the closure of the liquidation of the entity, namely when the interested parties have not communicated the company's assets or liabilities to the Registrar or if no assets or liabilities are found to be outstanding.

- **What are the tax consequences of termination the business?**

For companies in liquidation, the taxable profit is determined by reference to the whole period of liquidation. It should be noted that:

(i) Companies that are dissolved should close their accounts with reference to the date of dissolution to determine the taxable profit from the beginning of the accounting period in which the dissolution occurred to the date of dissolution;

(ii) Throughout the period of liquidation and until the end of the accounting period immediately preceding its completion, a provisional annual

determination of taxable profit should be made, which is then adjusted after the taxable profit for the entire liquidation period has been determined;

(iii) In the accounting period in which the dissolution occurs the profit referred to in *(i)* above and the profit mentioned in the first part of *(ii)* are to be determined separately;

When the liquidation period exceeds two years, the provisional taxable income determined annually in accordance with point *(ii)* above shall cease to be of a provisional nature.

Any loss incurred prior to the date of dissolution that is still deductible under the Companies Income Code (CIRC) may be deducted from the taxable income for the entire period of assessment, given that it does not exceed two years.

Where assets are divided among the shareholders, when determining the net proceeds of liquidation their value, is taken to be the market value.

The value assigned to each shareholder as a result of the distribution of the liquidation proceeds must be included in his total reported income, reduced by the purchase price of the corresponding shares. In computing total income for the purposes of taxing the difference in question it should be noted that:

(i) The difference, if positive, is considered income from the application of capital to the extent of the difference between the value assigned to it and that shown in the accounts of the liquidated company, with any excess being regarded as capital gain;

(ii) The difference, if negative, is considered a capital loss, being deductible only if the shares have remained in the ownership of the taxpayer throughout the three years immediately preceding the date of dissolution, and the amount that exceeds the tax losses has been transferred in the implementation of the special taxing of groups of companies, provided that the entity is not a resident in a country, territory or region with a clearly more favorable tax regime as set out in a list approved by order of the Minister of Finance.

For shareholders of companies covered by the system of fiscal transparency, the value assigned to them as liquidation proceeds is reduced by the amounts already imputed to them and assessed for purposes of taxation, together with the part corresponding to retained earnings in the company in the accounting periods in which it has been subject to that regime.

- **What costs are involved in termination?**

The registration costs of a termination depend on the procedure adopted, ranging between EUR 300 and EUR 525 and depending on whether there is real estate to be assigned to the shareholders, which involves a notarial deed and taxes (Municipal Tax on the Transfer of Immovable Property – IMT – and Stamp Duty).

B. Insolvency/Bankruptcy

- **What is the extent of an investor's liability in the event of insolvency or bankruptcy?**

In general, the liability of investors towards a company's creditors depends on the type of company that is going insolvent.

When the company which is going insolvent is a general partnership, the investors are subsidiarily liable for the payment of the company's creditors and jointly and severally liable among themselves for such payment. This means that if after the liquidation of the company's assets the proceeds of such liquidation are not enough to make full payment to all creditors, they can demand the payment of the amounts that remain unpaid from each and all of the investors.

If the insolvent company is a private limited company, the investors are not liable for the company's debts. Their liability is limited to the amount of their shares and this is the general rule. The articles of association may, however, provide that one or more investors may be liable to the creditors but limited to a given amount.

If the insolvent company is a limited liability company, the investors are not liable for the company's debts. Their liability is limited to the amount of their shares.

There is however a particular case where an investor may be held primarily and unlimitedly liable for a company's debts whatever type of company it is. This may happen when *(i)* the company has been reduced to a sole proprietor (investor), *(ii)* the company has been declared insolvent, or *(iii)* the interested creditors prove that, during the "sole proprietor period", there has been a breach of the provisions aimed at ensuring that the company's assets are used to discharge its debts. If *(i)*, *(ii)* or *(iii)* occur, the "sole proprietor/investor" may be held primarily and unlimitedly liable for the company's obligations entered into during the "Labor Permits". Please refer to Chapter VII, Section G above.

Besides liability for the payment of the company's debts in the above-mentioned circumstances, there are also two cases where an investor may be jointly and severally liable with the manager(s)/director(s) or member(s) of the supervisory body for any acts of the latter resulting in the company's insolvency. These are cases of extra-contractual civil liability of the investor towards the company and other investors. While insolvency proceedings are pending, the person entitled to bring an action for extra-contractual civil liability of the investor is the insolvency administrator.

INVESTOR LIABILITY FOR *CULPA IN ELIGENDO*

An investor may be found jointly and severally liable with the manager(s) of the company if the following requirements are met:

(i) Pursuant to the by-laws, the investor has the right, alone or jointly with others with whom he has signed a shareholder's agreement, to appoint a manager without needing the consent of the other investors;

(ii) The manager appointed is found liable towards the company or the investors; and

(iii) It is proven that the investor who appointed the said manager has *culpa in eligendo*.

INVESTOR'S LIABILITY FOR DECISIVE INFLUENCE

An investor may also be found jointly and severally liable with the person he is entitled to dismiss or call for the dismissal of, if the following requirements are met:

(i) The investor is permitted, either by contractual rights or because of the number of votes he holds, either alone or jointly with others with whom he has signed a shareholder's agreement, to dismiss a manager, director or member of the supervisory body, or call for their dismissal;

(ii) The investor exercises undue influence to cause that person to commit an act or to omit an act; and

(iii) Because of that act or omission that person is found liable towards the company or its partners.

- **What choices, if any, are available to an investor with regard to the restructuring of a business?**

An insolvency plan constitutes an alternative to full liquidation of the debtor's property and it is characterized by the prevailing of the creditors' will (by opting for full liquidation of the insolvent entity's property under the terms of the Insolvency and Corporate Recovery Code (CIRE), under the terms of the insolvency plan or opting for the continuation of the business and the restructuring of the company under the ownership of the debtor or of third parties under the terms of a plan).

An insolvency plan may be submitted by the insolvent, by the insolvency administrator, by the creditors, or by the person legally responsible for the insolvent entity's debts. An investor can therefore make some choices about restructuring the business if it is he who is responsible for the insolvent entity's debts; otherwise he will only, in limited circumstances, be given a chance to request that the judge not approve the insolvency plan that has been submitted by the insolvent company, the insolvency administrator or by the creditors.

On May 20, 2012, a special revitalization process (*Processo Especial de Revitalização* – PER came into force. This process, inspired by the US Chapter Eleven (Bankruptcy Code), begins with a request presented by a debtor company

citing economic difficulties or merely an imminent insolvency situation. This is a swift process, designed to trigger negotiations between a debtor and its creditors to reach an agreement that will enable the economic recovery of the former.

The structure of this special revitalization process allows for a certain degree of latitude concerning what is agreed to by the parties – debtor and creditors. However, the negotiation process must be overseen by a provisory judicial administrator, designated by the competent court.

Once a special revitalization process is established not only may no creditor judicially claim repayment of any debts from the debtor, but moreover any claims already presented by creditors are suspended. The special revitalization process also suspends any insolvency proceeding already initiated against the debtor.

If negotiations conclude with the approval of a recovery plan for the debtor, this plan is then submitted to a court for confirmation or rejection by a competent judge. The decision of the judge binds all creditors, including those who did not participate in the negotiations.

The closure of the negotiations without any agreement between the parties may lead the competent court to declare the debtor's insolvency if the debtor is in fact in an insolvency situation.

The special revitalization process may also be activated with the presentation by the debtor of an extrajudicial recovery agreement signed by a qualified majority of the creditors. The judge must then confirm this agreement provided that all formal requirements are met.

The Extrajudicial Company Recovery Regime ("*Regime Extrajudicial de Recuperação de Empresas*", hereinafter "RERE") also aims at recovering companies which are near-insolvent or in economically difficult situations, by promoting the negotiation and approval of a financial restructuring agreement between the company and its creditors that allows the former to continue to exercise its economic activity. The RERE is filed at the Commercial Registry Office by the company jointly with creditors holding at least 10% of all non-subordinated credits. Contrary to what happens in the PER, if a given creditor does not accept the restructuring agreement, his claim will remain untouched. A restructuring agreement, if

approved, is only therefore effective in relation to those creditors who have adhered to the RERE and who have approved the agreement.

During a RERE, and unless otherwise agreed by the company and the creditor in question, enforcement proceedings are extinguished only if they were initiated by one of the creditors who have adhered to the RERE.

XI. LABOR LEGISLATION, RELATIONS AND SUPPLY

A. Employer/Employee Relations

- **What laws govern employer/employee relations?**

The Portuguese Constitution enshrines the right to employment and a principle that limits cases of dismissal and forbids the termination of employment agreements without just cause (Articles 53 and 58). Other important provisions regarding employees' rights are laid out in Article 57(1) (the right to strike) and Article 59(1), which provides for other employees' fundamental rights, such as the rights to a fair/equitable salary, a rest period, annual paid leave and safety and health protection.

The Portuguese Labor Code currently in force was approved by Law no. 7/2009, of February 12 (PLC), subsequently amended. There are other laws that regulate specific areas of labor relations such as: Law no. 102/2009, of September 10, which sets out the safety and health at work regime; Law no. 105/2009, of September 14, which enhances the PLC in certain matters, such as working time, professional training, student employees, annual reporting on the company's social activity and absences due to illness; and Decree-Law no. 260/2009, of September 25, which sets out the legal framework for the exercise and licensing of private placement agencies and temporary employment agencies.

- **Are there obligations to train employees?**

According to Portuguese law, permanent employees are entitled to receive a minimum of 40 hours of professional training per year; employees hired under a fixed-term employment agreement (for a period of at least three months) are entitled to receive a minimum number of professional training hours in a year, proportional to the duration of the agreement in that year.

Except when employing less than ten employees, employers shall draw up an annual or pluriannual professional training plan based on a previous diagnosis of employees' needs. This plan should be implemented in consultation with the employees'

representatives, if any (*e.g.*, the work council or, in the absence thereof, (inter) union committee or union delegates).

Moreover, employers are required to provide the professional training due every year to at least ten per cent of their employees.

According to the law, the professional training hours that are not provided by the employer within two years after the relevant training year will be converted into a credit of hours (equal to the number of training hours that are lacking) for the employee to attend professional training during working hours at his own initiative. The right to claim this credit elapses after a three-year period.

Upon termination of an employment agreement (for whatever reason), the employee is entitled to receive the remuneration corresponding to the number of professional training hours that were not provided by the employer plus the unused credit of hours for professional training.

B. Employment Regulations

- **Must the investor hire nationals of the country?**

Although there is no obligation to hire nationals, there are certain formalities to be complied with if hiring foreign employees. There are two main kinds of foreign employees: EEA (European Economic Area) employees (employees with EEA citizenship) and non-EEA employees. Adhering to the principles of the European Union, EEA employees may work in Portugal under the same conditions as nationals. Notwithstanding concrete regimes foreseen in international bilateral conventions entered into between Portugal and other countries, the admission of non-EEA employees is regulated by Law no. 23/2007, of July 4, as subsequently amended, thus being subject to somewhat strict requirements, notably the need for a prior authorization from a Portuguese Embassy or Consul located in the origin country and from Portuguese Foreign and Border Services (*Serviço de Estrangeiros e Fronteiras*/SEF).

- **Is there a minimum wage?**

The minimum monthly legal wage is currently EUR 820 according to Decree-Law no. 107/2023, of November 17, except in Madeira (where it is EUR 850) and Azores (where it is EUR 861).

- **Is there a maximum number of hours an employee can work each week?**

As a rule, the maximum working period is of eight hours per day and 40 hours per week. However, collective bargaining may set out a lower maximum working period.

In addition, the implementation of an adaptability regime, by virtue of collective bargaining agreements or individual employment agreements, enables employees to work up to 60 or 50 hours per week (equivalent to 12 or 10 hours per day), respectively. Likewise, a bank of hours regime set out in a collective bargaining agreement or implemented pursuant to a company referendum can also allow employees to work up to 60 or 50 hours per week (equivalent to 12 or 10 hours per day), respectively, up to certain thresholds.

The average period of work rendered by an employee must be measured by reference to different periods set out in the law, either in the adaptability or bank-of-hours regimes.

- **Is there a minimum number of vacation and sick days to be granted?**

22 working days of vacation per year are mandatory, as stated in Article 238 of the PLC. However, collective bargaining may provide for longer holiday leave.

There is neither a minimum nor a maximum limit of permissible absences due to illness, but a suspension of the employment contract takes place when an employee is absent from work due to illness for a period of more than thirty continuous days. Additionally, employees are entitled to be absent from work *(i)* for up to 30 days per year or during the whole period of hospitalization to assist children under 12 years old or, regardless of their age, children with a disability or chronic disease, *(ii)* for up to 15 days per year to assist children above 12 years old, *(iii)* for up to 15 days per year to assist other family members (for instance, husband or wife). Please note

that Portuguese law provides for other specific leaves and justified absences (such as adoption leaves, pregnancy interruption leaves, wedding leaves, bereavement leaves, candidate for public office absences, absences justified by the need to attend academic exams, and others).

C. Hiring and Firing Requirements

- **Must the investor employ a minimum number of people?**

There is no minimum number of employees that a company must have. The PLC only regulates companies in terms of their size, qualifying them as micro (when employing less than 10 employees), small (when employing between 10 and 49 employees), medium (when employing between 50 and 249 employees) and large (when employing 250 employees and over).

Specific legal requirements may apply depending on the number of employees employed, particularly with regard to hiring people with disabilities, implementing whistleblowing and anti-harassment policies, and organizing occupational health and safety systems, amongst others.

- **Must the investor employ a minimum number of nationals?**

There is no limit of any kind as regards the minimum number of nationals hired.

- **Must nationals hold certain positions in the company?**

In Portugal there are no minimum requirements as to the number of employees the employer must hire. There is no obligation whatsoever in the private sector to hire or retain national citizens in any position in the company.

- **Are there rules to follow in hiring/dismissing personnel (*e.g.*, notice)?**

Although a written contract is not strictly required for an individual to be considered a permanent employee, the hiring of employees is usually made under a written employment contract. In effect, executing an employment contract is recommended not only in order to include employer-friendly provisions (*e.g.*, confidentiality and other restrictive covenants), but also to ensure compliance with

the employer's information duties (since there is a series of pieces of information of which an employee should be informed in writing – *e.g.*, start date, the job position and main duties comprised therein, remuneration paid, collective bargaining applicable, etc.).

On the other hand, employers should make sure that legally required onboarding procedures are observed, notably in terms of cover under an accidents insurance policy, scheduling of a health and safety medical exam upon admission, and reporting the new hiring to social security in a timely manner.

As regards the termination of employment agreements, Portuguese law tends to be strict. In effect, an employer may only unilaterally terminate an employment agreement as follows:

DURING THE PROBATION PERIOD

Termination of an employment agreement by either of the parties during the probation period does not require the communication of grounds and no indemnity is due. The maximum terms for the probation period are foreseen by law (periods which vary between 15 and 240 days, depending on the type of activity performed by the employee and nature of the agreement, *i.e.*, whether it is a permanent or term employment agreement). Prior notice is only required when the probation period lasts longer than 60 days (unless otherwise agreed).

Collective bargaining may provide for other rules regarding probation periods, notably as regards their maximum duration.

Moreover, it is important to note that the probation period provided by law may be reduced or even excluded depending on the duration of either a previous fixed-term contract for the same activity, a temporary employment contract for the same job, or a professional internship within the same activity.

DISMISSAL ON DISCIPLINARY GROUNDS

Dismissal for disciplinary reasons is only lawful for a very limited range of reasons, mainly if an employee is guilty of committing a serious offense, which makes it impossible to maintain the employment relationship (*just cause*).

An intentional behaviour by an employee that, due to its seriousness and consequences, makes it immediately and practically impossible to maintain the labor relationship, constitutes just cause for dismissal.

The following actions by an employee may be considered *just cause* under Portuguese law:

(i) Illegitimate disobedience of lawful orders given by superiors;

(ii) Breach of rights and guarantees of other employer's employees;

(iii) Repeatedly provoking conflicts with other employees;

(iv) Repeated lack of interest in performing, with the required level of care, the duties inherent to the position or work post entrusted to the employee;

(v) Serious damage caused to company assets;

(vi) False statements to justify absences;

(vii) Unjustified absences from work which cause direct damage or serious risks to the company or, regardless of any damage or risk, when the number of unjustified absences in any calendar year reaches five successive or ten interrupted absences;

(viii) Intentional non-compliance with health and safety at work rules;

(ix) Physical violence, insults or other offences punishable by law, committed at the workplace towards other employees, members of corporate bodies or the individual employer not belonging to such bodies or his delegates or representatives;

(x) Kidnapping and in general committing any crimes against the freedom of the persons referred to above;

(xi) Breach or refusal to comply with court or administrative decisions and acts;

(xii) Unusual reduction of productivity.

An employer may only dismiss an employee with cause following a disciplinary proceeding, which is subject to very strict formalities and shall occur *(i)* within 60 days after the employer becomes aware of the infraction and *(ii)* within 1 year from the date of the infraction itself (unless the facts also constitute a crime, in which case the applicable statute of limitations period is the one foreseen in criminal law).

Should the court find a dismissal unlawful, the employee is entitled to the salary due between the date of dismissal and the date of the last court decision (interim wages), plus, at his choice, either: *(i)* reinstatement to the company or *(ii)* an indemnity equal to the amount fixed by the court at between fifteen and forty five days of base remuneration and seniority premium (if applicable) per year of service or fraction thereof, with a minimum of three months of remuneration.

Pregnant, puerperal or breastfeeding employees and employees who are on a parental leave cannot be dismissed without the employer first consulting the Commission for Equality in Work and Employment (*Comissão para a Igualdade no Trabalho e no Emprego*). This commission is allowed 30 days to issue a written opinion on the dismissal. Should the commission's opinion be contrary to the dismissal, the employer has to file a lawsuit in court if he wishes to obtain a court authorization to dismiss. If the court finds the dismissal unlawful, the employee is entitled to the salary due between the date of dismissal and the date of the court's decision, plus, at his choice, either: *(i)* reinstatement to the company or *(ii)* an indemnity equal to the amount fixed by the court at between thirty and sixty days of base remuneration and seniority premium (if applicable) per year of service or fraction thereof, with a minimum of six months of remuneration.

The collective bargaining agreement applicable to a company may contain rules that change the regime described above in a manner more favorable to the employee, notably concerning the amount of the indemnity due in case of unlawful dismissal.

COLLECTIVE DISMISSAL

The closing down of a company or of one or more of its departments or a reduction in personnel for market, structural or technological reasons provide grounds for collective dismissal, as long as these grounds affect at least two or five employees,

depending on whether the company has less than 50 employees or more than that, respectively.

By market reasons Portuguese law means the reduction of a company's activity caused by a decrease in demand for its goods or services or the impossibility, whether legal or practical, of placing those goods or services on the market. An economic-financial imbalance, a change in activity, the restructuring of the business organization and the replacement of the company's main products may constitute structural motives. Technological motives relate to changes in production techniques, automation of production tools, computerization of services or automation of means of communication.

The termination of a labor agreement must first follow a formal procedure and then may only be decided after the employees affected, their representative bodies and/or governmental entities have been mandatorily informed and consulted. The final dismissal decision must respect a prior notice that goes out within 15 to 75 days, depending on the employees' seniority.

Again, the proposed dismissal of pregnant, puerperal or breastfeeding employees and employees on a parental allowance is not allowed without previous consultation of the Commission for Equality in Work and Employment (*Comissão para a Igualdade no Trabalho e no Emprego*). This commission has 30 days to issue a written opinion on a dismissal and, should its opinion be contrary to it, the employer needs to file a lawsuit in court to try to obtain the court's confirmation of the existence of grounds and authorization to dismiss.

Employees subject to dismissal are entitled to a compensation set out in the law. As a general rule, employees hired as of 1 May 2023 are entitled to a compensation equal to 14 days of base salary and seniority premiums (if applicable) per year of service (fractions of year to be calculated proportionally). The global compensation resulting therefrom cannot exceed 12 times the base monthly salary plus seniority premiums or 240 times the national minimum wage.

Notwithstanding the above, given that the statutory compensation due in the event of an objective dismissal has been successively changed over the last few years, other calculation formulas (ranging from 12 to 30 days of base salary and seniority

premiums per year of service or fraction thereof) may apply depending on an employee's seniority and length of contract.

Until the employment termination date, the employer has to pay the employee the said compensation, plus all labour credits accrued and payable up to the effective termination date. There is a legal relative presumption that employees accept the termination of their employment contract when they receive the compensation at the time of termination and do not return it immediately.

Should the reasons for a decision to dismiss not be demonstrated or should the employer fail to comply with the procedural requirements (including the payment of the legal compensation), the termination of the labor agreement is considered unlawful and the employee is entitled to the salary that was not received between the date of dismissal and the date of the court's last decision (interim wages) and may also choose between: *(i)* reinstatement in the company or *(ii)* an indemnity to be determined by the court at between fifteen and forty five days of base remuneration and seniority premium (if applicable) per year of service or fraction thereof, with a minimum of three months of remuneration.

LOSS OF LABOR POSITION DUE TO STRUCTURAL, TECHNOLOGICAL, ECONOMIC OR MARKET MOTIVES RELATED TO THE COMPANY

This regime is applicable only when a company lacks the grounds to proceed with a collective dismissal due to the number of employees involved (for example, a company with more than 50 employees wanting to close a division affecting only three employees).

If economic, technological or structural causes (as defined above) justify it, an employer can extinguish a job position. Even when the causes exist, the extinction of a job position may only determine the termination of the employment contract if maintaining the employment relationship would prove to be impossible, in that the employer fails to have an alternative job position compatible with the employee's professional category. Furthermore, the employer cannot extinguish a job position if there are employees hired under a term contract to carry out the duties corresponding to the job position(s) to be terminated.

The identification of the job position(s) to be eliminated should be made in accordance with the criteria set out by the law (in the following order: *(i)* worst performance evaluation, made with parameters previously known to the employees; *(ii)* lowest academic and professional qualifications; *(iii)* greatest onerousness imposed by the maintenance of the employment contract; *(iv)* least experience in the job; *(v)* lowest seniority in the company). These prior-ranking criteria only apply within the same section or structure.

The need to extinguish a job position and the consequent termination of the labor agreement must be provided in writing to each employee affected, and also to the employees' committee (or, in the absence thereof, to the (inter) union committee, if applicable). If the employee is a trade union member, the notification must also be sent to the respective trade union. A description of the reasons invoked for the extinction of the job position, identifying the section or the equivalent unit to which they refer, an indication of the employees affected and the respective professional categories, and an indication of the criteria used in selecting the employees to be dismissed must be attached to the notice.

After an information and consultation period, the termination of the labour agreement must be provided in writing to the respective employee(s) and to the employees' committee or, if there is no such committee, to the company's union or inter-union representative of the affected employee. The Labor Authority should also be provided with a copy of this final dismissal decision. The final dismissal decision must expressly contain: *(i)* the motive for dismissal; *(ii)* the confirmation of the cumulative occurrence of all the legal requirements that allow the termination of the employment agreement; *(iii)* evidence of the application of the criteria used in selecting the work position to be extinguished, if there has been an opposition to the same; *(iv)* the amount of compensation to be paid, as well as the place, date and manner of its payment; and *(v)* the date of termination of the agreement.

As in a collective dismissal, in this case the final decision must also respect a prior notice ranging between 15 to 75 days, depending on the employee's years of service.

The protection granted in case of dismissal of pregnant, puerperal or breastfeeding employees, the compensation to which an employee is legally entitled to as a consequence of the dismissal and the consequences of an unlawful termination are those described above under the collective dismissal regime.

DISMISSAL BASED ON THE EMPLOYEE'S FAILURE TO ADAPT

An employer may terminate a labour agreement if: *(i)* the employee's productivity and quality of output decrease continuously; *(ii)* repeated technical problems in equipment assigned to the job position occur; *(iii)* there are risks to the safety and health of the employee, other employees or third persons; or *(iv)* the employee taking on management functions or duties with a technical complexity fails to comply with objectives previously agreed in writing, provided that these circumstances make it practically impossible to maintain the labor relationship.

The grounds identified above may depend on the combining of several requirements, as the case may be, namely: *(i)* the introduction of new production and sales procedures or new technologies or equipment involving the job position; *(ii)* the employee is given adequate professional training and time to adapt to the new technologies; *(iii)* inexistence of another available job position that is compatible with the employee's professional category; and *(iv)* the situation of inadaptability does not result from the lack of safety and health conditions at work.

The termination of an employment agreement is decided following a formal procedure similar to the one described for the dismissal by extinction of a job position.

As in the above-described regimes, the final decision must also respect a prior notice that ranges between 15 and 75 days, depending on the employee's years of service.

The protection granted in case of dismissal of pregnant, puerperal or breastfeeding employees, the compensation to which an employee is legally entitled to as a consequence of dismissal and the consequences of an unlawful termination are those described above under the collective dismissal regime.

TERMINATION OF SPECIAL SERVICES (*COMISSÃO DE SERVIÇO*)

Labour agreements may be entered into under the special service regime should the functions which an employee carries out require special trust, such as administration functions or management functions directly dependent on the

administration or on the general management. This special regime may also apply to employees rendering secretarial duties to the holders of the aforementioned roles.

Following a prior notice of thirty or sixty days (depending on the special service regime lasting up to two years or more), an employer may freely terminate such services. Should an employee have been specifically hired under this special service regime (in the sense that the employee was not at the employer's service before that) or should an employee terminate the labor agreement further to the termination of the special service (given that the labor agreement can continue, regardless of the special service regime), the employee is entitled to compensation calculated on the same basis as in the event of a collective dismissal.

- **Does the investor have a continuing obligation towards dismissed employees?**

The employer has no legal obligation towards dismissed employees, as long as the termination was conducted lawfully.

D. Labor Availability

- **Is adequate skilled or unskilled labor available for the planned business?**

The answer to this question requires an analysis on a case-by-case basis.

In general, regarding the level of education of employees in Portugal, the Portuguese National Statistics Institute (INE) has published the following table:

ACTIVE POPULATION IN PORTUGAL BY LEVEL OF EDUCATION

Data reference period: 2022

Unit: thousands

	LEVEL OF EDUCATION			
Total number of employees	None	Up to basic education	Secondary and post-secondary education	Higher education
5222.6	23	1793.3	1632.9	1773.3

E. Labor Permits

- **Are labor permits required?**
- **If so, how are they obtained?**
- **How long does the process take?**
- **What fees are involved?**

Portugal is a member of the European Union, and as such, part of the European market. In principle, there are no special requirements, such as labor permits, for working in Portugal. However, certain business areas do require such permits, notably: transportation (land, sea and air), restaurants and quarries. The time required to attain a permit varies and fees may be payable.

With regard to employees, certain functions require specific academic or professional qualifications (doctors, lawyers, etc.), the possession of a professional license (for instance, journalists) or a certificate of the individual's ability to operate certain equipment (for example, drivers of vehicles).

Permits, certificates and professional licenses are granted by the respective professional associations (for example, the Bar Association), governmental entities or trade unions. The time required to get the permits varies and fees may be payable.

F. Safety Standards

- **Are there safety codes that must be followed?**

Portuguese labor safety law focuses on three main aspects: prevention, reparation of damages and punishment of offenders. There are two main statutes regarding safety: Law no. 102/2009, of 10 September, containing the legal regime on health and safety at work, and the Labor Accidents and Professional Diseases Law approved by Law no. 98/2009, of 4 September. The Criminal Code provides for the punishment of employers who violate employees' safety statutes and regulations in Article 152-B. For certain activities, like construction, there are laws and regulations imposing specific obligations on employers.

There is a general obligation on employers to ensure, the prevention of professional risks, and the provision of medical services, both internal and/or external to the company. Given that employers benefit from their employees' labor, the law's perspective was to make employers liable. Failure to comply with these statutes and regulations can lead to serious consequences, such as heavy fines and even prison. The law encourages employers to develop internal safety rules beyond those required by law.

Employers are responsible for accidents that take place during working hours and at the workplace, and for diseases from which an employee suffers because of the exercise of his professional activity, and even when the accident or the illness is not caused by the employer. An employer's responsibility is predominantly linked to the obligations to provide initial aid to the employee, to indemnify the employee for damages suffered, and to provide him with a job position suited to his condition. User companies and contracting entities are also liable for ensuring proper health and safety conditions for individuals working in their premises and may be jointly liable with an employer for the damages suffered by employees and their families because of a breach of health and safety provisions.

G. Unions

- **Are unions recognized?**
- **What unions are there in an investor's business?**
- **What are these unions' political affiliations, if any?**

Unions are recognized and regulated under Portuguese law. The respective regime is mostly ruled by the Portuguese Constitution (Articles 55 and 56) and by the PLC (Articles 404 to 475).

Portuguese law recognizes each employee's right to affiliation, which means that the employees may become members and leave any trade union representing their professional activity, and also set up a different trade union with other employees.

Portuguese trade unions cover almost all existing professional activities: in theory, therefore, all employees may be unionized. However, unionization rates are quite low.

There are two main associations of trade unions in Portugal: the CGTP-IN (*Confederação Geral dos Trabalhadores Portugueses – Intersindical Nacional)* and the UGT (*União Geral de Trabalhadores*). These associations of trade unions, although formally independent, are connected to left wing political parties, mainly the socialist (PS) and the communist (PCP) party.

- **Is there an obligation on the part of the employer to organize unions?**

Employers are not obliged to organize unions. On the contrary, employers are legally prevented from interfering with unions' activity, even with the purpose of promoting, supporting or financing trade unions.

- **Are there mandatory collective bargaining agreements for the business involved?**

There are several collective bargaining agreements ruling all different kinds of activities, and it is most likely that a new investor will come to the conclusion that his area of activity is already regulated by such an agreement, either because it was negotiated by the relevant employer association, or because it has become applicable by virtue of a mandatory governmental decision.

XII. TAX ON CORPORATIONS

A. Allowances

- **What are the major allowances (*e.g.*, capital cost depreciation)?**

All fixed assets, except land, can be depreciated or amortized for tax purposes.

METHODS

As a general rule, fixed assets are depreciated under the straight-line method. However, a taxpayer may opt for application of the declining-balance method for new tangible fixed assets – which are, other than those already being used when acquired, buildings, private passenger cars (unless used for public transportation or in a rental business), office furniture, uniforms and comparable items.

Except for buildings and private passenger cars, depreciation must be carried out on the basis of classes of items of a similar nature with a similar level of utilization.

The unit cost below which assets may automatically be written off in the year of acquisition or production is currently EUR 1000.

BASE

The base for depreciation is the historic cost (of acquisition or production), the revalued net value (as determined by the application of official revaluation coefficients) or the market value on the date of the opening of the book-keeping in cases where the historic cost is unknown.

RATES

Under the straight-line method the maximum depreciation is calculated by applying the specific depreciation rates set out below, or the general rates (for assets used in activities for which no specific depreciation rates are set out).

General maximum rates of depreciation are, *inter alia*:

(i)	Office buildings	*2%*
(ii)	Industrial buildings	5%
(iii)	Light construction (fiber, glass, wood, zinc)	10%
(iv)	Electronic equipment	20%
(v)	Computers and compressors	33.33%, 25%
(vi)	Ordinary tools and fittings	25%
(vii)	Engines and heavy machine tools	12.5%
(viii)	Portable machine tools	20%
(ix)	Motor vehicles	12.5%, 25%, 14.28%, 20%, 25%
(x)	Software	33.33%

Under the declining-balance method, annual depreciation is calculated by applying the rates applicable under the straight-line method, increased by:

(i) 50%, if the useful life is less than five years

(ii) 100%, if the useful life is five-six years

(iii) 150%, if the useful life is more than six years

- **What are the major deductible items?**

The general rule on business expenses is that a deduction is allowed for all expenses borne by a taxpayer for the production or maintenance of taxable income.

Items which are expressly mentioned as tax allowable expenses are:

(i) Costs of production or purchase of goods or services on revenue account, such as materials, labor, energy and other manufacturing, conservation and repair costs;

(ii) Costs of distribution and sales including transportation costs, advertising and other merchandise delivery costs;

(iii) Financial costs such as loan interest, discounts given, brokers' fees, transfers, differences in exchange rates, costs of credit operations, debt collection, costs of issuing shares, bonds and other securities, reimbursement premiums and costs? Arising from the application of the effective interest method to financial instruments registered by the amortized cost;

(iv) Administrative costs such as remuneration, including allocations under profit sharing, daily subsistence allowances, material consumption, transport and communications, rents, litigation, insurance, contributions to funds for retirement savings, contributions to pension funds and any supplementary social security, and spending on employment termination benefits and other post-employment benefits for long-term employees;

(v) Cost of analysis, efficiency, research, consultancy and development projects;

(vi) Taxes and social security contributions;

(vii) Depreciation and amortization;

(viii) Impairment losses and provisions;

(ix) Expenses resulting from the application of fair value criteria to financial instruments and consumable biological assets other than multiannual forestry holdings;

(x) Capital losses; and

(xi) Indemnities paid if the risk is not insurable.

- **What are the major expenses that are excluded from deductibility?**

The following items are disallowed as deductible expenses or losses for corporate income tax purposes:

(i) Corporate income tax itself and any other taxes directly or indirectly imposed on profits;

(ii) Amounts reflected in documents issued not in accordance with the applicable criteria, as well as expenses substantiated in documents issued by taxpayers bearing a non-existent or invalid taxpayer identification number or by taxpayers whose cessation of activity has been declared or whose commencement of activity has not been declared;

(iii) Illicit expenses arising from acts which are reliably expected to be violations of Portuguese criminal law even if carried out outside Portuguese territorial jurisdiction;

(iv) Any taxes and other expenses imposed on third parties that the company is not legally obliged to incur;

(v) Fines, penalties and other expenses of a non-contractual character imposed for any infringements by a corporate taxpayer;

(vi) Compensations received in respect of the occurrence of insurable events;

(vii) *per diem* expense allowances and payments for travel of an employee in a car on his employer's service, not invoiced to customers, regardless of how they were accounted for, where the employer does not possess, for each payment made, a schedule whereby it is possible to check the journeys to which those expenses are related, showing the respective cases, the duration of stay, purpose, and in the case of travel in a worker's own vehicle, the identification of the vehicle and its owner, plus the distance, except to the extent that they have been subjected to taxation under the personal income tax of the respective beneficiary;

(viii) expenses not duly documented, which are not only non-deductible, but are separately subject to a 50% surtax. The 50% charge is increased to 70% where such expenses are incurred by either totally or partially exempt corporate taxpayers or by entities not carrying on a commercial, industrial or agricultural activity;

(ix) Amounts due for rental of self-drive passenger or mixed-use vehicles to the extent of the amount of depreciation of such vehicles that would not be deductible;

(x) Fuel costs, to the extent that a taxpayer cannot prove that they relate to assets forming part of his fixed assets, are used under lease agreements and that the amount spent does not exceed normal consumption levels;

(xi) Interest and other means of payment regarding shareholders' loans and loans made by members to a company to the extent that they exceed an amount corresponding to the reference twelve month euribor on the day the debts are created, or another rate defined by order of the minister of finance that uses such rate as a reference;

(xii) Expenses relating to recreational boats and passenger airplanes, not destined for public transportation or rental activities within a taxpayer's business activity;

(xiii) Capital losses relating to recreational boats, tourism airplanes and light passenger vehicles or vehicles for the combined transport of passengers and goods that are not allocated to a public transportation service or meant for rental within the scope of a taxpayer's activity, except for the tax depreciable amount not yet accepted as a deductible tax expense;

(xiv) Expenses relating to profit sharing by members of the governing bodies and the company workers, whenever such amounts are not paid or made available to the respective beneficiaries by the end of the following tax period;

(xv) Expenses relating to profit sharing when the beneficiaries own, directly or indirectly, at least one per cent of a company's share capital in an amount

exceeding twice the value of the monthly salary earned in the taxation period to which the profits in which they share relate;

(xvi) Contribution on the banking sector;

(xvii) Extraordinary contribution on the energy sector;

(xviii) Extraordinary contribution on the pharmaceutical sector; and

(xix) Amounts paid or due under any title to physical or legal persons deemed as tax residents in a blacklisted jurisdiction or through bank accounts of bank entities registered or domiciled in the said jurisdiction, unless the taxpayer can prove that such amounts are payments for effectively arm's length transactions.

B. Calculation of Taxes

- **How is the taxable base calculated?**

GENERAL CONCEPT OF TAXABLE INCOME

Resident companies and permanent foreign establishments in Portugal are generally subject to corporate income tax (IRC) on their total income. Non-resident companies without a permanent establishment are generally liable to corporate income tax only on their Portuguese-sourced income, including capital gains.

The corporate income tax code (CIRC) classifies taxable income in four categories:

(i) The profits of taxable entities which carry on an activity of a commercial, industrial or agricultural character;

(ii) The global revenues of resident entities not carrying on an activity of a commercial, industrial or agricultural character;

(iii) The profits attributable to Portuguese permanent establishments of non-resident entities;

(iv) Revenues of various types, defined for purposes of the IRS (personal income tax), received by non-resident entities not liable to IRS.

COMPUTATION OF TAXABLE INCOME

The tax base is made up of the net profit for the year plus certain changes in equity not included therein (essentially premiums on bond issues), less allowable prior year losses, and tax incentives. Profit is defined in balance sheet terms as representing the difference in net equity at the beginning and end of the accounting period, adjusted in accordance with the CIRC rules.

The determination of taxable profits is conducted, whenever possible, using a *direct method* of computation based on the corporate taxpayer's return and accounting records; and, if this is not possible, an indirect method of computation based on circumstantial evidence.

Under the direct method, net taxable profit is the amount resulting from computing the net total turnover for the year and certain changes in equity not included therein, determined based on the taxpayer's accounting records.

The determination of taxable profits under an indirect method is carried out by the district director of taxes and is based on all the information available to the tax administration and more specifically:

(i) Average gross or net profit margins;

(ii) Average rates of return from investments;

(iii) Technical ratios of consumption and utilization of raw materials and other direct costs;

(iv) Information and reports from third parties relating to any taxes;

(v) Exercised activity location and dimension;

(vi) Presumed costs considering activity's specific conditions;

(vii) Taxable income determined in previous exercises;

(viii) services or goods provided at market value;

(ix) Consistent and justified relation between the facts ascertained and taxpayer's specific situation.

An indirect method may be applied only after it has been established that as a result of certain findings an accurate direct calculation of the tax payable is not possible.

FOREIGN-SOURCE INCOME OF RESIDENT COMPANIES

Resident entities are taxable on all income accruing to them, whether sourced in Portugal or abroad.

EXCLUSIONS FROM THE TAXABLE BASE

The following items are excluded from the taxable base:

(i) Contributions by shareholders and participants to the capital of a company, including the amount of premiums received on corporate shares, any contributions to capital for purposes of offsetting losses made by shareholders or participants, and any changes in equity arising from transactions on shares or other equity instruments;

(ii) Unrealized capital gains, even if they are shown in the balance sheet;

(iii) Contributions made within the scope of partnership agreements, including those made by an associate to the company for the purpose of offsetting losses;

(iv) Gains arising from income taxes;

(v) Capital increases arising from mergers, spin-offs, transfer of assets or exchanges of shares in the beneficiary company, excluding the part corresponding to the cancellation of shares held in the share capital of a merged or demerged company.

C. Capital Gains

- **What are the federal or national tax rates on capital gains?**

GENERAL

Capital gains realized by resident companies, including the Portuguese permanent establishments of non-resident companies, are generally included in taxable profits and are taxed at the normal rate. Capital gains include both *voluntary* capital gains, *i.e.*, gains from the sale or exchange of fixed assets or the appropriation of a company's fixed assets for any purpose unrelated to the operation of the business, and *involuntary* capital gains, *i.e.*, gains realized on compensation for expropriation and on indemnification for a disaster or theft.

COMPUTATION OF CAPITAL GAINS

The gain is the amount by which the proceeds from a divestiture exceed the cost of acquisition. The acquisition cost of fixed assets (including shares and comparable interests in companies and real estate, but excluding other financial investments), is deducted from the depreciation and amortizations made for tax purposes and, if divested after an ownership period of more than two years, may be adjusted for inflation in accordance with the index coefficient for the year of acquisition.

PARTIAL EXEMPTION FROM TAX ON CAPITAL GAINS

Capital gains from tangible fixed assets held for more than one year are exempt from 50% of the tax if the total consideration received is reinvested in the tax year prior to that in which the capital gains are obtained or within two years of such disposal, in the purchase, manufacture or construction of other tangible fixed assets, biological assets (if not consumable) or investment properties, provided that they are not purchased from entities with whom a special relationship exists *(relações especiais)*. If only part of the consideration is reinvested, then only the corresponding part of the gain qualifies for exemption, and the remaining shall be considered taxable income over the two year period aforementioned above, at a tax rate of 15%. Any unrecognized gain is deducted from the acquisition cost of an asset, thereby effectively reducing depreciation allowances and increasing capital gains in a future disposal.

RATES

The general corporate income tax rate for resident companies and Portuguese permanent establishments of non-resident companies, which is applicable to capital gains, is 21%.

PARTICIPATION EXEMPTION REGIME

Capital gains arising from the disposal of shares are exempt from corporate income tax (IRC) if the following conditions are met:

(i) Regardless of the percentage of share capital represented by the shares that are being transferred, the transferor must have held shares representing at least 10% of the share capital or voting rights of the entity for at least one year before the transaction;

(ii) The transferor must not qualify as a look-through company for IRC purposes;

(iii) The company whose shares are being transferred must be subject to, and not exempt from, Portuguese IRC, a corporate income tax referred to in Article 2 of Directive 2011/96/EU or any tax of a similar nature to Portuguese IRC. In the last two cases, the tax rate applicable to the entity must not be less than 60% of the Portuguese IRC rate;

(iv) The company whose shares are being transferred must not be resident or domiciled in a tax haven.

However, the participation exemption does not apply (and therefore capital gains are taxed and capital losses can be deducted) if more than 50% of the assets held, directly or indirectly, by the entity whose shares are being transferred are real estate located in Portuguese territory. Real estate properties allocated to an agricultural, industrial or commercial activity (other than the sale of real estate) are not relevant for this purpose. Additionally, the participation exemption will not apply if certain anti-abuse provisions are triggered in a specific case.

TAX NEUTRALITY

Capital gains arising from mergers, spin offs, transfers of assets and exchanges of shares may also not be subject to IRC on the moment of the relevant transaction, provided that the requirements for tax neutrality are met.

According to this regime, the assets transferred as a result of the said transactions should be registered in the accounts of the beneficiary company with the same book value that they had in the accounts of the contributing company.

Additionally, note that the tax losses, tax incentives and net financing costs of contributing companies may be transmitted to the beneficiary company.

- **What are the regional or state taxes on capital gains?**

N/A.

- **What are the municipal or local taxes on capital gains?**

N/A.

D. Filing and Payment Requirements

- **When must the corporation file its tax return, if any?**

Corporate taxpayers are required to file, over the internet, a final annual tax return for a given year by the last day of May of the following year, whether a working day or not. When its financial and tax years do not coincide with the calendar year, a company is required to file its final return up to the end of the fifth month after the date of the end of such tax period.

Non-resident entities maintaining a permanent establishment in Portugal are obliged to file a tax return in the same way as resident entities.

Non-resident entities without a permanent establishment in Portugal or with income not attributable to a Portuguese permanent establishment, must also file the above-mentioned tax return whenever their income from Portuguese source is

not subject to a final withholding tax. The tax return must be filed by the end of May of each year regarding real estate income not derived from its transfer or within 30 days from the date in which the taxpayer ceased to receive such real estate income. As regards income derived from the transfer of real estate, the tax return must be filed within 30 days from the date of disposal. Finally, regarding accretions to net worth arising from acquisitions that are free of charge, the tax return must be filed within 30 days from the date of acquisition.

Corporate taxpayers are required to file an annual statement of accounting and tax information (*Informação Empresarial Simplificada*) that must be submitted over the internet by 15 July each year in accordance with the rules and accompanied by the annexes mentioned for this purpose in the relevant form.

- **When must the corporation pay its taxes?**

The tax collection procedure has two stages, namely: *(i)* the voluntary payment stage which expires on the last day of the period set for the submission of the annual tax return, *i.e.*, on the last day of May each year and *(ii)* the enforced collection stage. If a taxpayer fails to pay within the voluntary period, the Tax Authorities issue a debt-claim certification on the grounds of which they can proceed against the taxpayer's property.

Advance payments on account of corporate income tax (IRC) for the current year are required to be made by resident corporate taxpayers in July, and on 15 September and 15 December of that year. For companies that have chosen a different tax period, the payments must be made in the 7th and 9th months and on the 15th day of the 12th month of their reporting period. The advance payments should equal 80% of the amount of tax assessed in the preceding year, when their turnover for the preceding year is equal to or less than EUR 500,000, and 95% of that amount when the turnover for the preceding year is more than EUR 500,000, divided into three equal instalments and rounded up to the nearest euro. The remaining tax liability must be paid upon filing the annual tax return by the end of May of the following year (or by the end of the 5th month after the date of closing of the reporting period for foreign permanent establishments which have opted for a different tax reporting scheme). Any excess payment must be refunded within three months of the mandatory filing date, unless the corporate taxpayer chooses to set the refundable amount against future IRC liabilities.

- **Are taxes paid in instalments or annually?**

As a rule, corporate income tax (IRC) is paid annually, without prejudice to advance payments that are due as per the previous topic, which will ultimately be deduced to the final IRC amount.

If authorization from the competent tax authorities is obtained, a taxpayer can pay its IRC liability in a maximum of 36 monthly instalments, commencing after the prescribed deadline for voluntary compliance but prior to any commencement of proceedings for forced collection. In such a case, the taxpayer must make adequate payment of the total tax liability plus applicable interest on late payment. Payment of the IRC liability must be done in Euros, in cash, or by check, postal money order or interbank transfer. The tax administration must send a payment receipt to the taxpayer.

E. Miscellaneous Taxes Due

- **Is there a tax on capital?**

Please refer to sections B and C above.

- **Is there a business license tax?**

No.

- **Is there an apprenticeship tax?**

No.

- **Is there a training tax?**

No.

- **Are there other taxes?**

MUNICIPAL TAX ON THE TRANSFER OF IMMOVABLE PROPERTY (IMT)

A municipal tax on the transfer of immovable property (IMT) is levied on the transfer of real estate located in Portugal. It is payable by a purchaser on the higher between the price paid and the taxable value of the property for municipal tax on immovable property (IMI) purposes.

IMT rates for corporate taxpayers are:

(i) 1% to 8% for urban property exclusively destined for residential purposes;

(ii) 6.5% for the transfer of urban property destined for other purposes than residential;

(iii) 5% for rural property;

(iv) 10% for urban or rural property if the purchaser is a resident of a listed tax haven or if the purchaser is an entity owned or controlled by another entity which is a resident of a listed tax haven.

Tax exemptions may apply in some specific cases, such as acquisitions for urban rehabilitation or acquisitions for resale purposes.

MUNICIPAL TAX ON IMMOVABLE PROPERTY (IMI)

A municipal tax on immovable property (IMI) is levied annually on immovable property located within each municipality. It is levied on the registration value of buildings, plots of land or rural land.

IMI tax rates are:

(i) 0.3% to 0.45 % for urban buildings;

(ii) 0.8 % for rural property;

(iii) 7.5 % for urban or rural property held by a resident of a listed tax haven or by an entity which is owned or controlled by another entity which is a resident of a listed tax haven.

IMI AND IMT TAX BENEFITS FOR URBAN REHABILITATION

Immovable property more than 30 years old or located in an urban rehabilitation area, that undergoes rehabilitation works and improves its preservation status by at least two levels as a result of such works may benefit from an IMI exemption for a three year period counting from the date of conclusion of the rehabilitation works.

Such exemption may be renewed for a five year period provided that the property is used as a permanent home or is leased for permanent home purposes.

Acquisitions of such properties may also be exempt from IMT, provided that the construction works start within three years from acquisition.

The first sale of a property after rehabilitation may also be exempted from IMT provided that the same is acquired to be used as a permanent home or leased for permanent home purposes.

The aforementioned tax benefits should be recognized by the territoriality competent City Council.

STAMP DUTY

Stamp duties are levied on all acts, deeds, documents, securities, books, papers and other events occurring in Portugal listed in the Stamp Duty Code and not subject to VAT, including gratuitous acquisitions of real estate located in Portugal.

ADDITIONAL MUNICIPAL TAX ON IMMOVABLE PROPERTY (AIMI)

An additional municipal tax on immovable property (AIMI) may be annually levied on immovable property located in Portugal, at a rate of 0.4% for companies and 0.7% for natural persons. The tax is levied on the registration value of urban buildings held on 1 January of each year.

Notwithstanding the above, urban properties deemed as destined for "trade, industry, or services" and "others" are excluded from AIMI.

Additionally, if an entity that holds an urban property is resident in a listed tax heaven, the tax rate applicable is 7.5%.

In the case of urban properties owned by companies, for the personal use of shareholders, members of the board or of any administrative, management or supervision bodies, a rate of 0.7% is applied. To any part of a taxable amount that exceeds EUR 1,000,000 a marginal rate of 1% is applied.

- **What are the filing and payment requirements?**

MUNICIPAL TAX ON THE TRANSFER OF IMMOVABLE PROPERTY (IMT)

A taxpayer must file an official tax return in any local tax office or on the internet. The IMT assessment will then be prepared by the tax authorities and notified to the taxpayer, who, as a rule, must pay the tax due on the same date as the assessment or on the following working day. IMT is assessed and paid before the transfer of immovable property.

MUNICIPAL TAX ON IMMOVABLE PROPERTY (IMI)

IMI assessments are prepared by the Portuguese Tax Authorities and notified to the person registered as the owner or user of any form of immovable property on 31 December each year (the person liable to taxation). IMI is paid:

(i) In May of each year if the tax due is not higher than EUR 100;

(ii) In two instalments in May and November of each year if the tax due is higher than EUR 100 but not higher than EUR 500; and

(iii) In three instalments in May, August and November of each year if the tax due is higher than EUR 500.

ADDITIONAL MUNICIPAL TAX ON IMMOVABLE PROPERTY (AIMI)

AIMI assessment is issued by the Portuguese Tax Authorities during the month of June of the year to which the tax relates.

AIMI should be paid during the month of September of the year to which the tax relates.

STAMP DUTY

Stamp duty is paid by filing an official form charging document.

F. Registration Duties

- **Are there registration duties due upon the incorporation of a company?**

Yes. Please refer to chapter VII, section C (What costs and fees are involved?) above.

- **Are there registration duties due upon an increase in capital?**

Yes. Each increase in a company's share capital is subject to the payment of registration duty in the amount of EUR 225 or EUR 191.25 if the registration of the increase is requested online on http://www.portaldaempresa.pt/C VE/pt/EOL/.

- **Are there registration duties due upon the transfer of a company's shares?**

Yes. The transfer of LDA's shares (*quotas*) is subject to the payment of registration duty in an amount of EUR 100 or EUR 85 if requested on line at http://www.portaldaempresa.pt/CVE/pt/EOL/.

- **Are there registration duties due upon a transfer of corporate assets?**

The transfer of corporate assets, *e.g.*, immovable property, motor vehicles, boats and airplanes, is subject to the payment of registration duties, which vary in accordance with the assets transferred.

- **Are there any other registration duties due?**

Yes. Mergers and demergers, the dissolution of a company, the appointment of management bodies, statutory auditors and insolvency managers and, in general terms, all changes in a corporation's by-laws, plus all other facts subject to registration are subject to the payment of registration duty, as foreseen in the Notary and Register Fees Regulation approved by Decree-Law no. 322-A/2001, of December 14, as amended.

G. Sales Tax or other Turnover Tax

- **What is the sales tax system (*e.g.*, VAT, cumulative)?**

Portugal adopted a value added tax system by Decree-Law no. 394-B/84, of December 26, which approved the VAT Code (*Código do Imposto sobre o Valor Acrescentado*), in order to fulfil a condition of entry into the European Union. Pursuant to Law no. 2/89, of February 17, Decree-Law no. 195/89, of June 12, introduced amendments to the VAT Code in order to bring domestic legislation in line with both the Sixth EC Directive on VAT (Counsel Directive 77/388/EEC, of May 17) and the new personal income tax (IRS) and corporate income tax (IRC) codes.

VAT also applies to the importation of goods by any person, although a taxable person may be able to treat such VAT as an input tax and offset it against the output tax payable on any subsequent supply of goods.

- **Is input tax creditable against output tax?**

Yes. VAT is an indirect tax on the consumption of goods and services and is normally borne by the final consumer. This, in general, is accomplished by imposing a tax (referred to as "output tax") on each stage of production, wholesaling, retailing,

etc., but allowing the supplier to offset, against the output tax which he must pay, an amount equal to the tax (referred to as "input tax") which he has paid on his own acquisitions of goods and service supplies.

- **What are the tax rates?**

VAT is levied at a standard rate of 23%. In addition, an intermediate rate of 13% and a reduced rate of 6% are applicable to a range of goods and services. In the Azores, the rates are levied at 16%, 9% and 4%, respectively and in Madeira the rates are levied at 22%, 12% and 5% respectively.

- **What are the filing and payment requirements?**

VAT taxable persons must file a tax return over the internet and pay the VAT due:

(i) By the twentieth day of the second month following the one in which the taxable operation took place, when a taxable person's turnover for the previous year is higher than EUR 650,000;

(ii) By the twentieth day of the second month following the quarter in which the taxable operation takes place, when a taxable person's turnover for the previous year does not exceed EUR 650,000.

H. Social Security and Welfare System Contributions

- **Are social security contributions due?**

Employers are required to contribute an amount equal to 23.75% of an employee's monthly gross salary. This contribution has no ceiling.

Employers are also required to make contributions for members of their corporate boards at a rate of 20.3% or 23.75% in the case of corporate managers. The contribution base is subject to a ceiling of EUR 5,055.84.

- **Are retirement or pension contributions due?**

No.

- **Are unemployment insurance contributions due?**

No.

- **What are the filing and payment requirements for any such contribution?**

Employers are required to register for social security purposes by filing an official form in which they provide the social security services with information about their company such as identification data, number of establishments and number of employees. Whenever employees are hired or leave, an employer has the legal obligation to communicate such fact to the social security services, and file and deliver an official form.

Since social security contributions (both the contributions due from employers and the contributions due from employees) are calculated on an employee's gross salary, the total amount due is withheld by the employer before the salary is paid. In Portugal salaries are normally paid on a monthly basis in order to pay these social security contributions. Payments can be made in those banks that have a protocol with social security services for that purpose, at any social security treasury services or by mail, sent to the competent social security services.

I. Special Tax Schemes

- **Are there particular tax consequences of doing business in the country?**

No.

J. Tax on Profits

- **What are the federal or national income tax rates on profits?**

As regards taxes levied on profits, companies are liable for corporate income tax (IRC) at the general rate of 21%. Companies classified as small or medium sized enterprises are subject to a reduced tax rate of 17% on the first EUR 50,000 of their respective taxable income. Companies are also subject to an additional surcharge

by the state (*derrama estadual*) of 3% on taxable profits between EUR 1,500,000 and EUR 7,500,000; 5% on taxable profits between EUR 7,500,000 and EUR 35,000,000; and 9% on taxable income above EUR 35,000,000.

- **What are the regional or state tax rates on profits?**

N/A.

- **What are the municipal or local tax rates on profits?**

Most municipalities subject companies to a municipal surcharge (*derrama*) of 1.5% on all taxable profits subject to and not exempt from IRC.

K. Tax Treaties

- **Are there any applicable tax treaties?**

Yes. Portugal has concluded several bilateral tax treaties for the avoidance of international double taxation. Currently, the Portuguese network of double taxation treaties in force includes the following countries: Algeria, Andorra, Angola, Austria, Bahrain, Barbados, Belgium, Brazil, Bulgaria, Canada, Cape Verde, Chile, China, Colombia, Croatia, Cuba, Cyprus, Czech Republic, Denmark, Estonia, Ethiopia, Finland, France, Georgia, Germany, Greece, Guinea Bissau, Hong Kong, Hungary, Iceland, India, Indonesia, Ireland, Israel, Italy, Ivory Coast, Japan, Kuwait, Latvia, Lithuania, Luxembourg, Macao, Malta, Mexico, Moldova, Montenegro, Morocco, Mozambique, the Netherlands, Norway, Pakistan, Panama, Peru, Poland, Qatar, Romania, Russia, San Marino, São Tomé and Principe, Saudi Arabia, Senegal, Singapore, Slovak Republic, Slovenia, South Africa, South Korea, Spain, Sultanate of Oman, Switzerland, Timor-Leste, Tunisia, Turkey, Ukraine, United Arab Emirates, United Kingdom, United States of America, Uruguay, Vietnam and Venezuela.

Additionally, note that Portugal has signed a Double Tax Treaty with Kenya, although the same is not yet in force.

- **Are there any rules against treaty-shopping?**

Yes. Many of the tax treaties which Portugal has entered into restrict the application of the treaty as regards dividends, interest and royalty payments to those residents of both parties who are, simultaneously, the beneficial owners of the payments. This rule allows Portugal to exclude any nominees, agents and conduit companies, intentionally located in the territory of one of the parties in order to benefit from the tax treaty, from the scope of the tax treaties. Furthermore, Portugal has accepted the introduction of LOB (Limitation of Benefits) clauses in some of its treaties.

The Multilateral Instrument (MLI) was also ratified and approved by Portugal in 2019 and it applies to most of the Double Tax Treaties in force.

L. Territoriality Rules

- **Where is the corporation subject to tax?**

Since Portugal is not a Federation, corporations are always subject to corporate income tax (IRC) at a national level, wherever they are located within Portuguese territory.

- **Is the corporation subject to tax on its worldwide income?**

Resident corporations, together with foreign permanent establishments in Portugal, are generally subject to tax on their worldwide income while non-resident corporations without a permanent establishment are liable to tax on their Portuguese-sourced income.

A company is generally deemed resident in Portugal if it has its legal seat or place of management in Portuguese territory.

M. Treatment of Tax Losses

- **How are corporate tax losses treated?**

ORDINARY LOSSES

Operating losses incurred by normal corporate taxpayers for any financial year may be offset against taxable profits, if any arise, for one or more of the subsequent financial years, without limitation, up to 65% of the taxable profits of each accounting period. Operating losses of a company subject to fiscal transparency (other than ACEs and EEIGs) may only be offset against that company's taxable profits within the permitted period.

The deductibility of tax losses is denied in the event of a change in more than 50% of a company's shareholders.

Loss carry-backs are not allowed.

CAPITAL LOSSES

Capital losses are defined as losses from the sale or other disposal of business property. The IRC Code makes no distinction between ordinary losses and capital losses. Therefore, capital losses are deductible in computing taxable income for purposes of corporate income tax with the restriction made above regarding participation exemption rules. Therefore, if the participation exemption requirements are met the capital losses could not be deducted to taxable income.

N. Wealth Tax

- **Is there a wealth tax applicable?**

No.

O. Withholding Taxes

- **What are the rates of withholding tax on dividends?**

Domestic dividends are fully exempt in the hands of a resident corporate shareholder other than an entity subject to fiscal transparency if it has directly held either at least 10% of the distributing company's capital for an uninterrupted period of at least one year prior to the distribution (participation exemption). Distributions made before the expiry of the one-year holding period qualify for the relief, provided that the holding period requirement is subsequently met.

Furthermore, the distributing company must not be deemed tax resident in a listed tax heaven and must be subject to, and not exempt from, Portuguese IRC, a corporate income tax referred to in Article 2 of Directive 2011/96/EU, of November 30, or any tax of a similar nature to Portuguese IRC. In the last two cases, the tax rate applicable to an entity must not be less than 60% of the Portuguese IRC rate.

This regime will not be applicable if the distributing company is allowed to deduct amounts paid as dividends for tax purposes.

If the requirements to apply participation exemption are not met, the general withholding tax rate for dividends is 25% when paid to resident corporations (in such cases, the tax withheld is an advance levy of corporate income tax), and also 25% when paid to non-resident corporations.

If a non-resident corporation is considered resident in a listed tax heaven, the dividends distributed to it should be subject to IRC at a tax rate of 35%.

- **What are the rates of withholding tax on royalties?**

The general withholding tax rate for royalties – which include fees for technical assistance, know-how and leasing of agricultural, commercial, industrial or scientific equipment – is 25% whether paid to resident corporations (in such cases, the tax withheld is an advance levy of corporate income tax) or to non-resident corporations.

If a non-resident corporation is considered resident in a listed tax heaven, the interest distributed to it should be subject to IRC at the tax rate of 35%.

The payment of royalties may be exempt from withholding tax if the, beneficial owner is a company from another EU Member State or a permanent establishment in another Member State of a company of a Member State, and the royalties are payable or paid by commercial companies or civil companies in commercial form, cooperatives and state-owned companies resident in Portuguese territory or a permanent establishment situated therein of a company from another Member State in accordance with the regime established by Directive 2003/49/EC, of June 3.

If interest arises from debt securities, it may be exempt from taxation in Portugal, provided that the requirements established by Decree-Law no. 193/95, of November 7, as amended, are met.

- **What are the rates of withholding tax on profits realized by a foreign corporation?**

Fees for services supplied by foreign corporations in Portugal are subject to a withholding tax at the rate of 25%.

XIII. TAX ON INDIVIDUALS

A. Allowances

- **What are the major allowances?**

There are no personal allowances, but a taxpayer's personal and family situations are reflected in various tax credits.

B. Calculation of Taxes

- **How is the taxable base determined?**

The Portuguese individual income tax Code (IRS) separates taxable income into six categories and, as a rule, specific deductions are granted for computing the net result for each category. Tax is levied on the aggregate base of the income categories, less personal deductions.

Taxable income of individual taxpayers is calculated under the cash receipts and disbursements method. Income is taxable in the year in which it is actually received or made available to the taxpayer. Capital gains accrue in the year in which the transfer is made.

Income-spreading is allowed for some categories of income where a taxpayer in one year receives income generated over preceding years or income that should be carried forward to the following years. In such cases, the taxpayer may in his income tax return for the current year spread the amount of such income over the years in which it was generated.

C. Capital Gains Tax

- **Are capital gains taxable?**

Yes, capital gains are included in one of the six categories into which the IRS Code divides individual income (Category G). A positive result from capital gains

less capital losses is aggregated to the remaining income and subject to tax at the general rates. Notwithstanding, some specific categories of capital gain are subject to withholding tax at a flat rate of 28%.

For instance, capital gains arising from the sale of real estate are subject to the general rates with only 50% of a gain considered taxable income (on the other hand, in a scenario of capital losses only 50% of the same is deductible). However capital gains arising from the transfer of shares are subject to a flat rate of 28% of the whole amount of the gain.

Moreover, capital gains arising from the sale of a taxpayer's residence may be exempt from Personal Income Tax, provided that the amount received for such sale is reinvested, within the 24 months prior to the sale or the 36 months after the sale, in the acquisition of a new residence.

However, capital gains arising from the sale of securities shall be necessarily considered taxable income and subject to the general rates if such securities have been held by the taxpayer for less than 365 days and the taxpayer's total taxable income for that year is equal to or higher than EUR 78,834.

D. Filing and Payment Requirements

- **When must the individual file a tax return, if any?**

As a rule, individuals are required to file an income tax return with respect to the previous year. It must be filed between April 1st and June 30th of each year.

The tax assessment is usually made by the central tax authorities on the basis of the return. Assessments must be finalized by July 31st.

- **When must an individual pay his/her taxes?**

An individual income tax assessment is notified to the taxpayer, who must pay any tax due by August 31.

E. Inheritance and Gift Tax

- **Does the individuals' presence in the country subject him/her to inheritance or gift tax?**

Portugal has not had a specific Inheritance and Gift Tax since 2004, the year in which it was abolished. Notwithstanding, inheritances and gifts are still subject to tax under the Stamp Duty Code provisions. The Code stipulates that inheritances and gifts are subject to Stamp Duty whenever the assets inherited or acquired are located in Portugal. An individual's presence in Portuguese territory does not therefore determine, in itself, subjection to Stamp Duty for inheritances and gifts.

- **What kinds of asset are subject to tax?**

An inheritance or gift acquisition of the following assets is subject to Stamp Duty:

(i) Immovable property;

(ii) Movable assets subject to registration (such as motor vehicles, boats and airplanes);

(iii) Share capital, securities, bonds, certificates of public debt and money;

(iv) Commercial, industrial or agricultural establishments;

(v) Industrial property, royalties and related rights;

(vi) Shareholders' advances and loans, share capital supplementary contributions, monetary accessory contributions and other claims of shareholders on a company;

(vii) Amounts distributed as the result of the settlement, revocation or extinction of trusts to taxpayers that were not settlors of the same.

- **What are the tax rates?**

Assets inherited or acquired for no compensation are taxed at 10% of their value. The inheritance of immovable property or other rights *in rem* in immovable property is taxed with an additional 0.8% tax rate on the value of the real estate.

- **Are allowances available?**

The Stamp Duty Code does not provide for any allowance but there are exemptions for inheritances or gifts passing to descendants, ascendants and spouses.

- **What are the payment and filing requirements?**

A Stamp Duty assessment, when related to inheritances and gifts, is prepared by the tax authorities. The beneficiary of a gift or the person responsible for managing an inheritance must communicate to the tax authorities, by means of an official form, the occurrence of a gift or the decease of an inheritance predecessor respectively, by the end of the third month following the arising of the tax obligation (*i.e.*, the acquisition of the above described assets for no consideration or the opening of a succession). All beneficiaries of gifts or inheritances (even the ones that are tax exempt) must deliver such communication detailing the assets received.

The tax authorities will then notify the Stamp Duty assessment to taxpayers, who must pay the tax due by the end of the second month following the notification (when the amount of tax due is inferior to EUR 1000) or during the month in which each instalment is due. Payment in instalments (a maximum of ten) occurs when the amount of tax due exceeds EUR 1000. The minimum amount of each instalment is EUR 200.

F. Miscellaneous Taxes Due

- **What are the miscellaneous taxes to which the individual may be subject?**

MUNICIPAL TAX ON THE TRANSFER OF IMMOVABLE PROPERTY (IMT)

A municipal tax on the transfer of immovable property is levied on the transfer of real estate located in Portugal. The tax is payable by an acquirer on the higher of the price paid and the taxable value of the property for municipal tax on immovable property (IMI) purposes.

IMT tax rates for corporate taxpayers are:

(i) 1% to 8% for urban property exclusively destined for residential purposes;

(ii) 6.5 % for the transfer of urban property destined for other than residential purposes; and

(iii) 5 % for rural property.

Tax exemptions may apply in some specific cases, such as acquisitions for urban rehabilitation or for resale purposes.

STAMP DUTY

Stamp duty is levied on all acts, deeds, documents, securities, papers and other events that occur in Portugal and are listed in the Stamp Duty Code and not subject to VAT, including gratuitous acquisitions of real estate located in Portugal.

- **What are the filing and payment requirements?**

MUNICIPAL TAX ON THE TRANSFER OF IMMOVABLE PROPERTY (IMT)

A taxpayer must file, at any local tax office or on the internet, an official tax return form. The IMT assessment will then be prepared by the tax authorities and notified to the taxpayer, who, as a rule, must pay the tax due on the same date as

the assessment or on the following working day. IMT is assessed and paid before the act of transfer of immovable property.

STAMP DUTY

Stamp duty is paid by filing an official form charging document.

G. Real Estate/Habitation Tax

- **Is the individual subject to real estate or habitation tax?**

A municipal tax on immovable property (IMI) is levied annually on immovable property located within each municipality. The tax is levied on the registration value of buildings, plots of land or rural land.

IMI assessments are prepared by the Portuguese Tax Authorities and notified to the person registered as the owner or user of any form of immovable property on December 31 each year (the person liable to taxation). IMI is paid:

(i) in May of each year if the tax due is not higher than EUR 100;

(ii) in two instalments in May and November of each year if the tax due is higher than EUR 100 but not higher than EUR 500; and

(iii) in three instalments in May, August and November of each year if the tax due is higher than EUR 500.

IMI tax rates are:

(i) 0.3% to 0.45% for urban buildings; and

(ii) 0.8% for rural property.

IMI AND IMT TAX BENEFITS FOR URBAN REHABILITATION

Immovable property more than 30 years old or located in an urban rehabilitation area, that is subject to rehabilitation works and improves its preservation status by

at least two levels as a result of such works may benefit from an IMI exemption for a three year period counting from the date of conclusion of the rehabilitation works.

Such exemption may be renewed for a five year period provided that the property is used as a permanent home or is leased for permanent home purposes.

The said acquisition may also be exempt from IMT, provided that the construction works start within the three years following the acquisition.

The first sale of a property after its rehabilitation may also be exempted from IMT, provided that the same is acquired to be used as a permanent home or to be leased for permanent home purposes.

The aforementioned tax benefits should be recognized by the territoriality competent City Council.

ADDITIONAL MUNICIPAL TAX ON IMMOVABLE PROPERTY (AIMI)

An additional municipal tax on immovable property (AIMI) may be annually levied on immovable property located in Portugal. The tax is levied on the registration value of urban buildings held on January 1st of each year.

Notwithstanding the above, urban properties deemed as destined for "trade, industry, or services" and "others" are excluded from AIMI.

Individuals and undivided inheritances can benefit from a deduction of EUR 600,000 to their taxable base. Married taxpayers or those living in non-marital partnerships can benefit from a deduction of EUR 1,200,000 to their joint taxable base if they communicate such option to the Portuguese Tax Authorities between April 1st and May 31st of each year.

Properties that benefited from an IMI exemption in the previous year are excluded from the taxable base.

For individuals the tax rate applicable is 0.7% to taxable income higher than EUR 600,000 and up to EUR 1,000,000. The tax rate applicable to taxable income

higher than EUR 1,000,000 and up to EUR 2,000,000 is 1%. The rate applicable to taxable income higher than EUR 2,000,000 is 1.5%.

AIMI assessments are issued by the Portuguese Tax Authorities during the month of June of the year to which the tax relates.

AIMI should be paid during the month of September of the year to which the tax relates.

H. Sales Tax

- **Does an individual pay sales tax?**

Yes. Generally speaking, a person taxable for VAT purposes is any individual or corporate entrepreneur exercising an activity as producer, trader or supplier of services on a continuous and independent basis.

Portuguese VAT liability is imposed on the following persons:

(i) any person who, independently, carries out in any place any economic activity, whatever the purpose or results of that activity, or practices only one taxable transaction, provided that this operation is connected with such activities, wherever it occurs, or where, regardless of this connection, this operation is subject to corporate income tax or personal income tax;

(ii) any person who, according to customs legislation, is an importer of goods;

(iii) any person who unduly mentions VAT in an invoice or in a document of equivalent character;

(iv) any person who carries out intra-Community transactions;

(v) any person referred in *(i)*, who acquires certain categories of goods and services;

(vi) any person referred in *(i)* who acquires goods and services from providers that do not have a seat, permanent establishment, domicile or tax representative in Portugal.

I. Social Security and Welfare System Contributions

- **Are contributions to social security due?**

Employees must pay contributions to the social security system in an amount equal to 11% of their gross salary without any ceiling.

Member of corporate boards must contribute an amount of 11%, but the base of their contribution is subject to a ceiling of EUR 5,765.16 for all the companies where they hold office combined.

- **Are contributions to the welfare system due?**

No.

- **If so, what are the payment and filing requirements?**

N/A.

J. Stock Option, Profit Sharing and Savings Plans

- **Is there taxation of stock option plans?**

Yes. Gains derived from (a) stock option plans or other award schemes of equivalent effect, (b) securities or similar rights created for the benefit of employees or members of corporate boards, including those resulting from the disposal or financial settlement of options or rights or surrender of them in return for valuable consideration, to the employer or third parties, and (c) the repurchase by an employer of securities or similar rights, but, in any case, only to the extent that it is in the nature of a remuneration, and even if the gains arise only after termination of the employment relationship or term of office, are considered employment income for personal income tax purposes. For tax benefits regarding the taxation of stock option plans, please refer to Chapter III, Section C.

- **Is there taxation of profit sharing plans?**

Yes. Income earned by members of joint ventures and other profit-sharing associations together with liquidation proceeds attributed to members that are considered income from the application of capital by the IRC Code, and any amounts paid in respect received by a member after deducting any amount due by him in relation to his participation in an association, is subject to personal income tax.

In the case of profit-sharing associations, the profits of entities subject to corporate income tax (IRC) made available to shareholders or their associates, including advances on account of profits, are also subject to IRS.

- **Is there taxation of savings plans?**

Not as a rule. Notwithstanding, costs borne by an employer for insurance and life assurance, and contributions to pension funds, retirement funds or any supplementary social security schemes, provided that the rights are acquired and individualized and are specific to the respective beneficiaries, together with those that, not being acquired rights of specific beneficiaries, are liable to redemption, advance, repayment or any other form of advance to them, or in any case, to receipt of a capital sum, even where the requirements of the applicable compulsory social security systems are met for transition to retired status or it has already occurred, are considered employment income for personal income tax purposes.

K. Taxation of Benefits in Kind

- **What is the rate of taxation on benefits in kind (*e.g.*, automobile, housing and utilities, education, etc.)?**

There are no special tax rates for benefits in kind. All benefits in kind are accordingly taxed at the general tax rates mentioned in chapter M) below.

L. Taxes on Dividends

- **Are dividends taxable regardless of their form?**

Yes. All dividends paid to individuals are subject to personal income tax (IRS), regardless of their form. When paid to resident individuals, dividends are subject to a final withholding tax at the rate of 28%, except when a beneficiary chooses to aggregate the dividends with his remaining income. In such cases, the tax withheld will be considered an advance payment of the final tax liability and the dividend are subject to tax at the general personal income tax rate, of up to 48%.

As for dividends paid to non-residents, these are subject to a final withholding tax, regardless of their form, at a rate of 28%.

M. Tax on Income

- **What are the federal or national tax rates on income for residents?**

The general and progressive tax rate applicable to aggregated net income in 2023 varies from 13.25% for taxable income up to EUR 7,703 to 48% for taxable income higher than EUR 81,199.

Taxable income between EUR 80,000 and EUR 250,000 is also subject to an additional solidarity tax rate of 2.5% and taxable income above EUR 250,000 is subject to an additional solidarity tax rate of 5%.

In the autonomous region of Madeira, the above mentioned progressive rates run from 10.15% (on the initial EUR 7,703) to 47.52% (over EUR 81,199).

In the autonomous region of the Azores, the above mentioned progressive rates run from 10.15% (on the initial EUR 7,703) to 33.6% (over EUR 81,199).

Some types of income are subject to a final withholding tax at the rate of 28%. This is the case for, for example: *(i)* interest on demand deposits or time deposits, including certificates of deposit; *(ii)* income from debt securities, in nominative or bearer form, and from repo transactions, transfers of credit, securities accounts with a guaranteed price or other similar or related instruments; *(iii)* the profits of entities

subject to corporate income tax made available to shareholders or their associates, including advances on account of profits; *(iv)* liquidation proceeds paid to members that are considered income when applying the corporate income tax code; *(v)* income earned by members of joint ventures and other profit-sharing associations and any amounts paid in respect of the cancellation of shares without reducing the share capital; *(vi)* gains arising from foreign exchange swaps, interest rate swaps, combined interest rate and currency swaps and forwards foreign exchange contracts; *(vii)* the positive difference between the amounts paid on redemption, advance or maturity of insurance and life assurance policies and the related premiums paid or sums invested is also considered investment income, as is the positive difference between the amounts paid on redemption, remission or other form of early availability by pension funds or other supplementary social security schemes, including those made available by credit unions, and the related contributions, without prejudice to the provisions of the following paragraphs, where the amount of premiums, sums or contributions paid in the first half of the term of the contracts represents at least 35%; *(viii)* income from securities paid or made available to recipients resident in Portuguese territory by entities without a domicile there to which payment can be imputed through intermediaries that are mandated by the payers or the recipients or that act on behalf of either of them.

- **What are the federal or national tax rates on income for non-residents?**

The Portuguese-sourced types of income mentioned in the previous question, if paid to non-residents. are subject to a final withholding tax at the rate of 28%. Royalties, work and professional income, pension income, compensation in respect of damages, other than those to property, and excluding that awarded by any court or arbitrator or resulting from a court-approved agreement, or relating to unproven damages and loss of profits but only where these are intended to replace net benefits that are no longer receivable as a result of impairment, and sums received as consideration for the assumption of obligations not to compete, regardless of their source or designation, are subject to a final withholding tax at the rate of 25%.

- **What are the regional or state tax rates on income for residents?**

N/A.

- **What are the regional or state tax rates on income for non-residents?**

N/A.

- **What are the municipal or local tax rates on income for residents?**

N/A.

- **What are the municipal or local tax rates on income for non-residents?**

N/A.

N. Tax Treaties

- **Are there any applicable tax treaties?**

Yes. Portugal has concluded several bilateral tax treaties for the avoidance of international double taxation. Currently, the Portuguese network of double taxation treaties in force includes the following countries: Algeria, Andorra, Angola, Austria, Bahrain, Barbados, Belgium, Brazil, Bulgaria, Canada, Cape Verde, Chile, China, Colombia, Croatia, Cuba, Cyprus, Czech Republic, Denmark, Estonia, Ethiopia, Finland, France, Georgia, Germany, Greece, Guinea Bissau, Hong Kong, Hungary, Iceland, India, Indonesia, Ireland, Israel, Italy, Ivory Coast, Japan, Kuwait, Latvia, Lithuania, Luxembourg, Macao, Malta, Mexico, Moldova, Montenegro, Morocco, Mozambique, the Netherlands, Norway, Pakistan, Panama, Peru, Poland, Qatar, Romania, Russia, San Marino, São Tomé and Principe, Saudi Arabia, Senegal, Singapore, Slovak Republic, Slovenia, South Africa, South Korea, Spain, Sweden, Sultanate of Oman, Switzerland, Timor-Leste, Tunisia, Turkey, Ukraine, United Arab Emirates, United Kingdom, United States of America, Uruguay, Vietnam and Venezuela.

Additionally, note that Portugal has signed a Double Tax Treaty with Kenya, although the same is not yet in force.

- **Are there any rules against treaty-shopping?**

Yes. Many of the tax treaties in which Portugal has entered into restrict their application, regarding dividends, interest and royalty payments, to those residents of both parties who are, simultaneously, the beneficial owners of the payments. This rule allows Portugal to exclude from the scope of the tax treaties any nominees, agents and conduit companies, intentionally placed in one of the parties' territory to take advantage of the tax treaty. Furthermore, Portugal has accepted the introduction of LOB clauses in some of its treaties.

O. Territoriality Rules

- **Where is an individual subject to tax?**

Since Portugal is not a Federation, individuals are always subject to personal income tax (IRS) at a national level, wherever they are resident within Portuguese territory.

- **Is an individual subject to tax on his/her worldwide income?**

Resident individuals are taxed on their worldwide income, while non-resident individuals are only liable for personal income tax on their Portuguese-sourced income.

An individual is considered a resident of Portugal if:

(i) He remains in Portuguese territory for more than 183 days, consecutive or otherwise, within a 12 month period;

(ii) He possesses a place of abode in the period mentioned above, under circumstances which imply his intention to keep and occupy such abode as his permanent residence;

(iii) He is, on 31 December of any year, a crew member of a ship or aircraft operated by a resident entity;

(iv) He discharges an office or commission of a public nature abroad but at the service of the Portuguese State;

(v) He is a Portuguese national who moves his residence to a listed tax haven (in which case he is considered a resident of Portugal in the year of relocation and the following four years), unless he proves that the move is for a valid reason, such as being seconded by his employer to perform a temporary activity.

Aggregation of all types of income in a family unit is mandatory. Spouses living together or non-marital partners are jointly liable for the tax of their family unit. Spouses and non-marital partners may choose to be taxed based on an income-splitting system which allows them to divide their combined income by two for the purposes of applying the progressive rates; the resulting tax liability is then doubled.

Partnerships subject to fiscal transparency are taxed through their partners. In all other cases, partnerships are treated as companies.

P. Wealth Tax

- **Is the individual subject to tax based upon his/her wealth?**

No.

Q. Withholding Tax

- **Is salary subject to a withholding tax at source?**

Yes.

- **What is the treatment of residents as compared to non-residents?**

For employment income earned by resident individuals, personal income tax (IRS) is withheld as an advance payment, which means that the amounts paid can be credited against the final IRS liability. For earnings from regular wages, together or not with variable wages, the tax is withheld at rates between 0% and 47.7%, in accordance with withholding tables and with regard to the taxpayer's personal circumstances. For exclusively variable earnings, the tax is withheld at flat rates between 0% and 40%, again in accordance with the approved withholding tables.

For employment income earned by non-resident individuals, personal income tax (IRS) is withheld at the final rate of 25% on the gross salary paid whenever the work is physically performed in Portuguese territory or the payer is established in Portugal and, in the case of entertainers and sportsmen, if their activities are personally exercised in Portugal or the income accrues to a person other than the entertainer or sportsmen.

XIV. TAX ON OTHER LEGAL BODIES

A. Allowances

- **What are the major allowances (*e.g.*, capital cost depreciation)?**
- **What are the major deductible items?**
- **What are the major expenses that are excluded from deductibility?**

Please refer to the answer provided in chapter XII, section A.

B. Calculation of Taxes

- **How is the tax base determined?**

Please refer to the answer provided in chapter XII, section B.

C. Capital Gains

- **What are the federal or national tax rates on capital gains?**
- **What are the regional or state taxes on capital gains?**
- **What are the municipal or local taxes on capital gains?**

Please refer to the answer provided in chapter XII, section C.

D. Filing and Payment Requirements

- **When must the entity file a tax return, if any?**
- **When must the entity pay its taxes?**
- **Are taxes paid in instalments or annually?**

Please refer to the answer provided in chapter XII, section D.

E. Miscellaneous Taxes

- **Are other taxes due?**
- **What are the filing and payment requirements?**

Please refer to the answer provided in chapter XII, section E.

F. Registration Duties

- **Are there registration duties or fees due upon the setting up of the legal body?**
- **Are there registration duties or fees due upon a change in the capital of the legal body?**
- **Are there registration duties due upon the transfer of capital?**
- **Are there registration duties due upon a transfer of assets?**
- **Are there any other registration duties due?**

Please refer to the answer provided in chapter XII, section F.

G. Sales Tax or other Turnover Tax

- **Is the legal body subject to sales tax or any other turnover tax (*e.g.*, VAT, cumulative)?**
- **Can input tax be credited against output tax?**
- **What are the tax rates?**
- **What are the filing and payment requirements?**

Please refer to the answer provided in chapter XII, section G.

H. Social Security and Welfare System Contributions

- **Are social security contributions due?**
- **Are retirement or pension contributions due?**
- **Are unemployment insurance contributions due?**
- **What are the filing and payment requirements for any such contribution?**

Please refer to the answer provided in chapter XII, section H.

I. Special Tax Themes

- **Are there particular tax consequences of doing business in the country in the form of the particular legal body?**

Please refer to the answer provided in chapter XII, section I.

J. Tax on Profits

- **What are the federal or national income tax rates on profits?**
- **What are the regional or state tax rates on profits?**
- **What are the municipal or local tax rates on profits?**

Please refer to the answer provided in chapter XII, section J.

K. Tax Treaties

- **Are there any tax treaties applicable?**

- **Are there any rules against treaty-shopping?**

Please refer to the answer provided in chapter XII, section K.

L. Territoriality Rules

- **Where is the legal body subject to tax?**
- **Is the legal body subject to tax on its worldwide income?**

Please refer to the answer provided in chapter XII, section L.

M. Treatment of Tax Losses

- **How are tax losses treated?**

Please refer to the answer provided in chapter XII, section M.

N. Wealth Tax

- **Is there a wealth tax applicable?**

Please refer to the answer provided in chapter XII, section N.

O. Withholding Taxes

- **What are the rates of withholding tax on the legal body's activities?**

Please refer to the answer provided in chapter XII, section O.

XV. GENERAL TAX CONSIDERATIONS

A. Taxes Generally

- **Is there a generally accepted way of structuring the company or other entity so as to ensure the desired tax consequences?**

There are many different ways of structuring a company and, although many tax consequences are similar (the legislator intends that the different forms of doing business be neutral for tax purposes), the fact is that some tax consequences differ from structure to structure so that the tax system should be adapted to the nature of each structure.

This being said, investors are allowed to choose any legally accepted form of company structure to ensure the desired tax consequences, as long as the form chosen is not 'empty'. *i.e.*, any form of structure is required to have some economic density beneath it.

- **Is there an advance tax ruling that can be used to validate or invalidate the chosen form of doing business?**

Taxpayers, together with lawyers, solicitors, auditors and accounting technicians or any other persons qualified to give advice about the tax status of their clients properly identified as such, may request an advance ruling about the tax situation of a taxpayer including, by law, eligibility for tax benefits.

The ruling must be requested from the General Director of Taxes and the application should be accompanied by a description of the facts, the tax treatment of which is being queried.

Additionally, within the scope of transfer pricing, it is also possible to execute Advance Pricing Agreements with the Portuguese Tax Authorities in order to avoid any tax contingency related with income or costs arising from transactions between related parties.

- **Is there a general anti-tax avoidance system?**

GENERAL ANTI-AVOIDANCE RULE

The Portuguese General Tax Law contains a general anti-avoidance rule under which a transaction is void if it is proved that its main purpose or one of its main purposes is the reduction or elimination of tax, which would be otherwise be due, by abusive means. In such a case, the transaction in question is subject to normal taxation.

In addition, the Corporate Income Tax Code contains specific anti-avoidance rules on the tax neutrality regime applicable to corporate restructuring and participation exemption.

ANTI-AVOIDANCE PROVISIONS TO PREVENT THE ACCUMULATION OF INCOME IN OFFSHORE FOREIGN-AFFILIATED COMPANIES

The IRC Code does not allow domestic entities to deduct payments made to companies located in listed tax havens or territories where those companies are subject to a IRC tax rate of less than 60% of the normal IRC rate or are exempt from tax, unless they prove that the services rendered by the latter are real and the fees respect the arm's length principle. This rule inverts the burden of proof from the tax authorities to taxpayers.

CFC RULES

Under the controlled foreign corporation (CFC) rules, a Portuguese resident (individual or company) may be subject to corporate income tax (IRC) on the profits (distributed or otherwise) of a non-resident company in which it has (directly or indirectly) a substantial (25% or more) participation and which is situated in a country or territory listed as a tax heaven. or where it is either exempt or not subject to any income tax, or the corporate tax imposed is less than 50% of the normal IRC payable according to the IRC Code.

A Portuguese resident controlling company must include in its tax base the after-tax profits of any foreign company it controls in proportion to its total participation (direct or indirect) in that company. The amount of undistributed after-tax profits

attributed to and subject to IRC in the hands of a resident recipient in a particular period may be offset against any dividends subsequently paid out of such profits. Thereafter the corporate recipient may credit the foreign withholding tax (in respect of dividends) and underlying corporate tax (in respect of attributed profits) paid by the CFC against and up to the amount of its IRC liability.

However, no profits are attributed if the non-resident company's profits derive for less than 25% from the following categories:

(i) Royalties or other intellectual/industrial property rights;

(ii) Dividends and capital gains;

(iii) Financial leasing;

(iv) Banking, certain types of insurance and other financial activities that are carried out with related entities (*relações especiais*);

(v) Income from invoicing companies that receive income from commercial activities and from the provision of services related to goods and services bought and sold to related entities (*relações especiais*);

(vi) Interest and other investment income.

The CFC rules described are also applicable to individuals deemed tax residents in Portugal.

- **Can the chosen form of business be treated as a different form for tax purposes?**

Not as a rule, but under the provisions of the Portuguese anti-avoidance system (please see answer provided to the previous question) this is possible in specific situations.

XVI. IMMIGRATION REQUIREMENTS

A. Immigration Controls

- **Are there immigration quotas?**

There are no immigration quotas.

- **Are vaccinations required?**
- **Are medical certificates required?**

No specific vaccinations or medical certificates are required for entering Portugal.

- **Are entry permits required?**
- **If so, must you apply for an entry permit before entering the country?**
- **Are exit permits required?**
- **Are re-entry permits required?**

Please refer to the answer provided in section B below.

B. Visas

For foreigners who are citizens from a *Member State of the European Union or a State that is party to the European Economic Area*, entry, circulation and residence in Portugal are assured by the European legislation (Directive 2004/38/EU of the European Parliament and Council, of April 29), which was transposed to Portuguese jurisdiction by Law no. 37/2006, August 9. According to this law, EU citizens and their family members can freely enter Portuguese territory provided they have a valid identity card. Their right to reside in Portugal is without restrictions for three months. In order to reside in Portugal for a period of more than three months, they have to either *(i)* perform a professional activity (independently or subordinately), *(ii)* have sufficient financial resources for themselves and their family, *(iii)* be registered at a public or private educational establishment and demonstrate financial resources and health insurance (the latter only if the originating country requires it for Portuguese citizens), or *(iv)* be a member of

a European citizen's family. Without prejudice to exceptional situations related to retirement, incapacity and others, citizens who have been legally residing in Portugal for five years acquire the right to permanently reside in Portuguese territory, and this is extended to their family members.

The immigration requirements described below pertain only to foreigners that are *not nationals from a Member State of the European Union or a State that is a party to the European Economic Area*. Even with regards to such foreigners, special legislation or international treaties may apply, which are not considered in the description below.

All information below is based on Law no. 23/2007, July 4, as subsequently amended.

IMMIGRATION CONTROLS AND REQUIREMENTS/FORMALITIES

People crossing the Portuguese border posts are subject to control, whenever *(i)* arriving or departing from a country that is not a party to the Schengen Convention signed on June 19, 1990, or *(ii)* using part of a flight departing from or arriving in such a country.

As a rule, to enter and leave Portugal, foreigners must carry a recognized travel document (in general, a passport) valid for at least three months longer than the duration of their intended stay, unless there are special circumstances set out by law, namely if the relevant foreigner is the citizen of a state with which Portugal has an agreement allowing entry and stay on the basis of an identification card or an equivalent document.

Furthermore, to enter Portuguese territory, foreigners in general must also hold a valid visa appropriate to the purpose of their trip to Portugal, which must be applied for at a Portuguese diplomatic mission or consular post based abroad or at a competent intermediary entity (such as VFS Global), depending on the case.

Nevertheless, nationals from certain countries do not need to hold a visa if travelling only for pleasure or business purposes and on a short-term basis, up to 90 days (*e.g.*, US citizens).

To confirm the purpose and conditions of their stay, foreigners may be requested to present appropriate evidence. Furthermore, foreigners may also be requested to file the statement of a Portuguese citizen, or a foreigner entitled to stay in Portuguese territory, acting as a guarantor for the purpose and conditions of the stay of the applicant in Portugal.

As far as foreigner minors (less than 18 years of age) are concerned, their entry and departure from Portugal without the authorization of their respective parents or legal representatives is in principle refused.

The refusal of entry should be justified and notified to the foreigner, who will be entitled to *(i)* appeal against the relevant decision, *(ii)* contact his country's local representation in Portugal or anyone else, and *(iii)* be assisted by a doctor and an interpreter, if necessary. Foreigners whose entry in Portugal has been refused are also entitled to be assisted by a lawyer with the fees incurred borne by the foreigners themselves.

Entry into Portuguese territory is refused to foreigners that *(i)* do not respect all the legal requirements, *(ii)* are registered under the Schengen Information System or the national list for no admittance into Portugal, or *(iii)* constitute a danger or serious threat to public order, national security, public health or the international relations of the EU Member States, together with the States where the Convention on the Application of Schengen Agreement is in force.

Foreigners that enter Portuguese territory through a border not subject to control are bound to declare such fact to the Portuguese Immigration Services within three working days, starting from the date of entry. This obligation does not apply to citizens who benefit from the European regime, that have been legally residing in Portugal for a period of more than six months or are travelers staying in hotels or other tourist installations after their entry into Portugal.

VISAS REQUIRED TO ENTER AND STAY IN PORTUGAL

Portuguese law currently foresees seven different types of visa issued abroad, as follows:

(i) Stopover airport visa ("*visto de escala aeroportuária*");

(ii) Short-term visa ("*visto de curta duração*");

(iii) Temporary stay visa ("*visto de estada temporária*");

(iv) Residence visa ("*visto de residência*");

(v) Visa for job seekers;

(vi) CPLP visa;

(vii) Other visas.

The visas referred to in *(i)* and *(ii)* may be valid for one or more countries that are party to the Convention on the Application of the Schengen Agreement as of June 19, 1990, and those referred to in *(iii)* to *(vii)* are only valid in Portuguese territory.

The visa is stamped in an individual or family passport. Visas granted abroad are of the individual type. The above-mentioned types of visas differ as regards their purpose and the duration of the stay, as summarily explained below. The duration referred to in the following explanation with regards to each type of visa may normally be extended for certain periods and under certain circumstances, upon request filed with the Portuguese Immigration Services ("*Serviço de Estrangeiros e Fronteiras*").

STOPOVER AIRPORT VISA

Stopover visas are required for citizens of certain countries identified by the Internal Affairs Ministry and Foreign Affairs Ministry or for citizens holding travel documents issued by the administrative authorities of such countries. Stopover visa holders only have access to the airport international zone.

SHORT-TERM VISA

This type of visa allows entry into Portugal for purposes that *(i)* are accepted by the relevant administrative authorities and *(ii)* do not justify the issuance of any other kind of visa (*e.g.*, tourism).

Notwithstanding, there are special conditions applicable to the granting of each type of visa and special regimes contained in treaties, protocols or similar international instruments, so that the short-term visa is only granted to nationals of third countries who *(i)* have not been subject to a measure to remove them from Portuguese territory, *(ii)* are not mentioned as "not admitted" in the Schengen Information System, *(iii)* are not mentioned as "not admitted" in the Integrated Information System of the Portuguese Immigration Services ("*Serviço de Estrangeiros e Fronteiras*"), *(iv)* have not been convicted of a crime punishable by imprisonment of more than one year, *(v)* possess livelihoods, *(vi)* hold a valid travel document, and *(vii)* carry travel insurance.

In general terms, this visa may be granted for a term of no longer than one year, allowing one or more entries, provided the relevant foreign citizen does not stay in Portugal for more than ninety days in each one hundred and eighty day period, starting on the date of the first entry into Portugal. The visa may be extended for up to ninety days (extendable for another similar period), provided the conditions of its initial granting are maintained.

TEMPORARY STAY VISA

This type of visa is aimed at allowing a foreign citizen to enter Portuguese territory for several purposes, namely for receiving medical treatment in officially recognized establishments, for following family members receiving medical treatment, for the transfer of citizen nationals of Member States of the World Trade Organization, for performing, independently or subordinately, a professional activity, or for performing scientific research in research centers or teaching activity in universities or a highly qualified activity during a period of less than one year. In addition, it is currently also possible to obtain a temporary stay visa to carry out an amateur sporting activity in Portugal, subject to certain conditions, to carry out a subordinate or independent professional activity remotely to a natural or legal person with a domicile or registered office outside Portugal, or to attend a course at an educational or vocational training establishment. This visa may also be issued is other limited situations.

Notwithstanding, there are special conditions applicable to the granting of each type of visa and special regimes contained in treaties, protocols or similar international instruments, so that the temporary stay visa is only granted to

nationals of third countries who: *(i)* have not been subject to a measure to remove them from Portuguese territory; *(ii)* are not mentioned as "not admitted" in the Schengen Information System; *(iii)* are not mentioned as "not admitted" in the Integrated Information System of the Portuguese Immigration Services ("*Serviço de Estrangeiros e Fronteiras*"); *(iv)* possess livelihoods; *(v)* hold a valid travel document; and *(vi)* carry travel insurance.

Temporary stay visa requests should be decided within a period of thirty days.

This visa is valid for multiple entries into Portugal and may only be granted for periods of up to 1 year, except in the case of a temporary stay visa granted to perform a subordinate seasonal activity (in this case, the visa is granted for a period of 90 days or less). A temporary stay visa may be extended by up to one year (extendable for another similar period), provided the conditions of its initial granting are still valid and provided it is not a visa granted for employment in Portugal (in this case, the extension is only allowed for up to nine months in a period of 12 months).

Nationals from a third country not belonging to the European Union, residing in a EU Member State and regularly employed in a company established in a EU Member State, are exempted from applying for a temporary stay visa, provided they maintain the work relationship and enter Portugal in order to render services under it.

RESIDENCE VISA

This type of visa allows foreigners to enter Portuguese territory in order to request a residence permit, whenever such previous step is required.

The residence visa is intended for various purposes, namely *(i)* to perform a subordinate or independent professional activity or for an entrepreneurial emigrant, *(ii)* to perform scientific research in recognized research centers or a highly qualified activity, *(iii)* to carry out professional activities remotely outside their national territory, *(iv)* to teach in universities, *(v)* to attend a study program, *(vi)* to participate in student exchange programs, *(vii)* to attend non-paid training courses in companies, *(viii)* to reunite with family members, or *(ix)* to live on their own income, in retirement or in a proven religious way.

Notwithstanding the special conditions applicable to the granting of each type of visa and the special regimes contained in treaties, protocols or similar international instruments, the residence visa may only be granted to nationals of third countries who *(i)* have not been subject to a measure to remove them from Portuguese territory, *(ii)* are not mentioned as "not admitted" in the Schengen Information System, *(iii)* are not mentioned as "not admitted" in the Integrated Information System of the Portuguese Immigration Services ("*Serviço de Estrangeiros e Fronteiras*"), *(iv)* have not been convicted for crimes punished with imprisonment of more than one year, *(v)* possess livelihoods and *(vi)* a travel document that assures their return, *(vii)* hold a valid travel document, and *(viii)* carry travel insurance.

Despite shorter terms foreseen by law in particular cases, a residence visa request should be decided within a period of sixty days.

This visa is valid for two entries into Portugal and allows its holder to stay in Portugal for a period of four months. It may be extended for up to ninety days.

Nationals from a third country not belonging to the European Union, who reside in a EU Member State and are regularly employed in a company established in a EU Member State, are exempt from applying for a residence visa, provided they maintain the work relationship.

VISA FOR JOB SEEKERS

The job-seeking visa entitles its holder to enter and remain in Portugal for the purpose of seeking work, authorizing them to engage in dependent employment until the visa expires or a residence permit is granted.

The issuing of this visa presupposes an appointment date with the competent services for the granting of the residence permit (SEF), which is within the 120-day validity period of the visa, and confers on the applicant, after the constitution and formalization of the employment relationship within that period, the right to apply for a residence permit, provided that certain general requirements are also met.

Once the maximum period of validity of the job-seekers visa has expired without an employment relationship having been established and the process of applying for a residence permit begun, the visa holder must leave the country.

In these situations, the holder can only reapply for a new visa for this purpose one year after the previous visa expires.

This type of visa is granted for a period of 120 days, which can be extended for a further period of 60 days, and allows only one entry into Portugal. The application for an extension of stay submitted by a visa holder looking for work must be accompanied by proof of registration with the IEFP and I.P., and a statement from the applicant indicating that the conditions of the intended stay are still valid.

CPLP VISA

This is an exceptional visa regime applicable to nationals of a state in which the Agreement on Mobility between the Member States of the Community of Portuguese-Speaking Countries signed in Luanda on July 17, 2021 (CPLP Agreement) is in force. Basically, citizens from Angola, Brazil, Cape Verde, Guinea-Bissau, Equatorial Guinea, Portugal, Mozambique, São Tomé and Príncipe and East Timor can apply for a CPLP visa in the manner described above, although they are exempt from presenting some types of documentation/proof, such as proof of livelihood and/or health insurance, depending on the case.

OTHER VISAS

At Portuguese borders subject to control, two types of visa (short-term visa and special visa) may be granted to foreign citizens.

The short-term visa may be exceptionally granted to people who, for unforeseen reasons, have not requested a visa from the competent authority, provided that they: *(i)* hold a valid travel document; *(ii)* possess sufficient means to pay an amount of EUR 75 for each person's entry and EUR 40 for each day in Portugal; *(iii)* are not included in the Schengen Information System or Portuguese list of non-admissible people; *(iv)* do not constitute a threat to public order, national security or the international relations of a EU Member State; *(v)* have guaranteed return travel and readmission in the return country. The short-term visas granted under this regime are only valid for one entry and allow holders to stay in Portugal for a period of no longer than fifteen days. This special visa may also be granted to foreign citizens for humanitarian or national interest reasons, recognized by the Minister of Internal Administration.

- **Application for visas and respective costs**

VISAS IN GENERAL

Stopover airport and short-term visas must be applied for in the Portuguese embassy or in the career consulate post in the country of the applicant's residence, whereas the visas mentioned in the remaining sections must be applied for in the career consulate post in the country of the applicant's residence.

Temporary stay and residence visas are also applied for at the Portuguese embassies or consulates of the Applicant's country of origin and in many cases at an intermediary entity (such as VFS Global), which is fully competent (see indications from the Ministry of Foreign Affairs) and depend on a previous favorable opinion of the Portuguese Immigration Services ("*Serviço de Estrangeiros e Fronteiras*"). Other visas may also be subject to such an opinion, if so determined by reasons of national interest, internal safety or illegal immigration prevention. In urgent and duly justified cases, such an opinion may not exempt holders of residence visas from performing an independent professional activity and from temporary stay visas. The Portuguese Immigration Services' opinion is issued within 20 days and the absence of it means a favorable opinion. When not favorable, the opinion is binding in cases where it has been determined by reasons of national interest, internal safety, or illegal immigration prevention.

Other visas are issued at Portuguese border posts.

An application should be made on the proper form, signed, and personally delivered to the relevant services located in the country of residence. In exceptional and duly justified cases, the presence of the applicant may be dispensed with on the grounds referred to in the application form.

If the application for a visa refers to people of less than 18 years of age, a corresponding authorization must also be filed. The competent authorities may at any time request an applicant's presence in order to provide further information that may be required for deciding on the application.

The period expected for a visa to be issued is hard to predict and may vary in accordance with the type of visa sought and the Portuguese consulate involved. In

accordance with present administrative practice, the issuance of labor or residence visas may take several months.

An application is immediately rejected if not filed with all the documents required or if it is insufficiently justified. Issuance of visas by Portuguese embassies may cost between EUR 60 and EUR 90, depending on the type of visa, pursuant to Ordinance no. 320-C/2011, December 30, amended by Ordinance no. 296/2012, September 28.

The application for a visa must be filed with the following information and documents:

(i) A complete identification of the applicant and of the other individuals to be included in family or group visas;

(ii) The duration of the stay;

(iii) Name of the receiving person or company, when applicable;

(iv) Place of accommodation, when applicable;

(v) Two similar photos, of small size, in color and with a clean background, that are up to date and in a suitable condition for the identification of the applicant;

(vi) Passport or other relevant valid travel document;

(vii) Whenever temporary stay and residence visas are requested, a certified criminal record issued by the competent authority of the country of which the applicant is a national or in which the applicant has been living for more than one year;

(viii) Application to the Portuguese Immigration Services (SEF) to obtain a Portuguese criminal record;

(ix) Valid travel insurance, covering the expenditure necessary for medical care, including urgent medical assistance and eventual repatriation;

(x) Evidence of the existence of sufficient means of subsistence, in accordance with the type of visa requested;

(xi) Copy of the return travel document, except if a residence visa to reunite with family members is requested (in this case, no return travel document is required).

In addition to the documents and information outlined above, other elements are required for certain types of visas, as follows:

STOPOVER AIRPORT VISAS

The application must also include a copy of a document showing travel to the destination country and evidence that the applicant is entitled to entry such country (if required). The applicant for a transit visa must also show evidence of economic and working conditions, namely proof of employer and salary earned, and presentation of the last three bank statements (proof of means of subsistence) to guarantee the duration of the stay and return.

SHORT-TERM VISAS

The application must also be filed with documents justifying the purpose of the travel and the conditions of the stay.

TEMPORARY STAY VISAS

Depending on the purpose of the temporary visa applied for, the application must be filed with additional documents, as follows: *(i)* to receive medical treatment - a medical report and a document issued by the health establishment proving the applicant's hospitalization or that clinical treatment is assured; *(ii)* to follow a family member seeking medical treatment – evidence of the family relationship; *(iii)* to transfer citizen nationals of Members States of the World Trade Organization for services to be rendered or for professional training in Portuguese territory – documents proving that the specific requirements of the transfer are fulfilled; *(iv)* to work temporarily or perform an independent activity – promissory employment contract or employment contract (in case of subordinate professional activity), company's bylaws or service rendering contract (in case of independent

professional activity), statement issued by the authority competent to verify the special requirements to perform a certain profession, when applicable; *(v)* to carry out scientific research work, teaching activity in a university or a highly qualified activity – documents proving admission as a worker in a recognized research center and the existence of a promissory contract, an employment contract or a service rendering contract; *(vi)* to exercise sporting activity – document from the respective federation and terms of responsibility signed by the sports association or club; and *(vii)* to carry out professional activity remotely/digital nomads – in situations of subordinate employment: employment contract or promise of employment contract – in situations of independent professional activity: company contract or services agreement, and proof of average monthly income earned from these activities over the last three months of at least the equivalent of four guaranteed minimum monthly salaries and a document certifying tax residence, regardless of whether the work is subordinate or independent.

RESIDENCE VISAS

Depending on the purpose of the visa applied for, an application must be filed with additional documents, as follows: *(i)* to work: employment contract, promissory employment contract or individual's interest declaration; *(ii)* to perform an independent activity: company bylaws or services rendered contract proposal, together with a document proving the applicant is able to perform a certain profession, when applicable, or, in the case of immigrant entrepreneurs, has carried out investment operations and has the financial means available in Portugal, including those resulting from financing obtained from a financial institution in Portugal, and demonstrating, by any means, the intention to carry out an investment operation in Portuguese territory, which is duly described and identified; *(iii)* to perform research, teaching or a highly qualified activity: either a document proving admission as collaborator worker in a recognized research center, a promissory employment contract, an employment contract, a written proposal of work or a service rendering contract (in the specific case of a visa applied for to perform a highly qualified activity, the contract should have a minimum duration of one year and, as a rule, establish an annual remuneration of, at least, 1.5 times the minimum monthly legal wage or three times the IAS (*Indexante dos Apoios Sociais*), currently amounting to EUR 509.26, and the foreign citizen should have the professional qualifications adequate for the activity); *(iv)* in the case of highly qualified workers of startups with headquarters or permanent establishments in Portugal, which wish

to attract qualified and specialized technical staff from third countries and residents from outside the European Union to Portugal, they must submit a declaration from IAPMEI – *Agência para a Competitividade e Inovação I.P.*, proving that they have signed an incubation contract with a certified incubator, in accordance with Article 6 of Normative Order no. 4/2018, of February 2, which regulates the "Startup Visa" program; *(v)* to attend a study program, participate in student exchange programs or attend an unpaid training course: documents proving the registration in the educational establishment or company or entity where the training course will take place, guaranteed accommodation; *(vi)* in the case of family reunification, proof of identification of the family members to be reunited with; *(vii)* in the case of pensioners, religious or people living on their own income, they must attach proof of their own income, proof of their status as a minister of worship or member of an institute of consecrated life, or proof of income from movable or immovable property, intellectual property or financial investments; *(viii)* in the case of digital nomads, they must attach the same documentation as for temporary stay visas.

OTHER VISAS

Short-term visas require, if possible, the presentation of documents proving the unforeseen reasons that prevented the applicant from requesting the relevant visa.

C. Residence permits

MATERIAL REQUIREMENTS AND TYPES OF RESIDENCE PERMIT

As a rule, a residence permit may only be granted to holders of a valid residence visa or a temporary residence permit, staying in Portugal. Exceptions may apply to entrepreneurs, employees assigned within the same company or group of companies and holders, managers and employees of companies that delocalize their headquarters or their primary or secondary establishment to Portugal, or highly qualified persons depending on the case. Nevertheless, a residence permit is not granted if there are public order, public security or public health reasons, or any circumstance that would jeopardize the issuance of a residence visa (whenever applicable), depending on the type of residence visa applied for (*idem*) (performance of an either subordinated or independent professional activity, performance of research or a highly qualified activity, study program, participation in student exchange programs or attendance of an unpaid training course, voluntary

work, family member regrouping, among others). In some cases, a medical exam may be required of an applicant for a residence permit, to verify that he does not suffer from any of the diseases listed by the World Health Organization or other infectious diseases or contagious parasites subject to protective measures in the national territory.

There are two types of residence permit: temporary and permanent. As a rule, the temporary residence permit is granted for two years starting on the date of issuance and is renewable for subsequent periods of three years. The permanent residence permit has no expiration date; however, it should be renewed every five years or whenever any change of facts of identification occurs.

The permanent residence permit, among other conditions, is only granted to individuals who have held a temporary residence permit for at least five years and demonstrate basic knowledge of the Portuguese language.

The renewal of the temporary residence permit must be requested no later than 30 days before the corresponding expiration date.

The residence permit may be cancelled, namely if the holder is out of Portugal, without a valid reason, for more than *(i)* six uninterrupted months or eight months intermittently (temporary permits) or *(ii)* twenty-four uninterrupted months or thirty months intermittently in a three-year term (permanent residence permit).

In certain cases, in addition to those already mentioned, a residence permit may be granted to citizens who do not hold a valid residence visa or temporary residence permit. This occurs, among several other special situations: with resident permit holders' minor children born in Portuguese territory, persons staying in Portugal for a period of more than three months, provided they perform a professional activity, participate in a study or professional training program, or present a valid reason for residing in the national territory.

Finally, the residence permit is not required of diplomatic and consulate agents residing in Portugal, administrative and domestic employees who render services in the diplomatic missions or consulate delegations of the respective States, workers of international organizations with headquarters in Portugal, and the members of

their families. As regards such persons, an identification document is issued by the Foreign Affairs Ministry, after applying to the Portuguese Immigration Services.

- **Application for residence permit.**

The application for a residence permit must be filed at the regional department of the Portuguese Immigration Services (*Serviço de Estrangeiros e Fronteiras*) in any delegation in the country.

Furthermore, the application for a temporary residence permit must be filed with the official form together with the following documents and information:

(i) Passport or other valid travel document;

(ii) Valid residence visa, when applicable;

(iii) Evidence of means of subsistence;

(iv) Evidence of accommodation;

(v) Evidence of the family relationships justifying the residence permit, if relevant;

(vi) Evidence of professional certification, when applicable;

(vii) Application for the Portuguese Immigration Services (SEF) to consult Portuguese criminal record;

(viii) Information necessary for verifying the applicant's enrolment in the fiscal administration and social security, when applicable.

Depending on the purpose and type of the temporary residence permit applied for, other specific documentation may be required.

As regards a permanent residence permit, this must be filed with an official form together with the following documents and information:

(i) Passport or other valid travel document;

(ii) Evidence of means of subsistence;

(iii) Evidence of accommodation;

(iv) Application for the Portuguese Immigration Services (SEF) to consult Portuguese criminal record;

(v) Evidence of basic knowledge of the Portuguese language;

(vi) Necessary information to verify the applicant's fulfilment of fiscal and social security obligations.

Depending on the purpose and type of the permanent residence permit applied for, other specific documentation may be required.

The common practice is that a final decision by the Portuguese Immigration Services (*Serviço de Estrangeiros e Fronteiras*) can take several months. Administrative fees due for the issuance of a resident permit vary between EUR 67.5 and EUR 5000, pursuant to Ordinance no. 1334-E/2010, December 31, as amended by Ordinance no. 305-A/2012, October 4.

WORK PERMITS

- **Does an investor need a work permit to work in the country?**
- **How and where does an investor apply for the permit?**
- **What documents are required?**
- **What fees are involved?**
- **How long does it take to receive the permit?**
- **For how long is the permit valid?**

Please see answers to section B of chapter XVI above, which cover the topics contained in all these questions. In accordance with the above-mentioned, please note that for a foreigner to enter Portuguese territory, whether an investor or not, he must hold a visa that is valid and appropriate for the purpose of his travel to Portugal (unless exempt).

Should the purpose of his entry into Portugal be to invest in the Portuguese territory, a residence visa is adequate (unless exempt), and no employment contract is required.

Should the purpose be to render subordinated work or to develop an independent activity, the appropriate visa should be the temporary stay or the residence visa. In both cases, the documents required to be filed with the application include *(i)* a promissory employment contract or an employment contract (in the case of subordinated work), *(ii)* a company's bylaws or service rendering contract (in the case of an independent professional activity), and *(iii)* a statement issued by the authority competent to verify the special requirements to perform certain professions, when applicable. Should an employment contract be required, it must state the position and work to be rendered. The employment contract must be valid under Portuguese labor law.

The temporary or permanent residence permit may also apply provided their legal requirements are fulfilled.

XVII. EXPATRIATE EMPLOYEES

A. Drivers' Licenses

- **Must the investor obtain a driver's license for Portugal?**
- **How does the investor obtain a driver's license?**
- **What fees are involved?**
- **Is an examination, either practical or written, required?**

Driving licenses issued by countries belonging to the EEA (EU Member States, Iceland, Liechtenstein and Norway) are valid in Portugal and the request for an equivalent national driver's license is optional. Drivers establishing residence in Portugal have a duty to inform the national Institute of Mobility and Transport (*Instituto da Mobilidade e dos Transportes*/IMT) of their area of residence within a 30-day period following the establishment of residence in the national territory – the infringement of this rule is subject to a penalty.

To obtain a Portuguese driving license in exchange for that from another EEA country, the application form can be obtained in the IMT website. A fee of EUR 30 is applicable.

Drivers with licenses from non-EEA member countries can apply for a national driving license exchange in the following situations:

(i) Licenses issued by a country with which Portugal has signed a bilateral agreement or has a mutual recognition agreement – the cases of Switzerland, Morocco, Republic of São Tomé and Príncipe (Decree no. 8/2009, of March 2), Republic of Mozambique (Decree no. 19/2009, of August 21), Republic of Angola (Decree no. 48/2008, of October 17), Principality of Andorra (Decree-Law no. 47/2008, of October 17), Republic of Cape Verde (Decree no. 10/2007, of June 5), Federative Republic of Brazil (Dispatch no. 10.942/2000, of March 21) and United Arab Emirates (Memorandum of Understanding on the Mutual Recognition of Driving Licenses signed on 18 January 2011);

(ii) Licenses from countries that have acceded to the International Conventions on Road Traffic; and

(iii) Licenses issued by the former Portuguese Administration of Macao or by the Special Administrative Region of Macao.

A fee of EUR 30 is applicable for the exchange license procedure.

Drivers with licenses issued by countries not referred to above or that have not acceded to the International Conventions on Road Traffic, may not drive a vehicle in the Portuguese territory.

In this case, the validity of the license, for each category that the driver holds in the country in which the license was issued, depends on the passing of a driving test. For the purpose of this test, enrolment in a driving school is not mandatory.

The application form for the test is available in the IMT website referred to above, and the applicable fee corresponds to EUR 90.

B. Education

- **What types of school are available for the investor's family?**

In the Lisbon and Oporto metropolitan areas there are American (*e.g.*, www.caislisbon.org), English (*e.g.*, www.stjulians.com), French (*e.g.*, www.lfcl-lisbonne.eu), German (*e.g.*, www.dslissabon.com) and Spanish (*e.g.*, https://www.institutoespanhol.pt/) primary and secondary schools. In the southern region of Portugal (Algarve) there are also English primary and secondary schools.

In Portuguese public and private schools, the working language is the official national language.

A detailed list with the geographical location of all primary and secondary public schools can be accessed at the school website of the Ministry of Education https://www.dge.mec.pt/rede.

- **What fees are involved?**

Fees charged by international primary and secondary schools in Portugal may vary, approximately, between EUR 400 and EUR 2000 per month. In some international schools there are scholarships available for the best students (*e.g.*, in the *Deutsche Schule Lissabon* – www.dslissabon.com – or in *St. Julian's* School – www.stjulians.com). Enrolment in national public primary and secondary schools is not subject to the payment of any fee. The fees in private Portuguese primary and secondary schools are similar to those charged in international schools.

- **What is required for enrolment?**

International schools require parents to complete an application form; the enrolment process may also include an interview with the parents and a fluency test or screening on the relevant language. The enrolment conditions are determined by each international school and may vary.

In some international schools – such as the *Lycée Charles Lepierre* (www.lfcl-lisbonne.eu) or the *Deutsche Schule Lissabon* (www.dslissabon.com) – students with the school's nationality may have priority in the enrolment selection process.

- **Can the investor or company receive a tax benefit?**

In Portugal, as a rule, the expenses relating to education, including enrolment and tuition fees, may be tax deductible, depending on the parents' income. If the education costs are supported by the parents' employer company, these can, as a rule, be qualified as costs deductible under the national corporate income tax rules.

C. Housing

- **What type of housing is available for the investor?**

All types of housing are available.

- **Can the investor own property?**

An investor may own property without any restrictions.

- **Must the investor have housing before entering the country?**

Housing is not a requirement for entering the country.

- **Can the investor subsidize housing and receive a tax benefit?**

If an investor provides the benefit of accommodation to an employee, the costs of providing this benefit are deductible for corporate tax purposes.

D. Importing Personal Possessions

- **How can the investor import personal belongings?**

Investors may import their personal belongings either before or after moving their residence to Portugal and they may choose to import all their personal belongings at once, or in several stages.

- **Are import duties payable?**

The import of personal belongings is VAT exempt and duty free provided such belongings have been used in the country of origin for at least six months prior to their departure.

- **Are there requirements for clearing the belongings through customs?**

For each import the investor must fill a customs entry.

E. Medical Care

- **What level of medical care is available?**
- **Is there national health care?**

Medical care is guaranteed by the National Health Care System (*Serviço Nacional de Saúde*/SNS), which is funded by the Portuguese Government and which covers all medical specialties.

The Portuguese Constitution establishes that all persons residing in Portuguese citizensal – including foreigners – have the right to global health care services and, for this reason, all existing health services must be provided in the exact measure of the needs of each person, whatever their economic, social or cultural conditions.

Legislative Order no. 25 360/2001 guarantees all foreign citizens who regularly lawfully reside in Portugal the same rights and duties as national beneficiaries regarding access to health and drug care.

Nationals of countries with which Portugal has entered into bilateral and reciprocal agreements have access to health care in Portugal in accordance with the terms of those agreements.

Nationals of other countries or foreigners, who reside in Portugal but have not yet regularized their situation, can be attended to in the medical center of their residence area or in hospitals through the payment of user charges.

F. Moving Costs

- **What costs are involved in moving?**

There are no special costs in moving to Portugal. An investor has to bear usual travelling and housing costs, and the costs inherent in the importation of his belongings and, if an investor intends to stay in Portugal for more than three months, the costs of obtaining a permanent visa.

- **Can the investor receive any tax allowances?**

No tax allowances related to moving costs are provided under Portuguese law.

G. Tax Liability

- **What is the expatriate's tax liability?**

A special income tax regime is available to non-habitual resident individuals for tax purposes. Non-habitual resident individuals are defined as individuals who have become residents in Portugal, provided that they were not residents during the

five previous years. Under this regime, non-habitual residents are eligible for a 20% income tax rate on their Portuguese-sourced employment income and business and professional income, provided that they engage in scientific or highly technical activities.

The regime also allows the application of the exemption method for the elimination of double taxation of foreign-sourced passive income, including dividends and income from independent personal services. Non-habitual residents may also opt for the exemption method with respect to foreign-sourced income taxable in the source state under a tax treaty.

Individuals who are not eligible for the non-habitual residents tax regime will either be treated as residents or non-residents for tax purposes (IRS), since there are no other specific provisions relating to expatriates (please see chapter XIII).

- **What are the allowances?**

Please refer to chapter XIII, section A.

- **Are there any applicable tax treaties?**

Please refer to chapter XIII, section N.

H. Work Contracts

- **Does the investor need a work contract to work in the country?**
- **If so, does the contract have to be for a certain duration, for the performance of a specific job or for a specific position?**
- **Does the contract have to be with a national or resident of the country or related state?**

Please see answer to section I below.

I. Work Permits

- **Does the investor need a work permit to work in the country?**
- **How and where does the investor apply for the permit?**
- **What documents are required?**
- **What fees are involved?**
- **How long does it take to receive the permit?**
- **For how long is the permit valid?**

Please see answers to section B of chapter XVI above, which cover the topics contained in all these questions. According to the above-mentioned, please note that for a foreigner to enter into Portuguese territory, whether an investor or not, he must hold a visa valid and appropriate for the purpose of his travel to Portugal.

Should the purpose of his entry into Portugal be to invest in Portuguese territory, a residence visa is adequate and no employment contract is required.

Should the purpose be to render subordinated work or to develop an independent activity, the appropriate visa should be the temporary stay or the residence visa. In both cases, the documents required to be filed with the application include: *(i)* a promissory employment contract or an employment contract (in the case of subordinated work); *(ii)* a company's bylaws or service rendering contract (in the case of independent professional activity); *(iii)* a statement issued by the Professional Job and Training Institute (*Instituto do Emprego e Formação Profissional/IEFP*) according to which the promissory employment contract or employment contract refers to a job offer available to nationals of third countries; and *(iv)* a statement issued by the authority competent to verify the special requirements to perform certain professions, when applicable. If an employment contract is required, it must state the position and work to be rendered, but no minimum duration is required. The employment contract has to be valid under Portuguese labor law.

The temporary or permanent residence permit may also apply provided their legal requirements are fulfilled.

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MORAIS LEITÃO
GALVÃO TELES, SOARES DA SILVA & ASSOCIADOS

MORAIS LEITÃO, GALVÃO TELES, SOARES DA SILVA & ASSOCIADOS

LISBON
Head Office
Rua Castilho, 165
1070-050 Lisboa
T +351 213 817 400
F +351 213 817 499
mlgtslisboa@mlgts.pt

PORTO
Avenida da Boavista, 3265 – 4.2
Edifício Oceanvs
4100-137 Porto
T +351 226 166 950 - 226 052 380
F +351 226 163 810 - 226 052 399
mlgtsporto@mlgts.pt

FUNCHAL
Av. Arriaga, n.º 73, 1.º, Sala 113
Edifício Marina Club
9000-060 Funchal
T +351 291 200 040
F +351 291 200 049
mlgtsmadeira@mlgts.pt

SINGAPORE
9 Raffles Place
#25-02 Republic Plaza
Singapore 048619
T +65 6349 2284
geral.sg@ml.pt

mlgts.pt

ALC ADVOGADOS

LUANDA
Masuika Office Plaza
Edifício MKO A, Piso 5, Escritório A/B
Talatona, Município de Belas
Luanda – Angola
T +244 926 877 476/8/9
T +244 926 877 481
geral@alcadvogados.com

alcadvogados.com

MDR ADVOGADOS

MAPUTO
Avenida Marginal, 141, Torres Rani
Torre de Escritórios, 8.º piso
Maputo – Moçambique
T +258 21 344000
F +258 21 344099
geral@mdradvogados.com

mdradvogados.com

VPQ ADVOGADOS

PRAIA
Edifício BAIcenter, 3.º esq.
Av. Cidade de Lisboa, Chã d'Areia
Praia – Cabo Verde
T +238 350 06 45
T +238 350 06 46
geral@vpqadvogados.com

vpqadvogados.com

members of MORAIS LEITÃO LEGAL CIRCLE