This guide provides general information to investors intending to operate in Portugal on legal issues on which they may need advice.

It is not intended, and cannot be considered, as a comprehensive and detailed analysis of Portuguese law or, under any circumstances, as legal advice from Cuatrecasas, Gonçalves Pereira.

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This guide provides an overview of the key legal aspects for foreign investors interested in investing in Portugal. It is not intended to be comprehensive, but to address practical issues that will help investors considering an investment project in Portugal.

Cuatrecasas, Gonçalves Pereira is a leading international benchmark for all legal issues in Portugal. It offers its clients a value-added service for strategic crossborder transactions with 25 integrated offices in Europe, America, Asia and Africa characterised by a multidisciplinary approach that combines traditional legal practice with in-depth knowledge of the specialty and economic sector required in each case. Over 950 lawyers offer clients a value-added service in 34 areas of business law.

The firm and its lawyers receive prestigious national and international awards year after year, acknowledging their reputation and technical skills. In 2015, the firm was acknowledged by Financial Times - Innovative Lawyers rankings as the “Most Innovative European Firm in Corporate and Commercial practice”. In 2014, Cuatrecasas was the only Iberian law firm recognised among the 30 best in the world for its international arbitration practice by GAR 30, the arbitration ranking prepared annually by Global Arbitration Review. The firm was also recognised as one of the top 10 firms for knowledge management worldwide (Most Admired Knowledge Enterprises, MAKE) in 2013. In 2015, two of the firm’s lawyers won the “40 under Forty award”, the leading publication Iberian Lawyer grants to the top 40 lawyers under 40 years of age on the Iberian Peninsula.
## LIST OF ACRONYMS

<table>
<thead>
<tr>
<th>Acronym</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>AdC</td>
<td>Portuguese Competition Authority</td>
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<tr>
<td>ANACOM</td>
<td>National Communications Authority</td>
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<tr>
<td>CIT</td>
<td>Corporate income tax</td>
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<tr>
<td>CMVM</td>
<td>Portuguese Securities and Exchange Commission</td>
</tr>
<tr>
<td>ERC</td>
<td>Telecommunications Regulatory Agency</td>
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<tr>
<td>EU</td>
<td>European Union</td>
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<tr>
<td>IMI</td>
<td>Municipal Property Tax</td>
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<tr>
<td>IMT</td>
<td>Real Estate Transfer Tax</td>
</tr>
<tr>
<td>Lda</td>
<td>Private limited liability company</td>
</tr>
<tr>
<td>NIPC</td>
<td>Corporate Identification Number</td>
</tr>
<tr>
<td>OECD</td>
<td>Organisation for Economic Cooperation and Development</td>
</tr>
<tr>
<td>PIT</td>
<td>Personal income tax</td>
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<tr>
<td>SA</td>
<td>Public limited liability company</td>
</tr>
<tr>
<td>PCA</td>
<td>Portuguese Companies Act</td>
</tr>
<tr>
<td>PSC</td>
<td>Portuguese Securities Code</td>
</tr>
<tr>
<td>SME</td>
<td>Small and medium-sized company</td>
</tr>
<tr>
<td>TOB</td>
<td>Takeover bid</td>
</tr>
<tr>
<td>VAT</td>
<td>Value added tax</td>
</tr>
</tbody>
</table>
1. PORTUGAL AT A GLANCE

1.1. Unique geo-strategic position

Portugal is attractive for foreign investment, not only because of its domestic market but also because of its privileged geo-strategic position. Portugal became a member of the European Union (“EU”) in 1986. It has a population of 10.4 million consumers and 16.1 million tourists per year. Its location provides an ideal gateway to Africa and it is also a unique platform to channel investments to Latin America and China. With strong cultural, economic and historical ties with Brazil, China, India, East Timor and several Portuguese speaking African countries, it is the perfect bridge between Latin America, Europe, Asia and Africa. Furthermore, Portuguese is a global language with over 260 million speakers worldwide.

1.2. Economic situation

After facing a recession, Portugal is now showing signs of an economic upturn, with a consistent increase of GDP since 2014 and a trend of increase in the levels of confidence in the Portuguese economy since late 2012. Moreover, despite of a challenging macroeconomic environment, Portuguese exports have consistently increased on an annual basis since 2010.

1.3. Portuguese legal system

Portugal is a semi-presidentialist republic with three independent branches of government: the executive, the legislative and the judiciary. The head of state is the President who, among other tasks, represents the Portuguese State. Executive authority is exercised by the government, whose action
is directed by the Prime-Minister. The legislative power is exercised by the parliament, which has one single chamber, the government also having legislative competence.

The judiciary power is represented by independent judges. The highest judicial court in Portugal is the Supreme Court. The Constitutional Court, which is not part of the judiciary system, has authority to interpret the Constitution.

Portugal has a continental law system based on written law, while case law is used for interpretation purposes. EU membership has a decisive influence on Portugal’s legal system, as a substantial part of its commercial law is based on EU Law.
2. WAYS OF DOING BUSINESS

2.1. Setting up a business

Limited liability companies

When setting up a business in Portugal, foreign investors generally incorporate or acquire a limited liability company. The two main types of companies with limited liability in Portugal are public limited companies (“SAs”) and private limited liability companies (“Ldas”). Both have a legal personality, separate and distinct from that of their partners, who are not personally liable for the company’s debts.

Choosing between an SA or an Lda is mainly determined by (i) the scale of the business, (ii) the legal requirements (only SAs can be listed), (iii) the future ability to raise capital, (iv) the rules on transferability that partners want to apply, and (v) the flexibility offered by Lda regulations as opposed to SA regulations (see section Overview of limited liability companies).

Branch or representative office

As an alternative, you can establish a branch or open a representative office. A branch is a secondary establishment operating permanently as a representative of its parent company. Although it has a degree of independence from its parent company and carries out all or part of that company’s business activities, it does not have a separate legal personality. Representative offices mostly carry out ancillary, accessory and instrumental activities (including information gathering, market prospection and local support). Like branches, a representative office does not have a separate legal personality. This means that you, as the parent company of a branch or a representative office, will be liable for their obligations and debts.
Other alternatives

Another investment option is to associate through a joint venture with a business already established and functioning in Portugal. Venture partners often create an equity joint venture by incorporating a limited liability company or acquiring a stake in an existing company. However, Portuguese law contemplates other joint venture alternatives:

- Enterprises complementary group (“ACEs”), with no separate legal personality besides that of its members, created to carry out specific projects or services, such as an engineering or a construction project.
- European groups of economic interest (“AEIE”), aimed at facilitating, improving or increasing the economic activity of their members, who are held jointly and severally liable, albeit subsidiarily to the AEIE. AEIEs are frequently created to provide centralised services for a group of companies. Entities of at least two different EU member states must be involved.
- Silent partnership agreements, under which investors hold an interest in a business they do not manage by making contributions of money or in kind. These are not considered as capital contributions, but give investors the right to participate in the positive or negative results of the business.

Finally, there is the option of selling or providing goods or services in Portugal without setting up a legal structure, for instance by entering into a distribution, franchise or agency relationship with a third party established in Portugal.

2.2. Overview of limited liability companies

Main characteristics

The most common types of limited liability companies that operate in Portugal are SAs and Ldas, which are regulated by the Portuguese Companies Act (“PCA”). Limited liability of partners is common to these capital-based companies. In both cases, the partners’ and the company’s assets are independent. These companies can generally be owned by a single shareholder.
Traditionally, small and medium-sized companies ("SMEs") have chosen the form of Lda because its characteristics are more suitable:

- Lower capital requirements than an SA (€ 1 as opposed to € 50,000).
- Statutory restrictions on the transfer of quotas are more stringent than for an SA. The capital of an Lda is divided into quotas, i.e., non-negotiable interests.
- More flexibility and greater autonomy to decide on the company’s structure and organisation. SA regulations establish more complex supervision structures aimed at protecting the company’s share capital and its creditors.

In contrast, SAs have traditionally met the needs of larger corporations. Although their more complex legal framework and the more limited ability of shareholders to structure the company clash with the needs of small businesses, they offer large corporations the following advantages:

- Investing in the company is easier since its capital is divided into shares that can be listed on stock exchanges and are naturally transferable.
- Wider access to financing sources. Unlike Ldas, SAs are able to quote on the stock exchange and can issue negotiable debentures to the public.

It is worth noting that these characteristics of SAs and Ldas can be interpreted in subtly different ways. We often find large corporations incorporated as Ldas, tailoring the statutory model, initially designed for SMEs, to suit their goals and interests. In this context, partners and shareholders agreements play an important role.

**Differences between SA’s and Lda’s**

The following table identifies the most important differences between an SA and an Lda. The information it provides is not fully comprehensive.
## Cuatrecasas, Gonçalves Pereira

<table>
<thead>
<tr>
<th>Capital</th>
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<tbody>
<tr>
<td><strong>Lda</strong></td>
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<tr>
<td>Minimum requirement: € 1</td>
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<tr>
<td>Divided into: Quotas, i.e., non-negotiable interests.</td>
</tr>
<tr>
<td>Disbursement: As a rule, capital contributions must be paid on the date of incorporation. Parties may agree to a deferred payment up to 5 years. Non-capital contributions must be fully paid-up on the date of incorporation.</td>
</tr>
<tr>
<td>Voting rights: As a rule, each cent of the nominal value of a quota is granted one vote. By-laws may establish, as a special right, two votes per each cent of the nominal value of the quota or quotas of shareholders that, in total, do not represent more than 20% of the share capital.</td>
</tr>
<tr>
<td>Contributions in kind: The value of the shareholders’ investments in kind must be assessed by an independent expert.</td>
</tr>
<tr>
<td><strong>SA</strong></td>
</tr>
<tr>
<td>Minimum requirement: € 50,000</td>
</tr>
<tr>
<td>Divided into: Shares issued as bearer or registered shares, and as certificate or book entry shares. Shares of listed companies can be negotiated on the stock market.</td>
</tr>
<tr>
<td>Disbursement: As a rule, capital contributions must be paid on the date of incorporation. Parties may agree to a deferred payment of 70% of the capital contributions up to 5 years. Non-capital contributions must be fully paid on the date of incorporation.</td>
</tr>
<tr>
<td>Voting rights: As a rule, each share is granted one vote. No voting privileges are allowed. By-laws may grant one vote to a certain number of shares or establish a cap for the number of votes that can be cast by each shareholder.</td>
</tr>
<tr>
<td>Contributions in kind: The value of the shareholders’ investments in kind must be assessed by an independent expert.</td>
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<tr>
<td><strong>Transfers</strong></td>
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<td><strong>Restrictions on transfers</strong></td>
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<tr>
<td><strong>Treasury stock and financial assistance</strong></td>
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<tr>
<td><strong>Derivative acquisition of treasury stock</strong></td>
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<tr>
<td><strong>Financial assistance prohibition</strong></td>
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<tr>
<td>Financing sources</td>
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<tr>
<td>Listing and issuing bonds or other negotiable instruments</td>
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</table>

<table>
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<tr>
<th>Capital decrease</th>
<th>Lda</th>
<th>SA</th>
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<tbody>
<tr>
<td>Shareholders may resolve a share capital decrease to cover losses, free excess of capital or for another special purpose.</td>
<td>Shareholders should adopt measures when the equity capital of the company is equal to or lower than half of its share capital. Share capital decrease may be one of these measures.</td>
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</tr>
<tr>
<td>Shareholders should adopt measures when the equity capital of the company is equal to or lower than half of its share capital. Share capital decrease may be one of these measures.</td>
<td><strong>Publicity and opposition term</strong></td>
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<tr>
<td>The capital decrease resolution must be registered and creditors may judicially oppose to it within one month.</td>
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<tr>
<td>Lda</td>
<td>SA</td>
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<tr>
<td><strong>Corporate governance</strong></td>
<td><strong>The shareholder’s meeting may resolve, in first call, whatever the number of shareholders attending or represented at the meeting, with the exception of certain matters, with respect to which the shareholder’s meeting can only resolve if the shareholders that attend or are represented at the meeting own shares corresponding to, at least, 1/3 of the share capital. In second call, the shareholder’s meeting may resolve whatever the number of shareholders attending or represented and the share capital that they represent.</strong></td>
<td></td>
</tr>
<tr>
<td><strong>General meeting</strong></td>
<td><strong>Resolutions are passed when approved by a majority of issued votes. 2/3 majorities are required in specific cases (e.g. share capital increase and decrease, amendment of by-laws, transformation, merger and spin-off).</strong></td>
<td></td>
</tr>
<tr>
<td>There is no general attendance quorum. Resolutions can be passed by a simple majority of the issued votes. Some resolutions require a reinforced majority (more than 3/4 of the voting rights for share capital increase or decrease, by-laws amendments, merger and spin off). By-laws can increase the voting majorities.</td>
<td><strong>By-laws can increase the attendance quorum and voting majorities.</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Administrative body</strong></td>
<td><strong>By-laws may establish that minority shareholders representative of 10% of the share capital that have voted against the winning proposal for the directors’ election may designate a representative in the board of directors of the company.</strong></td>
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<tr>
<td>The PCA does not establish specific rights for minority shareholders, such as those established for SAs</td>
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2.3. Incorporating new companies and acquiring “shelf companies”

When investing in Portugal, you can either incorporate a new company (“NewCo”) in 24 hours with publicly pre-approved template documents or specifically tailor the companies’ documents to your requirements. Alternatively, you can buy a company that has already been incorporated but has not yet initiated its activity (“shelf company”). The latter is more expensive and less common since a new standard company can now be incorporated in 24 hours.

Requirements for incorporating a limited liability company

This section describes the main steps required to incorporate a Portuguese limited liability company (either an SA or an Lda).

- **Powers of attorney.** If you are going to be represented at the act of incorporation, you have to grant powers of attorney, duly apostilled in accordance with the Hague Convention procedure or legalised by a Portuguese consul.

- **Company name.** You need to obtain a certificate of clearance to use the NewCo’s proposed name.

- **Tax identification numbers.** All foreign shareholders and future non-resident directors of the NewCo will need to obtain a Portuguese tax payer number. Non-EU citizens must also appoint a Portuguese tax representative.

- **Cash contributions.** Contributions made in cash to the NewCo can be deposited in or transferred to a bank account in Portugal, opened in the name of the NewCo under incorporation.

- **Private written document or public deed of incorporation.** You or your duly authorised representatives must execute a private written document, containing the company’s articles of association, wherein the signatures of the company’s founding shareholders or their representatives must be authenticated, unless a public deed is required (e.g., in cases where there is a transfer of real estate assets to the company by its shareholders). Such document regulates also the internal affairs of NewCo including, among others, the corporate purpose, the registered office, the issue and transfer of quotas/shares, the administration and supervision structure, and the general meeting attendance quorums and voting majorities.
• **Filing with the Corporate Registry.** The deed of incorporation must be submitted to the Corporate Registry for registration.

NewCo can act from the date the deed of incorporation is filed, although it will only have full legal personality upon registration.

Recent legal reforms aim to simplify the procedure to set up companies in Portugal. Currently, there are simplified procedures, allowing the incorporation of a company at one single service station in 1 day (the so-called “Empresa na Hora” regime) or online, by accessing the official entrepreneur website, in 2 business days (the so-called “Empresa Online” regime).

**Requirements for acquiring a shelf company**

As in the case of a NewCo, you will need to grant a power of attorney if you are going to appoint a representative. Besides, all foreign shareholders and future non-resident directors must obtain a taxpayer number. See the previous section for details on these two steps.

• **Sale and purchase deed.** You and the seller must execute a private written document to formalise the sale and purchase deed. The purchase price is paid as agreed between the parties.

• **Foreign investment filings** (please refer to section Exchange control and foreign investment regulations).

• **Other corporate actions.** Once you have purchased the shelf company, you will appoint new directors and amend the by-laws to tailor the company to your needs (change of corporate name, purpose, registered office, transfer rules and administration and supervision structure). These corporate resolutions must be registered with the Corporate Registry.

2.4. **Corporate governance of limited liability companies**

There are four alternatives to organise the managing body of a limited liability company: (i) a sole director; (ii) a number of joint and several directors that will act independently, each binding the company separately, in case of Ldas; or (iv) a board of directors in case of SAs. The by-laws may include all these options, allowing the General Meeting to opt for one of the structures.
Directors of limited liability companies are under duties of care and loyalty and must act *bona fide* in the best interest of the company. Directors (and *de facto* directors) are liable towards the company, its shareholders and the company’s creditors for any damages they may cause due to any acts contrary to law or the by-laws, or carried out in breach of the duties associated with their position.

### 2.5. Exchange control and foreign investment regulations

Exchange control and foreign investments are liberalised in Portugal (except for specific sectors such as activities related to national defence). Thus, they are generally free from restrictions, but some notification obligations to the relevant authority may be required. These reporting obligations are imposed for statistical and tax purposes and to prevent infringements of law. Failure to comply with these reporting obligations may result in monetary fines.
3. TAKING SECURITY

3.1. Preliminary ideas

Types of guarantees

There are two types of guarantees, depending on how the obligation is secured:

(a) \textit{In rem} guarantees, whereby an asset is granted as security for the fulfilment of obligations.

(b) Personal guarantees, whereby a person guarantees the fulfilment of obligations as an additional obligor.

In case of insolvency, these guarantees rank differently and there are material differences in their enforcement.

Notarisation and registration

Guarantee or security documents must, depending on the type of guarantee and the amount guaranteed, be issued before a notary to be considered as enforceable titles. When executing a public deed, it is important to remember that all non-resident parties or appearers must have a Portuguese tax identification number (NIF or NIPC).

Registration is required for and increases the costs of some types of guarantees, e.g., real estate mortgage.

Principle of integrity

Broadly speaking, a security interest can only secure one main obligation and its ancillary obligations. If two different main obligations need to be secured, two different guarantees must be created. Portuguese law does not provide for a so-called “universal guarantee” over all the debtor’s assets. Nor does it generally provide for the creation of a “floating” or “adjustable” lien or encumbrance.
Corporate benefit

Under Portuguese law, the directors of a company must perform their duties at all times, with the diligence of an orderly businessperson, and must act as loyal representatives when defending corporate interest. Unlike other EU jurisdictions, there is no specific obligation for companies to justify that they are acting for corporate benefit when granting a guarantee or security concerning its own obligations, although it is advisable to do so according to the characteristics of a specific transaction or to uphold the effectiveness of the security or guarantee if the grantor becomes insolvent.

In case of a guarantee or security concerning an obligation of a third party, even within the context of group, controlling or affiliation relationship, companies must justify that they are acting for their own corporate benefit.

Blanket prohibition on financial assistance

Portuguese limited liability companies cannot give financial assistance to acquire their shares or quotas, or those of their parent companies.

This blanket prohibition covers indirect assistance, meaning situations where the company is not providing consideration in the traditional sense, but is covering another party’s obligation, e.g., if the company guarantees a bank loan in favour of an individual for purchasing shares in the company. The rules prohibiting financial assistance are particularly relevant in the context of acquisition finance.

3.2. Overview of the most relevant types of security

In this section, we provide an overview of some of the options available when taking security in Portugal. This description, however, is not fully comprehensive and other types of security are available under Portuguese law.
Pledge over shares and credit rights

Pledges over shares and credit rights (such as bank accounts, receivables and insurance policies) are the most common type of security given.

These pledges entail a transfer of possession (or documentation that replaces it). In case of pledge over shares, such transfer takes place by means of endorsement or registration in the partners/shareholders book or book entry registry, as the case may be.

Real estate mortgage

Real estate is frequently used as security by means of a real estate mortgage. As an exception to the principle of integrity, a mortgage can secure several obligations as long as they are specified or specifiable and the procedure for settling each obligation is established. Mortgage agreements must be filed with the competent Real Estate Registry Department.

First demand guarantee

This guarantee imposes an obligation on the guarantor to pay the beneficiary on first demand. This guarantee is independent from the underlying contract that it guarantees and operates strictly in accordance with its terms. Therefore, the guarantor’s payment obligation becomes a principal obligation that is not affected by disputes over the underlying contract between the obligor and the beneficiary, who is usually entitled to payment simply on submitting a claim for payment.

3.3. Special regime for financial guarantees

Portuguese regulation on financial collateral agreements provides for a simple and quick procedure for enforcing financial guarantees. These are some of the most relevant features of these guarantees:
(a) They do not need to be formalised before a notary public to be enforceable against third parties.

(b) Security can be created by outright transfer of title to the asset or right concerned, or by creating a pledge.

(c) The creditor can negotiate a right of replacement and use of the financial collateral as if it were the owner, without losing rank of privilege.

(d) When expressly agreed, and provided certain requirements are met, enforcement of the collateral may be achieved through appropriation.

(e) These guarantees are not affected by the general insolvency regime.

(f) Close-out netting agreements are not limited or affected by the commencement of insolvency proceedings or appointment of receivers.

To grant a financial guarantee, the parties, the collateral and the secured obligations must fulfil several specific requirements.
4. ANTITRUST

Businesses in Portugal are subject to EU and Portuguese antitrust law. Portuguese antitrust law applies to anticompetitive agreements or conduct occurring or having effects in Portugal. EU law also applies to those agreements or conducts which may affect trade between member States.

The relevant Portuguese statute is the Competition Act (“CA”), Law 19/2012, May 8th.

The provisions of the CA are enforced by the Portuguese Competition Authority (Autoridade da Concorrência, or “AdC”). The new statutes of the Competition Authority (Decree Law 125/2014, of August 18), which came into force in September 2014, reinforced the powers of the Authority regarding the enforcement of the competition rules. In the first eight months of 2015, the AdC adopted two fining decisions.

In addition, EU and Portuguese antitrust law can be applied in private litigation before Portuguese courts.

4.1. Restrictive practices

The CA prohibits collusive practices (anticompetitive agreements, concerted practices and decisions by associations of undertakings), abuse of dominant positions and abuse of economic dependence that restrict or distort competition in the Portuguese market.

Collusive practices

In general terms, in Portugal, all agreements, collective decisions and recommendations, concerted practices or decisions by associations of undertakings that aim or achieve to prevent, restrict or distort competition are prohibited.
These practices include, *inter alia*, price fixing; limiting or controlling production, distribution, technical development or investment; sharing markets or sources of supply; applying dissimilar conditions to equivalent transactions; and concluding contracts subject to the acceptance of supplementary obligations that have no connection with the object of these contracts.

Prohibited agreements and practices, subject to some exceptions, are null and void and may be punishable, depending on the severity of the restriction on competition, with fines of up to 10% of the total annual turnover of the infractor or, in the case of associations of undertakings, of up to 10% the aggregate turnover of the associated undertakings.

Other ancillary sanctions that may be applied by the Portuguese Competition Authority include the publication, at the expenses of the infringing company, of the decision in the Official Gazette and, in case of bid rigging infractions, a ban, of up two years, on the right to take part in the procedures for public works contracts.

Under Article 10 of the CA, prohibited agreements and practices can be exempted if they contribute to improving the production or distribution of goods and services or to promoting technical or economic if the restrictive practices offer the users of goods or services a fair part of the benefit of the practices, do not impose on any restrictions that are unnecessary to achieve the objectives and do not enable the undertakings question. In addition, the AdC may impose on the undertaking(s) concerned behavioural or structural measures that are deemed indispensable to make the sanctioned practice and its effects come to an end.

**Abuse of dominance**

The CA prohibits abusive exploitation of dominance, whether by one or more undertakings. Such abuse may, *inter alia*, consist of applying unfair trading conditions, limiting production to the prejudice of consumers, refusing to deal, predatory pricing or discriminating so as to place one or more parties at a competitive disadvantage.
Abuse of dominance is punishable with fines of up to 10% of the total annual turnover of the infractor. Other ancillary sanctions that may be applied by the AdC include the publication, at the expenses of the infringing company.

In addition, the AdC may impose on the undertaking(s) concerned behavioural or structural measures that are deemed indispensable to make the sanctioned practice and its effects come to an end.

Abuse of economic dependence

The CA also prohibits the abuse of economic dependence by one or more undertakings, under which any of its supplier or customer may find itself as a result of the fact that any equivalent alternative is not available. Such abuses comprise, for instance, the refusal to deal or the unjustified termination of an existing commercial relationship between the undertakings involved, taking into account, *inter alia*, their previous commercial relations, recognised practices in a particular economic activity and the contractual conditions that have been specifically set down.

Abuse of economic dependence is punishable with fines of up to 10% of the total annual turnover of the infractor. Other ancillary sanctions that may be applied by the AdC include the publication, at the expenses of the infringing company, of the decision in the Official Gazette.

In addition, the AdC may impose on the undertaking(s) concerned behavioural or structural measures that are deemed indispensable to make the sanctioned practice and its effects come to an end.

Leniency regime

Under the Portuguese leniency regime, companies or individuals subject to liability for restrictive agreements and concerted practices prohibited by the CA may benefit from immunity or reduction of up to 50% of the fine provided they (i) cooperate fully and continuously with the Competition
Authority, providing all the information and evidence in their possession, (ii) terminate their participation in the infringement, and (iii) did not coerce any of the other companies to participate in the infringement.

The leniency regime is becoming increasingly popular among companies doing business in Portugal.

4.2. Merger control

The CA requires prior notification and authorisation for mergers and other concentrations, including acquisitions and full-function joint ventures, which are not notifiable to the European Commission under the EU Merger Regulation, but which satisfy any of the thresholds listed below.

A concentration should be notified to the AdC when:

(a) a market share equal to or exceeding 50% of the Portuguese market (or of a substantial part of it) for a specific product or service is acquired, created or reinforced as a result of the transaction; or
(b) a market share equal to or exceeding 30% but smaller than 50% of the Portuguese market (or of a substantial part of it) for a specific product or service is acquired, created or reinforced and the individual turnover achieved in Portugal in the previous financial year of at least two undertakings involved in the transaction exceeds €5 million, net of taxes directly related to such a turnover; or
(c) the aggregate turnover achieved in Portugal of all the undertakings involved in the transaction in the previous financial year exceeds €100 million net of taxes directly related to such a turnover and the turnover in Portugal of at least two undertakings involved in the transaction exceeds €5 million.

The CA provides for fines of up to 10% of the parties’ turnover if a transaction is not notified or if a transaction is completed without authorisation. In 2014, the AdC fined with more than €100 thousand three companies which implemented a concentration without prior notification.
4.3. Unfair competition

Portuguese unfair competition rules are based on the general principle that commercial conduct contrary to good faith is considered unfair. The relevant Portuguese statute is the Portuguese Industrial Property Code (Decree Law 36/2003, of March 5, in particular, Articles 317 and 318.

The Portuguese Unfair Competition rules specifically addresses unfair commercial conducts, including: acts of confusion, misleading advertising, some kinds of gifts and discounts, acts of denigration, acts of comparison, acts of imitation and sales at a loss.

4.4. Individual trade practices

Undertakings active in the production and distribution of goods in Portugal should also take into consideration the new legal regime on individual restrictive trade practices, set out in Decree Law 166/2013, of December 27. The legal regime on individual restrictive trade practices considers as restrictive trade practices the application of discriminatory prices or sales conditions, the sale below the price of cost, the refusal of supply of goods or services and other abusive business practices. For large undertakings, the fines for restrictive trade practices may go up to € 2.5 million.
5. STATE AID

Under EU law, State aid is subject to control by the European Commission to ensure that government interventions at any level (national, regional or local) do not distort competition and trade inside the EU. State aid is defined as an advantage in any form whatsoever (e.g. loans and guarantees), conferred on a selective basis to undertakings by national public authorities. Therefore, subsidies granted to individuals or general measures open to all enterprises are not covered by Article 107 of the Treaty on the Functioning of the European Union and do not constitute State aid.

EU law establishes a general prohibition of State aid measures (which must be notified to and only implemented after approval by the Commission), while making allowances for a number of areas in which State aid can be considered compatible under certain conditions.
6. INTELLECTUAL PROPERTY RIGHTS AND PERSONAL DATA PROTECTION

According to the Portuguese law, the intellectual, artistic and scientific creation is free and this freedom embraces the right to the invention, creation and disclosure of the scientific, literary or artistic work, including the copyright legal protection.

The English term “intellectual property rights” includes two different concepts:

(i) copyright, and
(ii) industrial property rights (including trademarks, designs, logos, patents and utility models, among other rights).

6.1. Copyright

The original intellectual, artistic and scientific creation is the object of the copyright legal protection and rights holders can exercise their rights, under national regulations, in countries where they request protection for their rights. Unlike industrial property rights, copyright legal protection is acquired by virtue of the simple creation of a literary, artistic or scientific work: no registration is legally required, just the exteriorization by any means apprehensible by our senses. Protection is automatic and existing from the moment the work is created and is not subject to registration or deposit. Nevertheless, it is advisable to carry out said registration with the competent authorities, since it proves the existence of the relevant works, of its ownership and permits effective enforceability of these rights, namely regarding priority issues.

In Portugal, copyright and neighbouring rights are regulated under the Copyright and Related Rights Act, enacted in compliance with several international treaties and EU Directives which regulate the rights of authors as well as other “neighbouring rights” (including the rights of producers of phonograms and videograms, performers and broadcasting companies).
Software and databases are also protected by copyright in Portugal, but are regulated in separate specific laws.

For a work to be protected by copyright it must be an original literary, artistic or scientific creation, (not a simple copy of a pre-existing work) expressed in any way or form, whether tangible or intangible, known at present or that may be created in the future. Works protected by copyright include books, magazines, newspapers, music, advertising slogans, cinematographic, television and radio works, sculptures and paintings, architectural works or works of engineering, photographic works, among several others.

Copyright include (i) personal or moral rights, which are not subject to a time limit, cannot be assigned or waived under any circumstance (including the right to claim authorship of the work and to react against any attempt to its integrity and authenticity), and (ii) rights of economic nature, based on the exclusive right that is recognised to the author to use and benefit from the work and to authorise its exploitation and which may be assigned to third parties.

In general terms, the exploitation rights last for the life of the author and until 70 years after the author’s actual or declared death. Neighbouring rights or sui generis rights have different durations. When the term expires, the works enter the public domain and the public may use them as long as they respect the moral rights, which have no term of duration, as previously stated.

If these rights are infringed (it depends of the type of infringements but in general terms, copyright breaches may be considered a crime or an administrative offense), the holder can apply for cessation of the unlawful activity against the infringer and claim reparation for the material and moral damages caused. The holder can also request a preliminary injunction to obtain immediate protection, if the applicable legal requirements are fulfilled. There are also other actions that may be applied for regarding maintenance and obtaining of evidence.

A number of EU directives and international treaties aim to harmonise some features of IP rights.
6.2. Industrial property rights

In general terms, Industrial property rights can be protected at different levels (national, EU or international). In all cases, rights over intangibles are subject to previous registration with the competent authorities.

It is worth noting that several intellectual property rights can exist over the same object, i.e., a logo can be protected by copyright, design rights and trademark rights, as long as the necessary requirements are met.

Trademarks

A trademark is any sign capable of being represented graphically, distinguishing different goods or services of one undertaking from others in the course of trade. These signs can be represented by words, images, shapes, letters, numbers, three-dimensional shapes, sounds or any combination of the above.

National trademarks

In Portugal, trademark rights are regulated in the Portuguese Industrial Property Code. A national (Portuguese) trademark application must be filed before the Portuguese Instituto Nacional da Propriedade Industrial (Industrial Property National Office – INPI), specifying the classes of products and services for which protection is sought, according to the Nice classification. Trademark legislation forbids registration of some signs if, for example, signs lack distinctive character; are contrary to law, public policy or principles of morality; are identical to an earlier trademark and claim identical goods or services; or are likely to cause confusion or association with an earlier trademark near the public.

Trademark registration is granted for a ten-year period starting on the application date and can be indefinitely renewed for subsequent ten-year periods. A trademark can be revoked if its holder has not used it, without proper reason, within a five-year period starting on the date the notice of registration is published.
Registration gives holders the right to use the trademark in the course of trade. If a third party uses an identical or similar trademark to designate identical or similar goods or services in the marketplace without authorisation, holders can request the cessation of the unlawful activity against the infringer and claim reparation for any material and moral damages caused. They can also request a preliminary injunction to obtain immediate protection, provided legal requirements are met.

Community trademark

The Regulation on the Community Trademark applies within the European Union. The community trademark application must be filed before the Office of Harmonisation in the Internal Market (OHIM). Like national registration, EU registration is effective in all Member States for a ten-year period and can be indefinitely renewed for additional ten-year periods. A community trademark can also be revoked if it is not used for an uninterrupted period of five years.

International protection

The Madrid Arrangement and the Madrid Protocol (together known as the “Madrid System”) establish a unified application procedure to obtain different national trademarks in the countries that are members of the Madrid System. The Madrid System, administered by the World Intellectual Property Organisation (WIPO), allows an international trademark application to be filed directly before the WIPO, which will subsequently forward it to the competent national trademark offices in the countries designated in the application. Trademark holders will have a national title in each country designated in their application.

Designs

Designs are defined as the appearance of the whole or part of a product resulting from the features of the lines, contours, colours, shape, texture or materials of the product itself or its ornamentation. Design registration entitles the holders to use the design and to prevent third parties from using it without consent.
The two requirements for registering a design are novelty and individual character, meaning that the overall impression it produces on informed users differs from the overall impression any previous design produced on these users.

In Portugal, design rights are also regulated in the Portuguese Industrial Property Code and the entity responsible for the designs registration is INPI. The protection period is of five years counted from the date the application is filed. The rights holder may renew the said protection period for equal periods, up to a maximum of 25 years from the filing date.

EU Regulation on community designs is directly applicable in all Member States, including Portugal. At international level, there are many conventions providing for the protection of designs, including the Berne Convention, the Paris Convention, the Hague Agreement and the TRIPS Agreement.

Patents

Portuguese patents

- Under the Portuguese Industrial Property Rights Code, an invention (either a product or procedure) is patentable if (i) it is novel, i.e., it is not part of the state of the art before the date on which the patent application is filed; (ii) it involves an inventive step, i.e., with regard to the state of the art, it is not obvious to a person skilled in the art; and (iii) it is susceptible of industrial application, i.e., it can be made or used in any kind of industry.

- INPI grants patent rights for a non-renewable period of 20 years, beginning on the date the application was filed. This registration grants exclusive exploitation rights and also protection rights against third parties.

- It is also possible to request a supplementary protection certificate (SPC), which is an industrial property right that extends the protection granted by a patent for a maximum period of 5 years. This can apply to a product, medicinal or plant protection, as long as the product is protected by the original patent. This industrial property right was created to meet the needs of the medical and phytopharmaceutical industries.
• Patent claims will determine the extent of the protection conferred by a patent. The rights holder must exploit the invention or license an authorised third party to exploit it. The Portuguese Industrial Property Rights Code provides circumstances in which a patent holder may have to grant a compulsory license, e.g., if the patent is not being used or if this is necessary due to public interest or export.

European patent issuance system

• The Munich Convention, of October 5, 1973, created a European patent issuance system whereby a single application must be filed with the European Patent Office. After registration, the European patent is converted into several national patents enforceable in each of the designated countries. Like the Portuguese national patent, the protection period is 20 years. A European patent is equivalent to several national patents, each of which is subject to the national rules of the countries listed on the application. Therefore, it is not valid throughout the entire EU territory.

Single European patent issuance system

• On December 11, 2012 the European Parliament voted positively in a first reading on the EU Council’s compromise proposals for two draft EU regulations on a unitary patent for Europe. Such unitary patent will allow the applicant to obtain a single patent covering the EU territory. The first draft regulation concerns unitary patent protection, and the second sets out the translation arrangements for such protection. The draft regulations were accepted under the EU’s legislative procedure of “enhanced co-operation”: With the exception of Italy and Spain, 25 EU member states have embarked on enhanced co-operation with a view to creating unitary patent protection for their territories. The regulations entered into force on January 20, 2013. However, they will only apply from the date of entry into force of the Agreement on a Unified Patent Court.
International patent issuance system

- The Patent Cooperation Treaty, signed on June 19, 1970, provides for a unified procedure to protect inventions by filing patent applications with the World Intellectual Property Organisation (WIPO). Examination and granting procedures are handled by the corresponding national authorities and do not result in an international patent.

Utility models

Utility models are defined as “minor” inventions possessing novelty and industrial applicability. Unlike patent rights, utility models are based on a limited nationwide assessment of the state of the art. They are subject to a less rigorous examination and only protect products (not procedures). The period of protection may not exceed 10 years from the date of registration. The regulation for patents applies by default to utility models in all aspects that are not contrary to the specific nature of utility models.

6.3. Personal Data protection

Privacy regarding personal data files is protected under the Portuguese Data Protection Act, which implements EU regulation. This Act governs all processing of personal data if (i) processing is carried out as part of the activities of an establishment located in the Portuguese territory belonging to the data controller; (ii) the data controller is not established in Portugal, but is subject to Portuguese law pursuant to public international law; (iii) the data controller is not established in EU territory, but uses means in Portugal for processing personal data (unless such means are only used for transit purposes).
The most important obligations concerning personal data protection relate to (i) registering personal data files in the Portuguese Data Protection Agency (Comissão Nacional de Protecção de Dados – CNPD); (ii) compliance with the right of information of the data subjects, informing the subjects about the processing, its purposes, destination of the data, identification of the controller, and about the data subjects’ rights of access, correction and opposition; (iii) compliance with the data subjects’ rights of access, correction and opposition; (v) implementing appropriate security measures; (v) entering into adequate contractual clauses with processors, legally set forth in the Portuguese Data Protection Act, when transferring data to such third parties to enable rendering the relevant services to the data controller; (vi) disclosing data to third parties; and (vii) transferring data outside the EU.

The lawful processing of personal data can only begin after registration of the personal data files before the CNPD. Whenever the personal data files include sensitive data and/or occurs the transferring of data outside the EU, the prior authorization of the CNPD is required.
7. TAX

7.1. Introduction

Under the Portuguese tax system, liability to tax is based on factors that determine the connection of income, acts and contracts or transactions to the Portuguese jurisdiction that differ according to the tax at stake, as follows:

- Residence and source of income, for income taxes (both personal and corporate);
- Location of the immovable property, for real estate transfer tax (“IMT”) and municipal property tax (“IMI”);
- Place of execution of acts and contracts, for stamp tax;
- Place where the transaction is deemed to be carried out, for value added tax (“VAT”).

The connection factors referred to above should be regarded as general principles aimed at providing the right to tax to the Portuguese State.

Accordingly, they should be analysed in light of key concepts that are foreseen under the Portuguese tax system and to which the latter provides the respective definition, eg, the concept of residence and the concept of source.

Furthermore, said general principles have some relevant exceptions foreseen in the Portuguese tax system aimed at (i) broaden the scope of the taxable acts and contracts (e.g., in the case of IMT, IMI and stamp tax), and (ii) considering the specific nature of the transactions (e.g., in the case of VAT).
7.2. Main Taxes

We provide below a brief and general overview of the main Portuguese taxes that in general terms one should take into account, as follows:

- Corporate Income Tax
- Personal Income Tax
- VAT
- Real Estate Transfer Tax
- Municipal Property Tax
- Stamp Tax

7.3. Corporate Income tax (“CIT”)

7.3.1. Preliminary Remark

Portuguese-resident companies are liable to CIT on their worldwide income, whilst non-resident entities are liable to CIT on Portuguese-sourced income only, i.e., that obtained through a local permanent establishment (“PE”) or that corresponding to any of the income types listed in the law.

A company is deemed to be tax resident if it has its legal seat or place of effective management in Portugal.

7.3.2. Resident companies and PE of non-residents

Taxable basis

The annual CIT taxable base of resident entities engaged in business undertakings results from the accounting profit or loss of the year added by certain positive and negative changes in equity not reflected in the P/L account, which is subject to certain adjustments required by the CIT law.

1 Portuguese CIT was subject to a Reform that produced its effects as from January 1, 2014.
On an exemplificative basis, CIT adjustments to the accounting results may refer to depreciation and amortisation, inventory adjustments, impairment losses, losses arising from applying the fair market value, expenses with onerous acquisition on or after January 1st 2014 of certain intangible assets with no limited useful life period, and with goodwill acquired within the context of a corporate restructuring process (except if arising from shareholdings), etc.

Adjustments may also result from non-deductible expenses, which include, e.g., (i) CIT itself, Municipal Surtax, and any taxes or charges that must be passed on to third parties; (ii) expenses supported by documents not observing legal requirements; (iii) criminal or administrative fines and sanctions, including fines and penalty charges for tax infringements; (iv) payments to residents in low-tax jurisdictions.

According to a recently introduced rule, applicable as from January 1st 2013, net financial expenses are in general tax deductible only up to the higher of the following limits: (i) € 1 million; (ii) 30% of annual EBITDA².

A local PE of a non-resident is liable to CIT on the income attributable to it, defined under domestic law as the income obtained through the PE and other income derived in Portugal from activities identical or similar to those undertaken through the PE. Under double-taxation treaties (“DTT”) concluded by Portugal, this domestic rule is overridden and taxable income of the PE corresponds exclusively to that obtained through the PE itself.

The CIT taxable profit of a PE is, in general, computed in accordance with rules similar to those applicable to resident companies. There is no branch tax on income remitted from a branch to the foreign head office.

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² Pursuant to a transitory regime for tax years from 2013 to 2017, a 70%, 60%, 50%, 40% percentage will apply in 2013, 2014, 2015 and 2016, respectively. EBITDA resulting from the accounting is adjusted under this rule.
Tax Losses

The carry-forward period for tax losses is of 12 years regarding tax losses incurred in the tax periods starting on or after January 1st, 2014. The carry forward period for tax losses incurred in prior years may vary between 4 and 6 years.

Offset of tax losses may however not exceed 70% of each tax period’s taxable profit. This threshold applies to the offset of tax losses against the taxable profits from the tax periods starting on or after January 1st, 2014.

The right to carry-forward tax losses may in certain cases be jeopardized when more than 50% of the share capital ownership or voting rights changes.

Tax Rates

As from January 1st 2015 the standard CIT rate for resident companies and PE of non-residents was reduced from 23% to 21%.

Small and medium companies benefit from a reduced CIT rate of 17% regarding taxable income of up to € 15,000.00:

<table>
<thead>
<tr>
<th>Taxable amount</th>
<th>Tax rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Up to € 15,000.00</td>
<td>17%</td>
</tr>
<tr>
<td>Above € 15,000.00</td>
<td>21%</td>
</tr>
</tbody>
</table>

The standard CIT rate may be further added by a Municipal Surcharge (*Derrama Municipal*) levied on the year’s taxable profit at a rate of up to 1.5%.
A State Surcharge (*Derrama Estadual*) is also levied over the year’s taxable profit exceeding € 1,500,000.00, at the following rates:

<table>
<thead>
<tr>
<th>Year’s Taxable Profit</th>
<th>Tax rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Up to € 1.5 million</td>
<td>Not applicable</td>
</tr>
<tr>
<td>Higher than € 1.5 million up to € 7.5 million</td>
<td>3%</td>
</tr>
<tr>
<td>Higher than € 7.5 million up to € 35 million</td>
<td>5%</td>
</tr>
<tr>
<td>Higher than € 35 million</td>
<td>7%</td>
</tr>
</tbody>
</table>

**Transfer Pricing**

Domestic transfer pricing rules, which follow the OECD guidelines, determine that terms and conditions of transactions between related parties should follow those that would have been established between independent entities in a comparable transaction (arm’s length). Otherwise, tax authorities may adjust the respective terms and conditions accordingly.

Regarding the personal scope, the rules start determining broadly that two entities are deemed as related whenever one may exercise directly or indirectly a significant influence in the management of the other, then providing for an extensive list of situations under which the ‘related party test’ is considered to be met.

The rules further establish specific – yet somehow extensive – documentation compliance requirements, which in certain cases require that a transfer pricing file is prepared and maintained. Furthermore, taxpayers are required to disclose in their annual tax and accounting return information on the existence of transactions with related parties, their identities, amounts and whether contemporaneous documentation was prepared.
These rules include the possibility of taxpayers entering into advanced pricing agreements (APAs) with the tax authorities, which may apply for up to three years.

Special Regimes

(i) **Participation Exemption on dividends and capital gains**: A participation exemption regime was introduced as from January 1st 2014 and generally applies to all CIT resident taxpayers that are not subject to the tax transparency regime, both for purposes of eliminating double economic taxation on distributed profits and reserves and regarding capital gains and capital losses arising from the sale of shares or other equity instruments.

In order so that the participation exemption regime may apply, a minimum direct or indirect shareholding of 5% of the subsidiary’s share capital or voting rights uninterruptedly held for a period of 24 months is required.

(ii) **Tax Group Regime**: A company (controlling company) that holds, direct or indirectly, at least 75% of the capital of other companies, granting to it more than 50% of the voting rights, may under certain conditions opt for a special regime under which a group of companies may file a group tax return. The group’s taxable income, determined by the controlling company, corresponds to the algebraic sum of taxable profits or losses (or both) as assessed individually in a periodical tax return of each company belonging to the group.

Timing requirements should be considered upon acquisition of a company, since applicable rules will normally imply a waiting period of more than one year before the regime can begin applying.

This regime includes particular rules on deduction of tax losses, which, for instance, may restrict the deductible amount in each year where the regime applies regarding tax losses assessed before the regime started being applied.
(iii) **Business reorganization**: CIT law provides for a tax-neutrality regime applicable to restructuring operations, which is in line with the so-called *Mergers Directive*\(^3\). This regime provides for deferral of the CIT otherwise due, both at the level of the companies involved and their shareholders, upon mergers, divisions, and partial divisions, transfers of assets and exchanges of shares, as defined under the *Mergers Directive*.

This neutrality regime does not cover indirect taxes, although domestic tax law sets out the possibility of applying for an exemption from the Ministry of Finance regarding real estate transfer tax and stamp duty triggered upon transfer of real estate within restructuring operations, and from other costs also arising in restructurings such as registry costs.

### 7.3.3. Non-residents without a PE

Non-resident entities without a PE herein are liable to Portuguese CIT on different types of Portuguese sourced-income listed in the CIT law, including notably that derived from local real estate, parts of capital or other securities issued by resident companies, positive variations in equity arising from certain gratuitous transfers, as well as investment income, royalties and certain services fees where paid by residents or attributable to a local PE\(^4\).

Dividends, interest and royalties derived by non-residents without a PE are in general liable to withholding tax at a rate of 25%.

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3. Council Directive 2009/133/EC of October 19, 2009 on the common system of taxation applicable to mergers, divisions, partial divisions, transfers of assets and exchanges of shares concerning companies of different Member States and to the transfer of the registered office of an SE or SCE between Member States.

4. As a rule, taxation is levied through final withholding taxation, though there are some exceptions, e.g., regarding real estate-related rental income or capital gains, which require non-residents to file a tax return, the periodicity and deadlines of which depend on the type of income.
Provided that the necessary requirements are met, the participation exemption regime may however apply to dividends distributed to residents in another EU Member State, in an EEA Member State bound to administrative cooperation in the tax area equivalent to that established in the EU, or, in a State with which Portugal has signed a DTT.

EU corporate investors may also benefit from withholding tax relief on interest and royalties pursuant to the regime of the so-called *Interest & Royalties Directive*.

As a final remark, we note that Portugal has currently more than 50 DTT in force, which generally follow the OECD model tax convention despite a few reservations it has made to some of its articles, which are reflected in some DTT. Regarding outward-bound payments, Portuguese DTTs normally provide for reduced withholding tax rates, as follows:

- regarding dividends, the domestic rate normally reduces to 5%, 10% or 15%
- regarding interest, the domestic rate normally reduces to 10%, 12% or 15%
- regarding royalties, the domestic rate normally reduces to 5%, 10% or 12%

### 7.4. Personal income tax (“PIT”)\(^6\)

#### General Rules applicable to resident individuals

Portuguese resident individuals are subject to PIT on their worldwide income, whilst non-resident individuals are only liable to PIT on Portuguese sourced income as defined by the PIT Code.

Under domestic law an individual is considered as tax resident in Portugal, if any of the following circumstances occurs:

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6. Portuguese PIT was subject to a Reform that produced its effects as from January 1, 2015.
• The individual stays for more than 183 days (whether consecutive or not) in Portugal in any period of 12 months starting or ending in the year at stake; or
• Though staying less than 183 days in Portugal, the individual has, in any day of the period referred to above, a house or abode in such conditions that evidence the intention to hold and occupy it as his habitual place of residence; or
• An individual may also be deemed as having tax residence in Portugal in the following particular cases: (i) if on December 31 of a given year the individual is a crew member of a ship or aircraft at the service of an entity with residence, head office or effective management in Portugal, or (ii) if although living abroad, the individual is performing public functions or commissions at the service of the Portuguese State.

The tax period is the calendar year and as a rule PIT due by resident individuals is levied, on an annual basis, at the general/progressive rates over the sum of the different categories of income subject to taxation, net from the corresponding deductions.

When there is a household (e.g. married couple or couple living under a civil union and minor children), PIT is individually assessed regarding each of the members of the couple, unless taxpayers opt to be jointly taxed as a family unit, to which an income splitting mechanism applies.

There are six income categories, as follows:

<table>
<thead>
<tr>
<th>Category A</th>
<th>Employment income, including fringe benefits and fees of members of corporate bodies (other than statutory auditors)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Category B</td>
<td>Business income, including income from a business or independent profession</td>
</tr>
<tr>
<td>Category E</td>
<td>Investment income</td>
</tr>
<tr>
<td>Category F</td>
<td>Income from immovable property</td>
</tr>
<tr>
<td>Category G</td>
<td>Net worth increases, including capital gains</td>
</tr>
<tr>
<td>Category H</td>
<td>Pensions, including annuities and alimony payments</td>
</tr>
</tbody>
</table>
Currently the higher rate of the progressive scale of tax rates is 48%, applied to annual taxable income exceeding € 80,000.00, which is further liable to an additional solidarity tax at a maximum rate of 5%, for taxable income exceeding € 250,000.00 (a 2.5% rate applies to the taxable income between € 80,000.00 and € 250,000.00). An additional surtax of 3.5% also applies to taxable income in excess of € 6,790.00.

**Non Habitual Resident's PIT Regime**

A favourable PIT regime applicable to the so-called non-habitual residents (“NHTRR”) was created in 2009, aiming at attracting skilled professionals for high value-added activities, as well as high net worth individuals wishing to move their tax residence into Portugal for retirement or long-term leisure purposes.

The non-habitual tax resident status may be granted to those individuals who (i) become resident for tax purposes in Portugal in a given year and (ii) have not had such status in the five preceding years. Eligible individuals may benefit from the NHTRR for a 10-year period, after which they will be subject to the standard PIT regime.

Amongst other beneficial taxation rules, the NHTRR, may under certain conditions provide for full PIT exemption on foreign sourced employment income, income from independent personal services, royalties, as well as foreign sourced investment income, capital gains, property rental income or pension income obtained.

Domestic sourced employment and independent personal income from listed high value-added activities obtained by non-habitual tax residents are subject to a flat PIT rate of 20%, instead of being subject to the progressive scale of tax rates.

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7 Exceptions to the progressive scale of tax rates however apply e.g. to capital gains upon disposal of shares or to real estate rental income, to which a flat rate of 28% applies. As a rule, investment income is liable to final withholding tax at a rate of 28%. Taxpayers may however opt to have these types of income included in his taxable basis together with other income, and taxation is then levied under the progressive scale of tax rates.
7.5. **Value added tax (“VAT”)**

The Portuguese VAT regime is based on the VIth VAT Directive and aims to tax the consumption of goods and services, falling on the different phases of the economic cycle, from production to sale. It includes transactions entered into in Portugal, but also intra-community acquisitions of goods and services, as well as the importation of goods into Portugal.

The following different VAT rates apply: 6% (reduced), 13% (intermediate) and 23% (standard).

In the autonomous region of Azores, VAT rates are currently reduced to 4%, 9% and 18%, respectively.

Pursuant to the so-called Economic and Financial Adjustment Program (*Programa de Ajustamento Económico e Financeiro*) between the Government and the autonomous region of Madeira, as from April 1st 2012, the VAT rates in the autonomous region of Madeira – that used to be identical to the ones applicable in Azores – were increased to 5%, 12% and 22%, respectively.

7.6. **Real estate transfer tax (IMT)**

IMT is a Municipal tax levied upon acquisition of real estate for a consideration, on the higher of the property transfer value and its fiscal value. The acquisition of 75% or more of the equity of a LDA owning real estate is also liable to taxation (on the higher of the property’s accounting value and its fiscal value).

IMT is borne by the acquirer and the applicable rates are as follows:

- Rural property: 5%
- Urban property and other acquisitions: 6.5%
- Urban property for residential purposes: progressive rates up to 6%
- Rural or urban property when the acquirer is domiciled in a blacklisted jurisdiction: 10%

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8 This rate does not however apply to individual taxpayers.
7.7. Municipal property tax ("IMI")

IMI is a Municipal tax levied annually by virtue of ownership of real property, over the fiscal value of the property, at rates determined by municipalities that cannot, however, differ from the following ones set forth in the IMI Code:

- Rural property: 0.8%
- Urban property: between 0.3% and 0.5%
- Rural or urban property when taxpayer is domiciled in a blacklisted jurisdiction: 7.5%

7.8. Stamp tax

Stamp tax is due on a list of specified taxable events, when deemed as occurring in Portugal, including a number of operations, contracts, acts and documents, as outlined in the stamp tax table. The main taxable events to consider by foreign investors are as follows:

- Acquisition of real estate: 0.8 per cent;
- Acquisition of a going concern: 5 per cent;
- Granting of credit: over principal amount at rates varying upon the term during which funds are used, as follows:
  
  (i) Credit for less than one year: 0.04% per month or fraction
  
  (ii) Credit for between one and five years: 0.5%
  
  (iii) Credit for five or more years: 0.6%

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9 Please refer to footnote 7.
In case of credit granted by banks or other financial institutions, taxation is also levied over interest (4%) and commissions (3% or 4%).

Under certain conditions exemptions apply to intra-group funding operations.

Guarantees deemed granted in Portugal are liable for taxation over the amounts guaranteed at rates varying upon the respective term similarly to that regarding credit taxation. No taxation is levied over guarantees if they are materially ancillary to contracts already taxed, and to the extent they are granted simultaneously to the guaranteed obligation.

Law 55-A/2012, of October 29, 2012 amended the Stamp Tax Code and established as new taxable events the ownership, usufruct right and surface right over urban property with fiscal value equal or higher than € 1 million. As from 2013 taxation is therefore levied annually over the fiscal value of the property at the following rates:

- Property for residential purposes: 1%
- If taxpayer is a legal entity domiciled in a blacklisted jurisdiction: 7.5%
8. EMPLOYMENT ISSUES

In this section we provide an overview of the main aspects of Portuguese employment law to consider when carrying out an activity in Portugal.

8.1. Employment law framework

The main mandatory employment and labour rules are provided in the Labour Code and the applicable collective bargaining agreement for each area of activity. Besides, there is a substantial body of legislation regarding employment, health and safety at work, social security, among others.

8.2. Employment contracts

Types of employment contract

Employment contracts are entered into on a permanent or fixed-term basis, and can be full-time or part-time.

Term (fixed-term or unfixed-term) employment contracts are valid if their nature is justified by temporary business-related reasons, namely:

- The company needs to carry out a specific task or service.
- There is an extraordinary increase in the company’s activity.
- The company requires temporarily replacement of an employee on leave with the right to return to work (employees on sick leave or maternity leave).

Entering into an employment contract

Apart from specific types of contract, such as term contracts, telework contracts, part-time contracts, service commission contracts (usually for top-management), as a general rule the employment contract is not subject to written form.
However, employers are obliged to provide their employees with basic information in writing on the key terms and conditions of the employment relationship, including the identification of the employer (if the employer is a company, the information shall include the company group relations) and the employee, salary, category, working time, workplace, vacation period, accident’s at work insurance policy, applicable collective bargaining agreement, work compensation fund and work compensation guarantee fund, etc.

**Probation period**

The parties may terminate the employment contract without prior notice or severance payment within the probation period.

The probation period cannot be longer than eight months for managerial position, six months for qualified employees, and three months for the rest of employees. In case of term contracts probation period will be of fifteen or thirty days depending on the length of the contract. By individual agreement, the legally defined periods may be reduced or eliminated but never extended.

**Temporary employment agencies**

Temporary employment agencies are permitted, subject to some limitations. Besides providing all kinds of temporary employment, they also act as outplacement agencies.

**8.3. Salary**

Salary is defined in the employee’s individual employment contract. Collective bargaining agreements usually set minimum salaries for different categories of employees. The annual salary is usually paid in 14 instalments: each month plus the vacation and the Christmas allowances.
Salary is subject to general legal provisions on social security and income tax. The employer is responsible for making the corresponding withholdings on the employee’s salary for these taxes and contributions.

The official minimum wage is established by law. Currently it has been set at € 505.00 per month.

8.4. Working time

The maximum number of working hours is 40 per week and 8 per day. Collective bargaining agreements may establish different maximum working hours provided that they do not exceed the legal maximum. Special flexible working time regimes may also be established in certain circumstances allowing an extension of the time limits to up to 12 hours per day and 60 hours per week. It is the case of the adaptability regime (where the normal working time is defined on an average basis), the bank of hours (where the employee has a sort of time saving account) and the concentrated working period (where the working time is concentrated in 3 or 4 days per week).

Employees are entitled to daily rest breaks of one to two hours and are not allowed to work for a period longer than five consecutive hours. These limits may be overtaken following authorisation by the Authority for Working Conditions (Autoridade para as Condições do Trabalho).

Time worked (including starting and end hours as well as rest breaks) must be daily registered.

Each hour worked over the maximum working time is considered overtime, and subject to a supplementary payment and, in some situations, entitles the employee to a compensatory rest.

Collective bargaining agreements may agree on a different payment and compensatory regime.
As a general rule, and for a full-time contract, overtime must not exceed 150 or 175 hours per year, depending on the size of the company. By collective bargaining agreement the maximum may be increased up to 200 hours per year.

The ordinary minimum annual vacation period is 22 working days.

The employee is entitled to different type of leaves, paid by the employer or by social security, such as, for example, sick and parental leave.

8.5. Changes in employment conditions

The Labour Code sets forth several types of employee mobility that allow companies to adapt to market and economic circumstances.

Functional mobility

Employers may freely use employees within the same professional group or career. Mobility between non-equivalent groups is permitted only when it is attributable to technical or organisational reasons, and must end as soon as the circumstances are resolved. If, as a consequence of functional mobility, an employee is performing higher functions, he or she will be entitled to salary and benefits corresponding thereto.

Downgrading is only allowed in case of exceptional need of the employer or the employee and if agreed by the parties; in case downgrading determines a decrease in the salary, prior consent of the Authority for Working Conditions is needed.

Geographical mobility

A change in the employee’s workplace is allowed (i) in case of transfer of the company’s location, and (ii) when it is attributable to economic, technical, organisational or production reasons and does not cause a serious damage to the employee.
Employees may be permanently or temporarily transferred. In the first case, and in the situation described in (i) here above, the employee may choose between being transferred and having the increase in his or her expenses reimbursed, or terminating the employment contract with right to severance equal to termination on objective grounds as described here below, if he or she may prove that the transfer causes him or her a serious damage.

In case of temporary transfer, the employee will have his or her expenses reimbursed. However the duration of the temporary transfer cannot, under normal circumstances, exceed six months.

Employment contracts may include a clause that allows a transfer of workplace without the limitation provided here above, but such clause will only be valid for a two-year period.

Other modifications of employment conditions

The employer may define the employee’s working time, unless it has been individually agreed with the employee.

Salary benefits from a very high protection under Portuguese law, and may be reduced only in very exceptional situations. Reduction of salary by simple agreement between the parties is be considered null and void.

Employers can temporarily suspend employment contracts or reduce working time with partial reduction of salary (layoffs) in case of market, structural or technological reasons.

8.6. Termination of employment

According to the Portuguese Constitution no one may be dismissed without just cause, including thereof subjective (termination for cause) and objective (e.g. collective and individual redundancies) causes.

In case of term contracts and service commission contracts the employer may unilaterally terminate the contract by serving a prior notice.
Termination for cause

Termination for cause may be triggered should the employee seriously fail to comply with its legal and/or contractual obligations; it is then mandatory that the employer initiates disciplinary proceedings in order to apply the most serious disciplinary measure that is the dismissal without indemnity or compensation.

Disciplinary procedure is strictly ruled by law, and failure to comply with the legal procedure may lead to an unlawful dismissal. Employee may be suspended from work without losing right to his salary during the disciplinary proceedings.

Employees under parental protection cannot be dismissed without the prior consent of the relevant authority, the Commission for Equality in Work and Employment (Comissão para a Igualdade no Trabalho e Emprego).

Collective and individual redundancies

Collective and individual redundancies may be grounded on market, structural or technological reasons. The applicable procedure will depend on the total number of employees of the undertaking and of the total number of employees affected by the redundancy.

The collective redundancy procedure implies written notification and information of the employees or their representatives, information and negotiation with the participation of the Ministry for Solidarity, Employment and Social Security (Ministério da Solidariedade, Emprego e Segurança Social) and final notification of the decision to the affected employees and the relevant Ministry. Objective selection criteria related with the grounds of the redundancy must be used to select the affected employees.

Notification of termination must be served with a prior notice period of 15 to 75 days depending on the seniority of the employees and paying in lieu of notice is not permitted. Within the prior notice period, the employee
has the right to a two working day paid leave per week in order to seek for a new job, and to terminate the contract with a three business-day prior notice, without losing the right to full severance.

Employees under parental protection cannot be dismissed without the prior consent of the Commission for Equality in Work and Employment.

Upon termination of employment under a collective redundancy employees will be entitled to severance equivalent to 12 days to 1 month of basis salary and seniority allowance for every year or fraction of seniority; depending on the starting date of the employment contract, there may be a minimum of three month and or a maximum of 12 month severance.

Apart from the existence of objective grounds, individual redundancy is also subject to additional requirements such as (i) the maintenance of the employment relation must be practically impossible (this will occur when the company has no other job position for the employee or when the employee does not agree with such new position); (ii) the company may not have or admit other employees under a term employment contract to perform the extinct functions. In an extinction of job position selection criteria is mandatorily defined by law.

As the collective redundancy, all steps of the individual redundancy procedure are legally established and described. The procedure implies written notification and information of the employee and notification of the Authority for Working Conditions. The employee may also request the opinion of such Authority on certain aspects/grounds of the decision of the company.

Prior notice periods, severance and parental protection will be the same as the collective redundancy.

In both, collective and individual redundancy, acceptance of the compensation by the employee will be deemed as an acceptance of the termination.
Consequences of unlawful dismissal

A dismissal may be considered unlawful, among others, in case (i) the grounds for dismissal have been declared unfounded; (ii) it has not been preceded by the respective procedure; (iii) or the procedure is invalid.

In case of unlawful dismissal, the employee is entitled to: (i) all the salaries between the date of termination of the contract and the date when the final court decision becomes *res judicata*, (ii) compensation for any alleged and proved moral and patrimonial damages due to the unlawful dismissal; (iii) choose between receiving an indemnification between 15 to 45 days of basis salary and seniority allowance per year or fraction of seniority (or 30 to 60 days in case of protected employees, such as employees under parental protection), or to be reinstated in the employee’s previous job position.

The choice between receiving an indemnification or to be reinstated lays on the ex-employee. The employer may oppose to the reinstatement if it has up to 9 employees, and in case of employee with managerial functions; if opposition is accepted, the indemnification will be equivalent to 30 to 60 days per year or fraction of seniority.

In case of disciplinary dismissal, if there has been a mere violation of procedural rules, the employee will only be entitled to indemnification that will be half of the amounts indicated above.

Termination agreement

Termination agreement must be entered into by means of a written document. The employee may revoke the agreement within seven days counted as from as entering into the agreement, unless both signatures (employer’s and employee’s) are certified in presence of a notary.
8.7. Transfer of undertaking

Under the Acquired Rights Directive, employees are automatically transferred to the transferee, preserving all their employment rights. Likewise, the transfer does not justify changes in the employees’ working conditions. The new company assumes the position of employer, with the same obligations as the previous employer, becoming a party to the employment contracts.

A transfer of undertaking occurs when the transfer involves an autonomous economic entity, defined as an organised grouping of resources that has the objective of pursuing an economic activity, regardless of whether that activity is central or ancillary. The object of this kind of transfer may be an entire company, a work centre or an autonomous production unit.

The transferor and transferee are jointly and severally liable, for a one-year period starting on the transfer date, for all employment obligations existing before the transfer and that have not yet been fulfilled. Employment obligations include social security obligations.

8.8. Collective representation and organisational rights

Trade union and workers council

The initiative to create a workers council depends totally on the employees and the employer does not have any obligation to propose, organize or suggest its creation.

However, once the decision is made by the employees the employer is under obligation to provide the workers council certain benefits.

The role of a workers council is advisory, aiming to safeguard employees’ interests by becoming involved in consultation on matters such as changes of workplace, plant closure and production changes.
Workers council may request information on several matters concerning the company, including, general plans of activity and budget, projects of alteration of the company’s object, alteration of the share capital or reconversion of the company’s activity; the workers council must be mandatorily consulted, amongst other matters, on any measure that results or may result in a significant reduction of the number of employees, employment conditions or significant changes to the working organization.

Employees and unions are free to develop union activity in the company.

Also in this case, the initiative to develop union activity depends totally on the employees and the employer does not have any obligation to propose, organize or suggest any action on this area. Number of union representatives entitled to specific rights and protection granted by law are limited and relates to the number of unionised employees. Union representatives may join in a union commission and union representatives from different unions will be part of an inter-union commission.

Union representatives are granted (i) right to held meetings at the workplace, (ii) right to display information at the company’s premises, and to distribute documentation directly to the employees, (iii) right to request information on matters and situations defined by law, (iv) and, under certain circumstances, right to permanent facilities.

Employees’ representatives are entitled to special protection in case of transfer of workplace, disciplinary proceedings and termination of employment.

**Collective bargaining agreements**

Trade union may negotiate and enter into collective bargaining agreements with employers or employers’ association. As a rule the collective bargaining agreement will only apply to is subscribers. However, the government may extend its application to employers developing the same activity or within a certain geographical area, by means of a ministerial order.
Employees that are not unionised may also under certain circumstances individually adhere to a collective bargaining agreement.

8.9. Social security issues

Social security contributions are compulsory for employers and employees. Employers must withhold their employees’ contributions from their salaries and are liable for this withholding. The monthly social security contribution is determined by applying the rates provided by law to the employee’s income.

As a rule, social security contributions on the employer side amount to 23.75% of the monthly salary; and on the employee side amount to 11%.

8.10. Health and safety at work

Employers must ensure health and safety at work by (i) notifying the labour authorities that they are opening a workplace, (ii) drawing up a risk assessment and prevention plan, (iii) providing professional training to employees, and (iv) monitoring the employees’ health.

Employers that fail to comply with these obligations may face severe penalties.

8.11. Fines and penalties

Portuguese law establishes penalties for infractions committed by employers and employees alike in the context of a wide range of employment laws, including those relating to social security obligations, health and safety at work, employment relationships, subcontracting, and temporary employment.

The labour and social security inspectors are in charge of monitoring that companies and employees comply with their labour and social security obligations.
9. SECURITIES REGULATION

9.1. Overview

In Portugal the regulated markets are (i) Euronext Lisbon, the Official Trading Market managed by Euronext Lisbon – Sociedade Gestora de Mercados Regulamentados, S.A. (“Euronext”); (ii) the Futures and Options Market, managed by Euronext; (iii) the Special Public Debt Market, managed by MTS Portugal – Sociedade Gestora do Mercado Especial de Dívida Pública, SGMR, S.A.; and (iv) MIBEL Derivatives Market (Iberian Electricity Market) managed by OMIP – Operador do Mercado Ibérico de Energia (Portuguese Division). Additionally, there are three multilateral trading facilities: (i) PEX, managed by OPEX – Sociedade Gestora de Sistema de Negociação Multilateral, S.A.; (ii) EasyNext Lisbon, managed by Euronext; and (iii) Alternext Multilateral Trading Facility, managed by Euronext.

Securities and financial instruments are mostly traded on secondary markets through electronic trading platforms. Admission to listing is subject to the requirements set forth by the relevant management entity of the relevant market. The relevant management entities are subject to the supervision of the Portuguese Securities Commission (“CMVM”).

Interbolsa – Sociedade Gestora de Sistemas de Liquidação e de Sistemas Centralizados de Valores Mobiliários, S.A. (hereinafter “Interbolsa”) is the management entity responsible for the management, at a national level, of securities settlement systems and central securities depository systems. It also acts as the National Numbering Agency.

Interbolsa is responsible for the organization and management of the Settlement Systems of securities in order to namely ensure the money transfers associated with the transfers of securities or inherent rights and with the guarantees regarding operations over securities. The Settlement Systems managed by Interbolsa perform: (i) the settlement of operations done in regulated or non-regulated market; (ii) the settlement of OTC
(Over-The-Counter) operations between the participants in Interbolsa’s Settlement System and directly instructed by the participants; (iii) the settlement of operations resulting from securities lending operations through the Securities Lending Management System (SGE – Sistema de Gestão de Empréstimo); (iv) the settlement of FOP (Free-of-payment) transfers; (v) the financial settlement regarding the exercise of rights inherent to the securities registered or deposited in the Central Securities Depository; (vi) the calculation of the corresponding financial settlement and sending of the payment instructions to Banco de Portugal (TARGET2) or to Caixa Geral de Depósitos (SPME), depending on whether the payment is in euro or in non-euro currencies.

LCH. Cclearnet, SA, acts as the clearing house and central counterparty for the Portuguese stock market.

The participants of the Settlement Systems are the Financial Intermediaries affiliated to Interbolsa that ensure the physical and financial settlement of the operations carried out in a market, regulated or not, as well as the operations done out of market.

Additionally, Interbolsa manages, on a national level, the functioning of the Centralized Securities System, also called Central Securities Depository or Central.

The Issuers, the Financial Intermediaries (custody entities), Banco de Portugal and even Interbolsa, as the controlling entity, participate on the Centralized System.

The Centralized System is formed by an interconnected group of accounts, through which the securities are created and transferred and the control of the quantity of the securities in circulation and of the rights that exist over them is performed.

Finally, as the National Numbering Agency, Interbolsa is responsible for assigning ISIN (International Securities Identification Number) and CFI (Classification of Financial Instruments) codes.
The main act regulating the Portuguese Securities Market is the Portuguese Securities Code (“PSC”) and the most important market authorities are the following:

(a) The Portuguese Securities Commission (“CMVM”). This agency is in charge of supervising and inspecting the Portuguese securities markets and the activities of all the participants in those markets.

(b) The Bank of Portugal. The national central bank and supervisor of the Portuguese banking system.

(c) The relevant Regulated Markets and Multilateral Trading Facilities Management Authorities. These companies supervise and manage the relevant regulated markets and multilateral trading facilities.

9.2. Listed companies: obligations and recommendations

This section outlines the main obligations of and recommendations for listed companies regarding corporate governance, transparency and market abuse.

Corporate governance

Two types of provisions apply to corporate governance: provisions of law and recommendations for good governance (soft law). In Portugal, recommendations for good governance are set out in the CMVM’s Regulation 4/2013, which despite approving a Corporate Governance Code applicable to listed companies (the “CMVM Code”) also entitles the companies to adopt a different Governance Code approved by competent entities (e.g. the Corporate Governance Code approved by the Portuguese Corporate Governance Institute).

The Portuguese Corporate Governance Codes are based on the principle of voluntary compliance, subject to the rule of “comply or explain,” whereby a listed company can choose whether to apply, or not, a given recommendation, but is obliged to inform the market and explain the reasons for its decision. Listed companies must publish an annual corporate governance report to notify the market of their degree of compliance with good governance recommendations.
We outline some of the most noteworthy provisions of law and good governance recommendations that apply to the general meeting and board of a listed company:

(a) **Provisions of law**

(i) Listed companies must approve a specific set of regulations for the general meeting and for the board of directors, which must be filed with the Corporate Registry.

(ii) Signatories to a shareholder agreement must disclose to the market any clause that envisage the acquisition or the maintenance of a qualified shareholding in a listed company or aimed at assuring or frustrating the success of a public offer. Otherwise, deliberations approved in accordance with said provisions may be declared null and void.

(iii) Voting caps can be included in a listed company’s by-laws, although they will not apply when a takeover bid (“TOB”) results in a bidder attaining 75% of the company’s voting rights.

(iv) Listed companies must have an audit committee with a majority of independent members, one of them being appointed based on his/her accounting or auditing knowledge and experience.

(v) An annual report on the directors’ remuneration (including a breakdown of each director’s individual remuneration) must be submitted to the vote of the general meeting, but only for consultation purposes.

(b) **Good governance recommendations**

(i) The Corporate Governance Codes provide several recommendations targeted at strengthening the role of shareholders, such as presenting a prior and detailed publication of board proposals to the meeting, separate voting on independent issues, and approval by the meeting of the acts of “extraordinary administration.”

(ii) Independent directors should be an “ample majority” within the board and clarify the circumstances that allow the qualification of a director as independent.
(iii) In addition to the mandatory audit committee, it is recommended that one or two separate committees should be created for appointments and remuneration.

(iv) The remuneration policy should be drafted by a remuneration committee and then approved by the board of directors. As mentioned previously, the board must submit an annual report on the directors’ remuneration policy to the general meeting for a vote of confidence.

Transparency

In this section we provide an overview of the continuing transparency obligations and disclosure rules applicable to listed companies. Please note that this description is not fully comprehensive and that listed companies are subject to other transparency obligations.

(a) Financial information

Listed companies have to submit annual, bi-annual and quarterly financial reports to the market following the standard forms published by the CMVM.

(b) Privileged information

Listed companies have to immediately publish and disclose to the market any privileged information, understood as any relevant information which, if disclosed, may reasonably induce an investor to acquire or transfer securities or financial instruments, and may materially affect their quotation on a secondary market. Exceptionally, the company may postpone publishing a relevant fact, under its own responsibility, if it considers that the information would damage its interests, as long as this postponement is not likely to confuse the public and the company can guarantee the confidentiality of the information.

(c) Significant stakes

Shareholders of listed companies (and the equivalents) must report the acquisition or loss of a qualified shareholding, or its existence in the case of an initial listing, when it meets, exceeds or falls below the following thresholds: 2%, 5%, 10%, 15%, 20%, 25%, 1/3, 1/2, 2/3, and 90% of the company’s voting rights.
Directors of listed companies must report their number of voting rights, whether directly or indirectly and regardless of the percentage of the stake, (i) on acquisition or transfer of shares, voting rights or financial instruments that confer the right to acquire shares with voting rights; (ii) on their appointment or removal; and (iii) when the company’s shares are initially admitted to trading.

(d) **Treasury stock**

A listed company must disclose the direct or indirect acquisition of its own shares when this represents at least 1% of the company’s voting rights. The same obligation applies whenever the relevant threshold is reduced. Additionally, a disclosure obligation is triggered regarding all the acquisition and alienation transactions of its own shares executed on the same session of the relevant regulated market whenever they represent at least 5% of the total volume of shares negotiated in that session, regardless the net result of the same.

**Market abuse**

The Portuguese market abuse regulation, which implements EU regulations, distinguishes two categories of market abuse: insider trading and market manipulation.

(a) **Insider trading**

Anyone holding privileged information must not misuse this information and must take the necessary measures to prevent the information from being used abusively or unfairly. For this purpose, privileged information is understood as any precise information that has not been made public and that could affect the quotation of the securities if it were made public.

It is worth noting that directors and executives of listed companies and persons closely linked to them are subject to relevant reporting obligations that enable the CMVM to monitor improper use of privileged information.

As previously mentioned, regulation on disclosure of relevant facts does not extend to acts of examination, preparation or negotiation completed before important decisions are made, provided specific requirements targeted at protecting the confidential information are met.
(b) **Market manipulation**

Rather than establishing a closed definition of Portuguese law, the PSC includes a non-comprehensive list of conducts susceptible of being qualified as manipulative.

9.3. **Offering of securities and admission to trading**

A prospectus must be published when (i) an offer of securities is made to the public, and/or (ii) securities are admitted to trading on a regulated market. There is a single regime throughout the EU governing the content, format, approval and publication of the prospectuses. This prospectus regulation is a major component of the EU’s Financial Services Action Plan, aimed at creating a single market in financial services in the EU. The automatic European passport is a major step towards this goal, as it allows companies from the EU and third-party countries to offer their securities or apply for admission to listing on any EU regulated market, on the condition that the authority of the home Member State has approved the prospectus. The supervisory authorities of the host Member States cannot impose further requirements.

(a) **Public offerings**

Anyone making a public offering of securities in Portugal must obtain the approval from the CMVM and file and publish a prospectus to inform the public of the offering.

EU prospectus regulation introduced an EU-wide definition of “public offering”. The definition is very broad, encompassing any notification, regardless of its form and the means pursuant to which it is disclosed, as long as it provides sufficient information on the terms of the offer (price or criteria to determine price) and the securities offered, enabling an investor to decide to purchase or subscribe for those securities.

Given the characteristics of potential investors and the structure of the offer, certain offers are considered to be private placements and are not required to obtain approval from the CMVM or to file and publish a prospectus. Private placements include, among others, offers addressed solely to qualified investors or offers addressed to less than 150 persons (other than qualified investors) per Member State.
Moreover, a prospectus and the CMVM’s approval are not required for offers of certain securities (“exempted public offerings”), such as (i) shares offered, allotted or to be allotted, upon a merger, to at least 150 existing non-qualified shareholders or shares resulting from the conversion or exchange of other securities or from the exercise of the rights conferred by other securities; (ii) securities offered, allotted or to be allotted to directors or employees by their employer or by a group company provided the statutory or effective registered office of the issuer is within the EU; (iii) shares granted as payment of dividends provided they are of the same category of the shares regarding which the dividends are being paid.

A document containing equivalent information must be made available in most cases as a condition for the exemption.

9.4. Takeover bid regulation

The EU Takeover Directive, implemented in Portugal in 2006, establishes a set of minimum rules for carrying out TOBs on securities in the EU and the European Economic Area, allowing countries to adopt additional and more stringent requirements. The Takeover Directive is the result of 14 years of negotiations that resulted in the optional implementation of some of its rules and, in the long term, in a failure to achieve a European-wide harmonisation on some essential rules (including the passivity rule and breakthrough rule). On July 16, 2012, the EU Commission published a review on the application of the TOB Directive and concluded that the regime is satisfactory on the whole, despite some areas that could be clarified. The European Securities and Markets Authority (ESMA) has begun to clarify some of these aspects. One example is its statement of November 12, 2013, on shareholder cooperation issues relating to acting in concert and the appointment of board members.
Types of TOBs

In Portugal, two types of TOB open up a range of possibilities when designing the strategy for acquiring control of a listed company:

(i) **Mandatory bids**, a procedure aimed at accomplishing a change in control of a listed company to guarantee all shareholders access to the control premium.

(ii) **Voluntary bids**, a procedure to acquire shares of a listed company by means of a public offering.

Whenever as a consequence of a bid the biding entity acquires the totality of the shares of a listed company, it determines the delisting of the company who will be prevented from being admitted to listing within one year.

Definition of control

For the purposes of the PSC, control of a listed company is gained when a shareholder:

(a) Acquires the majority of the company’s voting rights,

(b) Is entitled to exercise the majority of the company’s voting rights, or

(c) Is entitled to appoint or dismiss the majority of the members of the board of directors or of the supervisory board.

The CMVM may waive the obligation to launch a takeover bid provided the requirements set forth by law are met (e.g. whenever the relevant thresholds are reached as a consequence of a takeover bid over the whole shares of the company, within a financial rescue plan or as a consequence of a merger). Additionally the CMVM may suspend the obligation to launch a takeover bid, provided the shareholder who has reached the relevant triggers undertakes to reduce its shareholding within the immediately succeeding 120 days.

Control can be achieved not only by direct or indirect acquisition of securities conferring voting rights, but also by reaching agreements with other holders of securities that will lead to the acquisition of the voting rights reaching the relevant triggers.
Characteristics of mandatory bids

Mandatory bids are an important mechanism allowing shareholders to exit after a change in the control of a listed company. They must be addressed to all the holders of shares, subscription rights and convertible debentures, and must be launched at an equitable price, including the premium that the offeror has paid to the sellers of the controlling stake.

The equitable price is understood as the highest price that the offeror or the persons acting in concert with the offeror have paid for the same securities during the 6 months immediately prior to the bid announcement. If no shares have been acquired, this price will be the medium price at which the relevant securities have been traded in the regulated market. Should it not be possible to determine the price in accordance with the above-mentioned criteria, the price will be determined by an independent auditor appointed by the CMVM.

There are noteworthy exceptions to the mandatory bid regime. A mandatory bid will not be required, among others, when control is acquired as follows:

(i) After a total voluntary bid.
(ii) Within a merger, provided the minutes of the general meeting approving the merger expressly refers that the merger would trigger the obligation to launch a takeover bid.
(iii) As a consequence of a financial recovery plan, provided it complies with the legal requirements set forth by law.

The above-mentioned exemptions do not apply automatically. They must be declared by the CMVM.
Characteristics of voluntary bids

Voluntary bids may be partial, freely priced and conditional, provided the CMVM considers that the condition complies with the law and that compliance of the condition may be verified prior to the expiry of the acceptance period. Voluntary bids are frequently subject to a minimum number of acceptances, removal of voting caps included in the target’s by-laws, or approval of the bid by the bidder’s general meeting.

Squeeze-out/sell-out

In Portugal, squeeze-out and sell-out rights are only provided for listed companies when, following a total TOB, (i) the bidder holds at least 90% of the target’s voting rights, and (ii) the TOB was accepted by holders representing at least 90% of the voting rights comprised in the bid.

The squeeze-out or sell-out right must be exercised within three months following the expiry of the acceptance period and the price will be the same as the price offered in the TOB.

9.4.1. Financial entities and investment companies

Prior authorisation from the Bank of Portugal is required to carry out banking activities in Portugal.

Investment activities are developed by investment services companies: dealers, brokers, portfolio management companies and investment advisory firms. They can also be provided as ancillary activities by credit institutions and UCITS management companies. To incorporate any of these entities and develop their activities, prior authorisation from the Bank of Portugal is also required, except for investment advisory companies, which must obtain authorisation from the CMVM.
Credit institutions and investment services companies from other EU member states are exempt from these authorisations if they operate through a branch in Portugal or under the free rendering of services regime. The latter only requires a formal notification to the competent supervising authorities (the Bank of Portugal or the CMVM, as applicable) by the corresponding supervisory authority of the Home Member State, i.e. the State where the bank rendering the services has its corporate address.

All credit institutions and investment services companies must comply with specific rules regarding their assets, investments, accounting and reporting to the supervisory authority.

9.4.2. Insurance

Prior authorisation from the Portuguese Insurance and Pension Funds Supervisory Authority (the “ASF”) is required to carry out insurance activities in Portugal. EU insurance companies benefit from simplified procedures when setting up a branch or providing their services on a free rendering of services basis. In this case, notifications by the supervisory authority of the relevant Home Member State are made to the ASF.

All entities participating in this sector must comply with specific rules regarding their assets, investments, accounting and reporting to the supervisory authority.
10. REGULATED SECTORS

10.1. Financial entities and investment companies

Prior authorisation from the Bank of Portugal is required to carry out banking activities in Portugal.

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All entities participating in this sector must comply with specific rules regarding their assets, investments, accounting and reporting to the supervisory authority.

10.3. Energy

Electricity market activities

In Portugal, the general principles concerning the organization and functioning of the electric national system, as well as the activities of production, transport, distribution and commercialization of electricity and the organization of the electricity markets are set forth in Decree Law 29/2006, February 15 (as subsequently amended).

There is a regime for the ordinary production mostly subject to market regime, despite the fact there are still two thermoelectric long term acquisition contracts (Pego and Outeiro). Regarding previous hydroelectrical production long term contracts (CAE), these have ceased but in return the producers have been granted compensation (CMEC) which is paid by the consumers in the final price, as it is included in the due tariff system (tariff for the transmission network).

Regarding renewable energy, the previous system was based on a feed-in tariff regime but the new regime, safeguarding the previously licensed situations, foresees both a market regime and a feed-in tariff regime, in this latter case following a tender procedure.

The Energy Services Regulatory Authority (“ERSE”) is responsible for regulating the electricity sector. The aims of ERSE’s activities are: (i) to protect the interests of consumers, in particular the vulnerable customers, with regard to prices, service quality, access to information (ii) to ensure the existence economic and financial balance conditions in respect of the activities of the regulated sectors exercised in the public interest, when managed properly and efficiently (iii) promoting as regulator and in
accordance with the applicable law, competition in the energy markets (iv) to encourage efficient energy use and protection of the environment (v) to arbitrate and resolve disputes, encouraging the settlement of disputes outside of the courts.

In the electric sector the following activities are subject to regulation: (i) Transmission; (ii) Distribution; (iii) Last Resort Supplier; (iv) Logistic Operations for Switching Supplier and (v) Management of Organized Markets. The tariffs are determined according to an add-in system and based upon fixed assets rate of return plus other allowed profits and in some situations other aspects as recovery of the tariff deficit.

In Portugal, the process of liberalization of the electricity sector was carried out in a phased manner and, as in most European countries, started by including clients with higher consumptions and higher voltage levels. The market was progressively opened between 1995 and 2006. Since the September 4, 2006, all consumers in mainland Portugal have been able to choose their electricity supplier.

Associated with the liberalization and the construction of the internal electricity market an increase in competition is to be expected, reflected in the level of prices and the improvement in the quality of the service, which aims to lead to greater satisfaction on the part of electricity consumers. In this regard, recent legislative measures were taken. Decree Law 74/2013, June 4, established a new regulatory mechanism envisaging to ensure competitiveness of the electricity wholesale market in Portugal, focusing on the economic general interest costs of the System Global Use Fee.

There is a special contribution in the energy sector mostly regarding the fixed assets of the transmission and distribution network.
Gas market activities

Portugal has no natural gas resources of its own. The supply of natural gas to the Portuguese market is carried out through long term take-or-pay contracts entered into with GALP, where the main suppliers are Algeria and Nigeria.

The organization of the Portuguese Natural Gas System (SNGN) is fundamentally based on the exploitation of the public network which is formed by the National Transmission Network, the Underground Storage Facilities, the LNG Terminal and the National Distribution Network, subject to concessions and local distribution units subject to licenses.

The natural gas sector is regulated by ERSE and the following activities are subject to regulation: (i) reception, storage and LNG regasification (ii) underground storage (iii) transmission, distribution and natural gas last resource supply (iv) logistic operations for the switch of supplier.

The tariffs are determined according to an add-in system and based upon fixed assets rate of return plus other allowed profits and in some situations other aspects as recovery of the tariff deficit. The commercialization activity is free although subject to the commercial conditions regulation of ERSE. Decree Law 30/2006, February 15 (as subsequently amended) establishes the main rules applicable to this sector.

There is a special contribution applicable over the fixed assets of the transmission and distribution network.

10.4. Technology, media and telecommunications ("TMT")

Pursuant to Decree Law 309/2001, December 7, ANACOM ("Autoridade Nacional de Comunicações") is the main regulator, supervisor and representative of the communications sector in Portugal. ANACOM is endowed namely with the following responsibilities: (i) to guarantee network access for communications operators under conditions of transparency and equality; (ii) to promote competition and development in communications
markets, namely in the context of convergence of telecommunications, media and information technologies; (iii) to ensure application and supervision of laws, regulations and technical requirements applicable in the context of its responsibilities, as well as compliance by communications operators with provisions of the respective licences or concession contracts; (iv) to guarantee the existence and availability of a universal communications service, assuring fulfilment of the corresponding obligations; and (v) to ensure the correct use of spectrum resources and granted numbering.

More recently, Law 53/2005, November 8, created the ERC (“Entidade Reguladora para a Comunicação Social”), public agency with the responsibility for the regulation and supervision of all entities that pursue activities in the media sector Portugal.

Entities that operate in the media sector must disclose to the ERC any direct or indirect ownership interests in newspaper, TV and radio operators companies, as well as information on the identity of board members, officers with management duties and officers responsible for the orientation and supervision of the respective emissions contents.

ERC is under the duty to ensure, in articulation with AdC, that no excessive concentration of ownership in the share capital of companies operating in the media sector occurs, with the aim to safeguard pluralism and diversity of the press, TV and radio markets.

Law 78/2015, July 29, was recently passed with the objective to adequately preserve the values of liberty of expression and editorial independence, and creates an additional obligation for entities that operate in the media sector to disclose their sources of financing to ERC.
11. INSOLVENCY

In this section, we describe some of the key aspects of Portuguese insolvency law.

11.1. Definition of insolvency

Insolvency proceedings are only triggered in the case of a debtor’s insolvency, which is defined, in general, as the inability of the debtor to fulfill its obligations as they fall due (*cash flow test*).

Aside from this criteria, and in the case of legal entities, the debtor is also considered to be in an insolvency situation when, according to accounting criteria, the liabilities of the debtor clearly exceed its assets (*balance sheet test*).

11.2. The insolvency procedure

In Portugal, there is only one insolvency procedure for all debtors, either companies or individuals.

According to the Insolvency and Restructuring Companies Code (hereinafter the “CIRE”), the insolvency procedure is an universal enforcement procedure with the goal of satisfying creditors’ claims according to an insolvency plan addressed namely to the recovery of the company integrated in the insolvency estate, or, if such recovery is not possible, the liquidation of the insolvency assets and the distribution of the proceeds amongst the creditors.

11.3. Voluntary insolvency

The debtor must file for insolvency within 30 days after it becomes aware, or should have become aware, of its situation of insolvency. If the debtor fails to fulfil this obligation, directors can become personally liable.
11.4. Mandatory insolvency

Creditors can file for mandatory insolvency against a debtor if any the following listed facts (which determine the existence of an insolvency situation) occur:

(a) Generalized suspension of payments of matured obligations;

(b) Default of one or more obligations which, given its amount or default circumstances, reveals that the debtor is unable to punctually meet the majority of its obligations;

(c) The abandon by the owner of the company or by the directors of the insolvent company or the abandon of the place where the company has its head-office or performs its main activity as a result of the lack of solvability of the debtor and provided that no reputable substitute was appointed;

(d) Dissipation, abandon, hasty or loss-making liquidation of assets and fictitious constitution of credits;

(e) Insufficiency of assets that can be seized for payment of credits verified in an enforcement procedure filed against the debtor;

(f) Default of obligations foreseen in an insolvency plan or payment plan approved by the creditors in a previous insolvency proceeding;

(g) Generalized default, during the last six months, of the following obligations:
   - Tax and social security obligations;
   - Employment contracts or breach or termination of employment contracts obligations; and
   - Rents regarding any kind of lease including financial lease, installments related with an acquisition price or a mortgage loan regarding the place where the debtor carries out his activity or has its residence or head office; and

(h) In case of legal entities, the liabilities of the debtor clearly exceed its assets according with the last approved financial statements, or delay of more than 9 months regarding the approval or deposit of the accounts.
11.5. Aggravated/culpable insolvency

Once a court makes a declaration of insolvency, a procedure to classify the insolvency shall be initiated. The insolvency may be deemed to be fortuitous or aggravated/culpable (where insolvency is a result of a willful or gross negligence action of the debtor’s or of it’s in legal or de facto directors within the three years prior to the beginning of insolvency proceeding). The law provides for circumstances where (i) insolvency is automatically classified as negligent; and (ii) where fraud or gross negligence is presumed.

11.6. Effects on debtors

A declaration of insolvency effectively transfers the power to run a company from its directors to an Insolvency Administrator, who becomes the representative of the debtor for all purposes. Management bodies of a debtor may continue to operate (when requested by the debtor, if the insolvency is voluntary, or with the agreement of the creditors), but actions that might be carried out by the debtor that breach any required supervision of the Insolvency Administrator may be declared null and void.

A declaration of insolvency implies that all debts of the insolvent become immediately due, provided that they are not subordinated to a condition precedent.

Any judicial proceedings involving patrimonial matters, where the final result may affect the value of the insolvent company’s estate, are attached to the insolvency proceeding provided that the Insolvency Administrator requests it. A declaration of insolvency stays (and may then terminate) any pending enforcement proceedings and creditors cannot initiate new enforcement proceedings against the debtor.
11.7. Effects on creditors

One of the keystones of the CIRE is that creditors must receive equal treatment. There are few exceptions to this rule and those permitted by law abide by the rule that “ordinary credits” are considered equal.

On this basis, a distinction is made between guaranteed, privileged, ordinary and subordinated credits:

- Guaranteed credits are those secured by a guarantee in rem. They are paid out of the proceeds of the sale of the secured asset once sale expenses and any amount allocated to credits over the insolvency estate are deducted. If the secured assets are insufficient to pay all debts owed to guaranteed creditors, any remaining debt is included in the common credits.

- Privileged credits are those benefiting from general creditor’s privilege (e.g. credits arising from an employment contract) over assets comprised in the insolvent estate. Due to their nature, these credits are paid in a pro rata basis with the proceeds of the unsecured assets and according to its inner ranking. In fact there are several types of privileged creditors that are ranked differently.

- Common creditors can only be paid after creditors who rank in priority to them are paid in full. They are paid in a pro rata basis if the proceeds of the insolvency estate are insufficient to fully satisfy the debt.

- Subordinated creditors rank below common creditors. They follow the same pro rata rules applicable to common creditors. Holders of such credits are not entitled to vote at the General Meeting of Creditors save for approving an insolvency plan.

- In addition, there is another special and prioritised category, known as “credits against the insolvency estate,” which generally arise after the declaration of insolvency. These credits are not subject to ranking or acknowledgement and, in principle, must be paid by the Insolvency Administrator when they fall due.
11.8. Clawback Period

The Insolvency Administrator is entitled to revoke in favor of the insolvency estate any act/contract deemed detrimental to the insolvency estate.

Requirements of clawback actions

Provided that such acts were performed or omitted within two years prior to the beginning of the insolvency proceeding:

(a) **Detrimental acts**: acts that reduce, frustrate, prevent, jeopardise or potentially delay the payment of the insolvency creditors.

(b) **Bad faith**: the bad faith is presumed in acts performed or omitted within two years prior to the beginning of the insolvency procedure and in which a person with special relation with the insolvent participated or took advantage, even if at the time no special relation existed. It is qualified as bad faith the acknowledgement of any of the following circumstances:
   - That the debtor was in a insolvency situation;
   - The detrimental nature of the act and that the debtor was at the time in a imminent insolvency situation; or
   - The beginning of insolvency proceeding.

Clawback actions without requirements

- The CIRE also foresees the acts subject of clawback actions without need of the fulfillment of any other requirement.

11.9. Key pre-insolvency instruments

In 2012 the Portuguese Government launched the “Revitalize Program” (*Programa Revitalizar*) with the purpose of offering entrepreneurs more agile legal mechanisms enabling them to revitalize companies during a particularly hard period of the Portuguese Economy.

Two of those mechanisms must be pointed out: SIREVE – Sistema Extrajudicial de Recuperação de Empresas (Out of Court Recovery Proceeding) and PER – Processo Especial de Revitalização (Special Revitalization Proceeding).
SIREVE

SIREVE, which was approved by Decree Law 178/2012 of August 3, is an extrajudicial voluntary mechanism, conducted by IAPMEI\(^{10}\), aiming companies’ recovery through negotiations with creditors representing at least 1/3 of the total debts.

Any company facing economic difficulties or in an imminent insolvency situation may start its own SIREVE.

The application to SIREVE starts with the submission of an electronic form\(^{11}\) before IAPMEI, containing a description of the grounds to request said proceeding, the identification of the debtor and of the creditors representing at least 1/3 of its debts, the aimed agreement and the business plan. The application must also be accompanied by all documents required to submit an insolvency proceeding before the court, as provided in CIRE.

After receiving the application form, IAPMEI promotes all the necessary contacts between the debtor and its creditors, in order to reach a settlement agreement necessary to ensure the debtor’s recovery. These negotiations should be concluded within a period of three months, which may be extended for an additional one month period. The settlement agreement must be signed by the debtor, the creditors that approved it and the IAPMEI’s representative and, if necessary, must be executed by public deed. If the settlement is accepted by creditors representing more than 2/3 of total amount of the debts, the recovery plan may be submitted before the court. The court shall then approve the plan and make it binding before all creditors, even those that did not accept the settlement agreement. The payment plan has the legal effects provided in CIRE.

\(^{10}\) A public Institute that provides support to SME’s.

\(^{11}\) That can be obtained in IAPMEI’s website www.iapmei.pt
PER

PER was created by the Law 16/2012, April 20 (which approved the introduction of articles 17-A to 17-I to the CIRE). This procedure aims, at a time prior to insolvency, to allow the debtor in financial difficulties or imminent insolvency, but whose recovery is still feasible, to enter into negotiations with creditors in order to reach an agreement with them, leading to its revitalisation. With the adoption of PER the need of obtaining a prior declaration of insolvency of the debtor is removed, as a situation of imminent insolvency or a difficult economic situation is enough to launch the proceeding, allowing the debtors to be able to achieve their recovery/viability through negotiation, without first being subjected to the stigma of being declared insolvent, which, alone, prevented, often their viability. PER is an urgent proceeding that shall run before the court with jurisdiction to declare the insolvency of the debtor. In procedural terms, under the PER there are two possible ways of reaching a restructuring agreement with creditors: after submission the request for PER (PER under article 17º-A of CIRE) or before said submission (PER under article 17º-I of CIRE). PER under article 17º-A of CIRE.

Only the debtor may submit in court the request for PER under article 17º-A of CIRE. Said request must include a written statement of the debtor and at least one of its creditors, expressing the intention of engaging negotiations leading to the revitalisation, through the approval of a recovery plan.

The debtor shall also certify and declare, in writing, that it meets the necessary conditions for its revitalisation. These statements are addressed to the court, which, after receipt of such statements, immediately appoints an Interim Judicial Administrator (Administrador Judicial Provisório, the “AJP”).
The order appointing the AJP is published on the platform CITIUS (Court’s official web site) and the debtor shall communicate to all its creditors (that did not sign the statement mentioned above) the beginning of negotiations and invite them to participate. The creditors shall submit their credit claims to the AJP within 20 days as from said publication, so that the AJP may prepare a provisional list of credits, which shall also be published on the platform CITIUS.

After said period of 20 days and, specifically, after the deadline for submission of appeals from the provisional list of claims, the negotiations shall be completed within a period of two months (this period may be extended for another month, subject to the previous agreement of the debtor and of the AJP). Any creditor may participate in the negotiation process as long as negotiations last. The debtor may stop negotiations at any time.

The recovery plan will be approved only if it has met the affirmative vote of two thirds of the creditors participating in the negotiations, as long as they represent one third of the debtor’s total creditors (as per foreseen in the list of recognized credits prepared by the AJP). The judge shall decide either to approve or not the recovery plan within 10 days. This decision shall be published in CITIUS, and is binding for all creditors of the debtor (even if they did not vote in favour of the plan or even if they did not participate in the negotiations).

If it is not possible to reach an agreement for the approval of the PER, the proceeding is extinguished and will have no effects, as long as the debtor is not insolvent. Otherwise, the court shall declare the debtor’s insolvency within three working days and the special process of revitalisation is attached to the insolvency proceedings.

If debtor and creditors fail to reach an agreement, the debtor cannot submit a special process of revitalisation for a period of two years.
PER under article 17º-I of CIRE

PER may also be initiated by filing an extrajudicial recovery plan signed by the debtor and creditors representing at least a majority of votes provided in general terms. In this case, a simplified procedure shall apply (which notably removes the need of negotiations).

Protection against clawback actions

With the aim of providing the debtor with the necessary funds for its recovery, the agreements executed in the context of the PER cannot be subject to clawback actions.

On the other hand, said agreements executed during the PER with the aim of providing the debtor with the necessary funds to finance its activity will be maintained even if the PER ends and there is a declaration of insolvency of the debtor within two years.

New money privilege

Finally, the creditors that finance the debtor’s activity, providing it the necessary funds for its recovery, benefit from special statutory liens over moveable assets, which rank prior to special statutory liens over moveable assets granted to employees.
12. DISPUTE SETTLEMENT

12.1. Litigation: jurisdiction and civil procedure

Jurisdiction

Jurisdiction is determined by different criteria, namely (i) subject matter of the case (mainly civil and commercial, criminal, administrative, labour, tax, intellectual property, competition, family), (ii) instance (first instance, second instance, Supreme Court), and (iii) territory.

In the civil jurisdiction, courts of first instance are competent to hear, in first instance, all civil cases not expressly attributed to other courts by legal provision. Some courts of first instance are specialised in specific commercial issues, such as insolvency. Appeals are usually heard by second instance courts.

The general territorial rule is that the claimant must initiate the litigation in the place where the defendant resides, even though other special rules may apply, depending on the grounds of the claim. For instance, claims based in tort law have to be brought before the court where the tort has occurred.

Civil and commercial procedures

Without prejudice to different procedures that govern tax or administrative matters, civil and commercial declaratory procedures are common procedures under the civil procedure code.

Such procedure consists essentially of (i) a statement of claim accompanied by documentary evidence and by the indication of witnesses and expertise evidence that will be presented later during the procedure; (ii) an answer to the statement of claim made by the respondent, together with the documents and indication of witnesses and expertise evidence that support this plead; (iii) a preliminary hearing, which is primarily directed to make an
attempt to conciliate the parties, to solve procedural issues, to determine the object of the dispute and the controversial issues and to propose additional taking of evidence; and (iv) a trial, in which witnesses and experts are heard.

The Civil Procedure Code is also residual to other procedures such as the administrative ones, meaning that it shall apply whenever there is no specific provision regulating administrative procedures.

Appeals

Most first instance decisions can be appealed before a second instance court, frequently with a three-judge panel, depending in general of the value of the proceeding (for instance, proceedings with a value inferior to € 5,000.00 cannot normally be appealed). In these courts there is usually no hearing, although one can be held if necessary.

In some cases, the second instance decision can be challenged before the Supreme Court, provided that (i) the value of the proceeding is higher than € 30,000.00 and (ii) the second instance court did not confirm the decision issued by the first instance court. There are some exceptions to this rule: when there is a general reverse interest that justifies a decision of the Supreme Court in that particular case or when there is a contradiction of rulings concerning a matter of law that needs to be clarified.

Enforcement procedures

The Civil Procedure Code also rules enforcement procedures. Public instruments (documents issued before a notary public or equivalent) are directly enforceable, provided that they contain a debt confession, which means that a prior declaration proceeding will not be necessary to enforce them.

Most decisions issued in first and second instance are provisionally enforceable while being subject to appeal, if the counter party does not request the court the suspension of the decision at stake, for means of which the payment of a retainer is required.
In addition, the European order for payment simplifies collection for some cases of cross-border debts. It is recognised and enforced in almost all EU countries without requiring a declaration of enforceability.

12.2. Commercial arbitration and mediation

Commercial arbitration in Portugal is governed by Law 63/2011, of December 14, 2011 (hereinafter referred to as Arbitration Law), which is based on the UNCITRAL Model Law of June 21, 1985 (amended in 2006).

Arbitration Law regulates both domestic and international commercial arbitration and it applies to all arbitration procedures that take place in Portugal and to recognition and enforcement in Portugal of arbitral awards made in arbitrations seated abroad.

Under Arbitration Law, the parties may submit any dispute involving economic interests to arbitration, unless exclusively submitted by special law to state courts or to compulsory arbitration. If the dispute does not involve such kind of interests but the parties may conclude a settlement on the issue under dispute the arbitration agreement is also valid.

Arbitration Law contains a number of provisions to ensure that the arbitration jurisdiction is respected by state courts and to avoid that parties not interested in having the dispute decided by arbitrators may sabotage arbitration. Such is the case of the provision that establishes that a state court before which a lawsuit is submitted in a matter subject of an arbitration agreement shall dismiss the case, unless the arbitration agreement is clearly null and void, is or becomes inoperative or is impossible to be executed. .

Differently from the former arbitration law (dated from 1986), the current Arbitration Law regulates interim measures and preliminary orders, multiple parties and third party joinder.
The parties may agree on the rules of the arbitral proceedings, as long as these fundamental principles are respected: the respondent shall be summoned to submit its defense; the parties shall be treated equally and shall be given a reasonable opportunity to present their case before the final award is issued; in all phases of the procedure the principle of adversarial process shall be guaranteed, with the exceptions foreseen in the law.

Unless otherwise agreed by the parties, the arbitral award may not be challenged by means of appeal and may only be set aside in very limited cases, such as the subject matter of the dispute cannot be decided by arbitration under Portuguese Law or the content of the award is in conflict with the principles of international public policy of the State of Portugal.

Portugal represents a privileged seat for arbitrations involving Portuguese speaking countries and Portuguese state courts have a practice of respecting the arbitral jurisdiction.

Both ad hoc and institutionalized arbitrations take place in Portugal. There are many arbitrations centers in Portugal, being the Centro de Arbitragem da Câmara de Comércio e Indústria Portuguesa the most important one in what regards commercial arbitration. Portugal has also been a seat of international arbitration proceedings held under the International Chamber of Commerce Rules of Arbitration.

Portugal is a party to the NY Convention on the Recognition and Enforcement of Foreign Arbitral Awards ("NY Convention"), which entered into force in Portugal on 16.01.1995. Portugal declared that it would apply the NY Convention only to recognition and enforcement of awards made in the territory of another contracting State.

Portugal is also a party to the 1965 Washington Convention on the Settlement of Investment Disputes ("ICSID Convention"), which entered into force in Portugal on 01.08.1984. To the extent of our knowledge no ICSID award regarding the Portuguese State was ever rendered nor has any ICSID award ever been enforced in Portuguese courts.
Only in 2013 Portugal approved the legal regimen on civil and commercial mediation – Law 29/2013, of April 19. Until such date, mediation had been specially developed by Julgados de Paz, a special category of courts that may decide cases which value may not exceed € 15,000.00. There were also some entities that before 2013 promoted and currently promote mediation procedures as the Portuguese Securities Market Commission.
13. REAL ESTATE

In this section we provide an overview of the key legal aspects regarding real estate matters in Portugal.

13.1. Ownership

The “ownership right” (“direito de propriedade”) is governed by the Portuguese Civil Code and is the highest in rem right over real estate in Portugal. According to the legal definition, the owner of a property fully and exclusively enjoys the rights of use, fruition and disposal of real estate, within the limits of law. The Portuguese legal concept is similar to the concepts of the French Law (“propriété”), British Law (“freehold”) and German Law (“voll eigentum”).

Under the Portuguese law, there are no restrictions regarding the ownership of real estate by non-residents or foreign investors, although certain formalities may be required, such as previously obtaining a Portuguese taxpayer number.

A property may be owned individually by a single person or jointly by two or more persons, designated as co-owners, under a co-ownership regime (“compropriedade”). Within this regime, the “co-owners” simultaneously hold the ownership right over the same asset, exercising their rights and obligations in proportion of their respective quotas.

Under the Portuguese legal framework, it is also possible to divide a building into several independent units, under the horizontal property regime (“propriedade horizontal”). According to this regime, also established in the Civil Code, the units are subject to separate ownership and may belong to different owners. The common areas of a building divided under the horizontal property regime, such as stairs, lifts, hallways, are co-owned by the owners of each unit. It should be noted that the division under the horizontal regime may also be applicable to separate buildings or complexes if certain legal requirements are met.
There are other lawfully established *in rem* property rights within the Portuguese legal framework, from which we highlight the surface right ("direito de superfície"). This right, which does not include the ownership of the soil, consists in the faculty of building or keeping, permanently or temporarily, a construction on a land owned by a third party, or of making or keeping a plantation therein. At the end of the term of the surface right, when temporary, the building erected on the soil shall revert to the landowner.

Finally, it should be noted that any facts that create, recognise, acquire or modify any real estate right are subject to mandatory registration before the land registry office ("conservatórias do registo predial"), which also records the description of a property. The production of effects of such facts against third parties depends on its registration. Moreover, according to the principle of priority of registration a right registered in first place prevails over any subsequent registered acts.

### 13.2. Real estate transactions

The transfer of rights over real estate might be direct, i.e. through the direct acquisition of an asset (asset deal), or indirect (share deal) through the transfer of shares of the company that owns the property.

The direct or indirect investment in real estate may occur through a vehicle of investment. Although the most common property investment vehicles in Portugal are the commercial companies, notably public limited liability companies ("SAs") and private limited liability companies ("Lda")\(^{12}\), there are other investment vehicles such as property investment funds and property investment companies.

\(^{12}\) Please refer to section 2 – "Ways of doing business".
13.2.1. Asset deals

The purchase and sale of real estate is done by means of a public deed, executed and signed before a notary, or by a private document certified by one of the persons or entity legally qualified for such procedure (a notary, a lawyer, a registry officer, among others).

Apart from the compliance with the tax obligations which result from the acquisition of real estate, several documents may be required for the transfer of property ownership such as the energetic efficiency certificate of the property, the technical document ("ficha técnica de habitação"), when applicable, or the use permit ("autorização de utilização") issued by the relevant Municipality (although this document may not be required if the property’s construction is prior to August 7, 1975).

Although the transfer of in rem rights over an asset occurs with the execution of an agreement, as above-mentioned, it is mandatory to register such transfer in order to ensure the publicity of the legal situation of the assets and guarantee the lawfulness of the property transactions. The registration must occur within two months as from the transaction.

13.2.2. Share deals

Share deals are usually formalized through private agreements that do not need to be notarized. Under these agreements, the parties agree on the terms and conditions for the transfer of shares, which generally include specific provisions in relation to the real estate owned by the seller (e.g. representations and warranties or certain conditions regarding the property that shall be met).

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13 Please refer to section 7 – “Tax”. 
It should be noted that, in this case, there are also no restrictions to the acquisition of shares in Portuguese companies by non-residents or foreign investors, although certain formalities may be required, such as previously obtaining a Portuguese taxpayer number.

The legal requirements for the transfer of shares depend on the type of investment vehicle at stake.

13.3. Urban lease agreements

The legal regime of urban lease agreements is essentially set out in the Portuguese Civil Code and in Law 6/2006, of February 27, with amendments, in accordance with which a consistent and thorough reform of said regime was carried out.

Under a lease agreement, one of the parties (the landlord) grants to the other (the tenant) the temporary use of a real estate property – with the maximum limit of 30 years –, in exchange for the payment of an interest (the rent).

The lease agreement has to be formalized in a written document and leases with an initial duration longer than 6 (six) years must be registered before the land registry office, in order to produce effects against third parties.

Unless differently established by both parties, the tenant may not assign his position in the lease agreement to a third party without prior consent of the landlord, except in the case of transfer of the commercial business ("trespasse"), which includes also the lease.

It should be noted that if a leased property is sold, the lease agreement is transferred to the new owner in the same terms and conditions, and the new owner assumes the position of landlord without further requirements needed.

In accordance with Decree Law 160/2006, of August 8, only buildings or units whose suitability for the intended purpose is certified by use permit may be subject of lease agreements, under penalty of nullity of the agreement.
In terms of their purposes, urban lease agreements can be divided into urban leases for housing or for commercial purposes.

The main aspects regarding urban leases for housing purposes, such as those concerning early termination, opposition to renewal and expiry of the agreements, are imperatively established in the law.

As for commercial lease agreements, their main characteristic is the contractual freedom enjoyed by the parties to establish the provisions regarding duration, termination and opposition to renewal. In the absence of provision by the parties regarding these matters, the legal provisions of housing agreements shall apply.

13.4. Planning and licensing

The most relevant legislation regarding urban planning and property project licensing are (i) Basic Law on Territorial and Urban Planning Policies (Lei de Bases da Política dos Solos, Ordenamento do Território e Urbanismo), (ii) Territorial Planning Instruments Regulations (Regime Jurídico dos Instrumentos de Gestão Territorial) and (iii) Legal Regime of Urban Planning and Building (Regime Jurídico da Urbanização e da Edificação – RJUE).

According to the planning legal framework, both national and local public authorities (the State and the Municipalities) are empowered to approve the rules of use, occupation and transformation of the soil, defining goals and principles to which land use should conform with. These rules are contained in plans, the main territorial management instruments, and all urban operations shall comply with the regulations set forth therein.

The existing territorial management instruments are of different nature, notably sectorial or special planning instruments such as Natura 2000 or special plan of coastal area (POOC), among others, and different scope (national, regional or municipal plans).
However, the most recent amendment to the planning legal framework aims to simplify the access of any interested party to all the rules applicable to a certain urban operation, and establishes that such rules shall all be concentrated in one single plan (the municipal or intermunicipal plan).

RJUE foresees the rules of execution of real estate projects notably urbanization, edification and allotment operations, among others.

Municipalities are responsible to assess if the execution of a certain urban operation is in accordance with the applicable law and territorial management instruments. Such assessment is made within the powers of approval and supervision granted by law to the Municipalities in the execution of urban operations.

However, it should be noted that although Municipalities play an important role within the execution of urban projects, other entities may be asked to give their opinion (e.g. Public Heritage Department ["Direcção-Geral do Património Cultural"] or the Tourism Authority ["Turismo de Portugal"]). In some cases, the opinion of such entities may be binding.

The execution of urban operations may be subject to different procedures. Nevertheless, before filing one of such procedures, any interested party may obtain information on the viability of the execution of a given urban operation, as well as on the respective legal or regulatory constraints within a prior information request ("pedido de informação prévia").

In the scope of this procedure, Municipalities have a term to decide on the request and their decisions are binding on the competent bodies as regards the possible procedure to which it respects. The effects of such decisions remain in force for a 1 (one) year period.
Depending on the type of operation to be carried out, the execution of urban operations may be subject one of the following procedures: licensing ("licenciamento"), advance notice ("comunicação prévia") or use permit ("autorização de utilização"). Additionally, some operations do not have relevant urban impact (such as, in general, maintenance works) and, for that reason, do not depend of any of the referred procedures, although they may be subject to supervision by the Municipalities.

RJUE sets forth the list of operations that are subject to each of these procedures. In general, the operations that require a license are more relevant from an urban planning point of view than the ones subject to an advance notice procedure, which tends to be simpler and faster.

Finally, upon the completion of an urban operation, and provided that the construction complies with the project that was submitted and approved (or, in case of advance notice procedures, not rejected by the relevant Municipality) a use permit shall be issued. Thus, the use permit is the legal document which attests (i) the conclusion of the construction works; (ii) the conformity of the works with the building permit ("licença de construção") and (iii) the use purpose of the construction.
14. NEW LEGAL REGIME FOR PRIVATE EQUITY

14.1. Introduction

Private equity activity in Portugal is regulated by Law 18/2015, of March 4 (“Law 18/2015”) and is subject to supervision by the Portuguese Securities Market Commission (“CMVM”).

Firstly, it should be noted that there is no true distinction in Portugal between the concepts of private equity and venture capital, these terms being used interchangeably. Therefore, the term “private equity” is used in its broadest sense, comprising private equity activity in all its forms, including venture capital.

Early this year there was a regulatory change regarding the legal regime of private equity activity, with the enactment of Law 18/2015, transposing to the Portuguese legal system the EU Directive 2011/61/EU, of the European Parliament and Council, on alternative investment funds’ managers, and the EU Directive 2013/14/EU, of the European Parliament and Council, on alternative investment funds’ excessive dependence on credit ratings. Further, Law 18/2015 secures the execution of Regulation (EU) 345/2013, of the European Parliament and Council, on European private equity funds. Finally, it revokes the former regulatory regime of private equity investment, established in Decree Law 375/2007.

14.2. Chief innovations

New private equity activities

Along with the already established Private Equity Funds, Private Equity Investors and Private Equity Companies, the new regime introduces the concept of social entrepreneurship investment, which means the acquisition of equity or debt instruments in companies developing solutions to social problems, through the creation of Social Entrepreneurship Funds, managed
by Social Entrepreneurship Companies. Further, it creates a new type of Alternative Investment entities, the Specialized Alternative Investment entities, which allow for the acquisition of assets of any kind, as long as each asset does not represent more than 30% of the entity’s global net value. These entities may take the forms of Specialized Alternative Investment Companies or Specialized Alternative Investment Funds.

In addition, Private Equity Companies are now allowed to manage, besides Private Equity Funds, Specialized Alternative Investment Funds and Social Entrepreneurship Funds, at national level, EuVeCa and EuSEF, respectively Private Equity Funds and Social Entrepreneurship Funds, at European level.

This innovation will make the Portuguese market more competitive within the European market.

**Simplified Framework and Qualified Framework**

The foremost change put in place by Law 18/2015 was the creation of two distinct regulatory frameworks of Private Equity Investment depending on the global amount of the assets under management. Formerly there was a unique regulatory framework applicable regardless of the amount of the assets under management.

Thus, a more demanding and qualified regulatory framework applies to entities managing assets exceeding (i) € 100,000,000.00, when the respective portfolios include assets acquired with leverage; or (ii) € 500,000,000.00, when the respective portfolios do not include assets acquired through leverage and regarding which there are no reimbursement rights for a five-year period counting as of the date of the investment.
Without prejudice to the entities not exceeding the above-mentioned limits, but opting to be subject to this qualified framework, the latter is applicable to Management Companies of Private Equity Funds, to the correspondent Private Equity Funds and to the Companies of Private Equity Investment. Such entities are now subject, among others, to the following provisions:

(a) Incorporation subject to prior authorization of the CMVM;
(b) Minimum social capital of € 300,000.00 for Companies of Private Equity Investment, and € 125,000.00 for entities Management Companies of Private Equity Funds;
(c) Prohibition to cumulate the management of their own portfolio with the management of an external portfolio;
(d) Functional and hierarchical separation of the risk management department from the operating department, which includes portfolio management functions;
(e) New conflict of interests policies established to prevent, identify, manage, monitor and, if needed, disclose any existing conflict of interests;
(f) New risk management policies and implementation of measures adequate to identify, measure, manage and monitor relevant risks to the investment strategy to each Private Equity Fund, and regular execution of due diligence operations to the investments at stake;
(g) Remuneration policies compatible with and able to promote a solid and efficient risk management;
(h) Obligation to inform the CMVM of the intention to delegate functions in its name to third parties;
(i) Obligation to inform the CMVM, with a periodicity dependent on the amount of the assets under management, regarding their main investments, their main risk positions and the main concentrations of the private equity funds under management; and
(j) Ability to commercialize units of Private Equity Funds in other European countries and third countries, pursuant to the EU Passport rules, as established in Law 16/2015, of February 24.
The main changes regarding the simplified regulatory framework, i.e. the framework applicable to Private Equity companies whose assets under management do not exceed (i) € 100,000,000.00, when the respective portfolios include assets acquired with leverage; or (ii) € 500,000,000.00, when the respective portfolios do not include assets acquired through leverage and regarding which there are no reimbursement rights for a five-year period counting as of the date of the investment, are as follows:

- Private equity companies shall now have a social capital of at least € 125,000.00 (formerly, the regime demanded a social capital of at least € 750,000.00 for companies whose management included both own and external assets, and € 250,000.00 for companies whose activity was exclusively the management of Private Equity Funds);
- Whenever the global net value of the assets under management by private equity companies exceeds € 250,000,000.00, these companies shall have own funds corresponding to 0.02% of the amount of the global net value exceeding the said limit; and
- Private equity companies shall inform the CMVM, on an annual basis, about their main investments, their main risk positions and the main concentrations of the Private Equity Funds under management.

Other innovations

Other worth highlighting innovations include the ability of the management regulations to create investment compartments, named “subfunds”. Notably, each subfund is represented by one or more units categories and is subject to property autonomy ruling. Further, management companies are now allowed to unilaterally modify certain aspects of the Fund’s management regulations. Finally, Law 18/2015 establishes a new penalty system, whereby infractions are punishable with fines up to five million Euros.
Conclusion

In conclusion, the new legal regime of private equity investment brought key changes, especially in respect of those funds whose assets represent a relevant position in the financial system. These innovations represent a stronger protection of the investor, since they create more demanding and strict rules in areas as diverse as supervision and sanction, activity access, information disclosure, risk and liquidity management, remuneration, among others.

Finally, by creating new forms of private equity investment, namely Social Entrepreneurship Investment and Specialized Alternative Investment, it brought more competitiveness to the Portuguese private equity market.
15. RESIDENCE PERMIT FOR INVESTMENT ACTIVITY PROGRAM (ARI)

15.1. Investment Program associated with residence permits

According to the Portuguese law, non-EU citizens operating an investment activity in Portugal may be granted a residence permit in Portugal, provided that some requirements are complied with and verified.


Residence permits are granted for a one-year initial period and can be renewed for successive periods of two years, and provide the respective holders:

- A residence permit in Portugal;
- Free access to the Schengen Area;
- Access to a profession or to carry on a business in Portugal;
- Access to the Health and the Educational Systems on the same conditions of Portuguese citizens;
- Access to Justice; and
- Possibility to apply for (i) Portuguese permanent residence after holding the temporary permit for at least five years, or (ii) apply for citizenship after six years if the respective requirements are met.
15.1.1. Investment activity

For the purposes of the Act 23/2007, of July 4, as subsequently amended, it is considered as an investment activity, any activity that is carried out as an individual or through a company that generally leads to the completion of at least, one of the following situations in Portuguese territory and for a minimum period of five years:

(a) Capital transfer with a value of at least € 1 million:

This type of investment includes the acquisition or investment in Portuguese listed and unlisted companies, and covers the cases where the companies operate in Portugal and have investments in other countries. The rule is that the companies are based in Portugal, even though they can invest abroad.

(b) Creating at least 10 jobs positions:

Investors can either incorporate a company or invest in companies already incorporated in Portugal. However, it should be noted that the 10 jobs positions legally required must be created after the ARI regulations were enacted, which occurred on August 9, 2012.

If this is the case, investors, in their capacity of shareholders, will therefore be entitled to apply for the ARI.

Investors are also granted the possibility of creating the 10 mandatory jobs individually, i.e., without incorporating a company in Portugal.

(c) Acquiring real estate with a purchase price of at least € 500,000.00:

The ARI rules determine that either rural or urban real estate can be acquired and that real estate properties can be acquired for leasing, commercial, agricultural and tourism purposes.

The acquisition of real estate may be carried out (i) through joint ownership, provided that the applicant is a joint owner and invests at least € 500,000.00; or (ii) through a purchase and sale commitment agreement, in case the down payment is at least € 500,000.00.

(d) Acquiring real estate whose construction has been concluded, for at least 30 years or located in urban rehabilitation areas for rehabilitation purposes in the amount of at least € 350,000.00;
(e) Capital transfers, with an amount of at least € 350,000.00, to be applied in research activities developed by public or private scientific research institutions, that are part of the Portuguese scientific and technological system;

(f) Capital transfers, with an amount of at least € 250,000.00, to be applied in investment or support to the artistic output recovery or maintenance of the Portuguese cultural heritage, through services of the central and peripheral direct administration, public institutes, entities forming part of the business public sector, public foundations, private foundations with a statute of public utility, inter-municipal entities, entities forming part of the local business sector, municipal associative entities and cultural public associations, pursuing attributions in the area of artistic production, recovery or maintenance of the Portuguese cultural heritage;

(g) Capital transfer, with an amount of at least € 500,000.00, aiming the acquisition of participation units in investment funds or in venture capital funds dedicated to the capitalization of small and medium sized companies that, for such purpose, present the respective capitalization plan and the same shows to be doable;

As from July 1st 2015, according to the recently introduced changes in Law 23/2007 of July 4, provided that the investment is carried out in low density territories, the minimum amount or requirement of the investment activities mentioned in subparagraphs b), c), d), e) and f) above may be lower in 20%. For these purposes, are considered as low-density territories the territories of level III of the Nomenclature of Territorial Unities for Statistical Purposes (NUTS III) with less than 100 inhabitants per km2 or with a gross domestic product (GDP) per head lower than 75% of the national average.

15.1.2. Family reunification

The law allows those with the Portuguese residence permit or those who are applying to ARI to apply for the Portuguese residence permit for their family dependents that include:

- The spouse;
- Children, disabled adult sons/daughters;
• Single adult sons/daughters studying at a school or educational institute in Portugal or abroad, economically dependent from their parents;
• Minor sibling under custody of the investor, in accordance with a decision issued by the competent authority of their Country of origin and recognized in Portugal;
• Economically dependent parents of the investor and of the spouse.

15.1.3. Permanent Residence permit

• As referred above, the residence permit granted under the investment program provides the respective holders, the possibility of applying for the Portuguese permanent residence. In this regard, the relevant applicants are required to:
  • Hold a temporary residence permit for at least five years;
  • Have not been sentenced to punishment or punishments which, individually or cumulatively, exceed one year of imprisonment over the past five years of residence in Portuguese territory;
  • Have means of subsistence;
  • Have accommodation; and
  • Show knowledge of basic Portuguese language.

15.1.4. Portuguese Citizenship

Furthermore, non-EU citizens operating an investment activity in Portugal may also apply for the Portuguese citizenship, provided that the same comply with the following requirements:

• Are of legal age or emancipated according to the Portuguese law;
• Are legally resident in Portuguese territory, for at least six years;
• Get to know the Portuguese language sufficiently;
• Have not been convicted for a crime punishable with imprisonment not less than three years, according to the Portuguese law.
**PORTUGAL AND SPAIN**

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