CUATRECASAS

Doing business in Portugal

A legal and tax perspective

2020 Edition

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

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Introduction

This guide provides an overview of 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.

A year like no other

It is impossible not to mention the COVID-19 pandemic in this 2020 guide. During this year, the Portuguese Government has taken several temporary and exceptional measures that cover most areas contained in this guide and affect investments and investors.

For an overview of the most significant measures that have been approved to fight the pandemic and, most importantly, to recover and revitalize the society and the economy, please read Cuatrecasas COVID-19: Snapshot of Portugal's Legal Measures.

The Snapshot is regularly updated by the Task Force Coronavirus, an multidisciplinary created by the firm to coordinate the response to the complex situations arising in companies in all areas of law, and to ensure top-quality, innovative legal advice to our clients.

About Cuatrecasas

Cuatrecasas is a law firm present in 14 countries, with a strong focus on Portugal, Spain and Latin America. It has a multidisciplinary team of over 1,000 lawyers that advises on all areas of business law, organized by business and industry-specific practice areas. It combines maximum technical expertise with business vision.

Through 16 offices in the Iberian Peninsula and 13 international offices, desks and country groups, Cuatrecasas connects regions through a model that offers the best team for each case, depending on the jurisdiction, specialty area and complexity required. Each year, the firm advises on some of the largest and most significant transactions, as well as complex and high-profile litigation and arbitration proceedings in Iberia and other important jurisdictions.

Cuatrecasas maintains close relationships with leading companies in every sector and possesses invaluable experience advising on the most complex aspects of every specialty area. Different regions are connected through the firm's client-tailored model that offers the best team for each specific case, depending on jurisdiction, specialty area and complexity. Our 16 offices on the Iberian Peninsula coordinate with our teams in Bogotá, Brussels, Casablanca, London, Luanda, Maputo, Mexico City, New York, São Paulo and Shanghai, optimizing efficiency of resources and client proximity, and benefiting from the different time zones. The international desks (covering Africa, China, France, the German-speaking countries, Latin America, and the Middle East) and over 20 country-specific groups guarantee the comprehensive approach of the legal advice from Spain and Portugal. In continental Europe, Cuatrecasas has developed a non-exclusive network with three other leading law firms, Chiomenti in Italy, Gide in France and Gleiss Lutz in Germany, allowing it to offer integrated services in complex crossborder transactions.

The firm works with a new approach to client service, combining collective knowledge with innovation and the latest technologies to offer contemporary, efficient advice and to provide solutions to the most complex situations, creating value for the client, the team and society at large.

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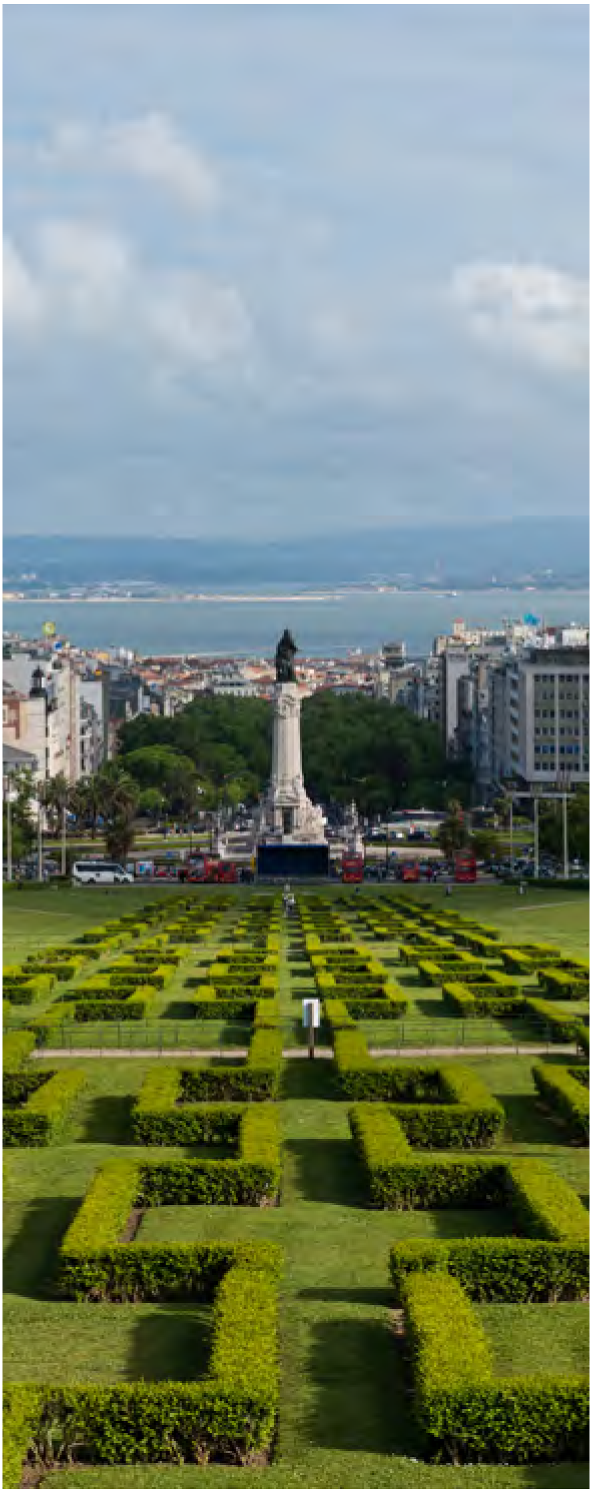


List of acronyms

AdC	Portuguese Competition Authority
ANACOM	National Communications Authority
CIT	Corporate Income Tax
CMVM	Portuguese Securities and Exchange Commission
ERC	Telecommunications Regulatory Agency
EU	European Union
IMI	Municipal Property Tax
IMT	Real Estate Transfer Tax
NIPC	Corporate Identification Number
OECD	Organization for Economic Cooperation and Development
PIT	Personal Income Tax
SA	Joint Stock Company
SQ	Private Limited Company
PCC	Portuguese Companies Code
PCPC	Portuguese Civil Procedure Code
PSC	Portuguese Securities Code
SME	Small and Medium-Sized Company
TOB	Takeover Bid
VAT	Value Added Tax

1 Portugal at a glance

1.1. Unique geo-strategic position

Portugal has become one of the most attractive countries in the EU, not only for its privileged geo-strategic position, but also due to the implementation of tax and investment regimes for foreign investment. Portugal became a member of the European Union ("EU") in 1986. It has a population of approximately 10.3 million people and receives more than 20 million tourists per year. With strong cultural, economic and historical ties with Brazil, China, India, East Timor and several Portuguese-speaking African countries, it is the perfect bridge to Latin America, Europe, Asia and Africa and is a unique platform to channel investments in these economic areas. Portuguese is a global language with over 270 million speakers worldwide.

1.2. Portuguese legal system

Portugal has become one of the most attractive countries in the EU due to the implementation of tax and investment regimes for foreign investment

Portugal is a semi-presidential republic with three independent branches of government: the executive, the legislative and the judiciary. The head of state is the president, who represents the Portuguese state. Executive authority is exercised by the government headed by the prime minister. The legislative power is exercised by the parliament, which has a single chamber, and the government.

Independent judges represent the judiciary power. The Supreme Court is the highest judicial court in Portugal. The Constitutional Court, which is not part of the judiciary system, has authority to interpret and apply the Constitution.

Portugal has a civil law system based on written law, while case law is used for interpretation purposes. EU membership has had a decisive influence on Portugal's legal system, as a substantial part of its commercial laws are based on EU law and international treaties.

2

Ways of doing business

If a foreign investor wants to operate in Portugal for more than one year, a permanent representation in Portugal must be set up

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 joint stock companies ("sociedade anónima" or "SA") and private limited companies ("sociedade por quotas" or "SQ"). Both have a legal personality separate and distinct from that of their shareholders, who are not personally liable for the company's debts.

Choosing between an SA or an SQ is mainly determined by (i) the size 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 shareholders wish to apply; and (v) the flexibility offered by SQ regulations, as opposed to SA regulations (see "Overview of limited liability companies").

Branch or representative office

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

Alternatives

Another investment option is a joint venture with a business already established and operating 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 offers other joint venture alternatives:

- Enterprises complementary group ("ACE"): It does not have a separate legal personality besides that of its members. It is created to carry out specific projects or services, such as an engineering or construction project.

- European economic interest groups ("AEIE"): Aim to facilitate, improve or increase the economic activity of their members, who are held jointly and severally liable, albeit subsidiarily to the AEIE. AEIEs are frequently created to provide centralized 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 in money or in kind: These are not considered capital contributions but entitle investors 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; e.g., by entering a distribution, franchise or agency relationship with a third party established in Portugal.

2.2. Overview of limited liability companies

The most common types of limited liability companies operating in Portugal are joint stock companies and private limited companies

Main characteristics

The most common types of limited liability companies operating in Portugal are SAs and SQs, which are regulated by the Portuguese Companies Code ("PCC"). Limited liability of shareholders is common to these capital-based companies. In both cases, the assets belonging to the shareholders and the company are separate. These companies can be owned by a single shareholder when specific requirements are met.

Traditionally, small and medium-sized companies ("SMEs") have chosen the SQ form because its characteristics are more suitable:

- Lower capital requirements than an SA (€1 per quota, as opposed to €50,000).

- Statutory restrictions on the transfer of quotas are more stringent than for an SA.

- More flexibility and greater autonomy to decide on the company's structure and organization. SA regulations establish more complex supervision structures aimed at protecting the company's interest, shareholders and creditors.

By contrast, SAs have traditionally met the needs of larger corporations. While their more complex legal framework and 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 because its capital is divided into shares that can be listed on stock exchanges and are naturally transferable.

- Wider access to financing sources. Unlike SQs, SAs can quote on the stock exchange and issue negotiable debentures to the public.

However, these characteristics of SAs and SQs can be interpreted in subtly different ways. Large companies incorporated as SQs often tailor the statutory model initially designed for SMEs to suit their goals and interests. In this context, shareholders and shareholder agreements play an important role.

Main features of SAs and SQs

The following table identifies the most important, though not comprehensive, features of SAs and SQs:

	SQ
CAPITAL	
Minimum requirement	€1 per quota
Divided into	Quotas
Disbursement	Capital contributions generally must be paid on the date of incorporation or before the end of the first economic period. Parties can agree to defer payment for up to five years. Contributions in kind must be fully paid up on the date of incorporation.
Voting rights	Every cent of a quota’s nominal value is granted one vote. Bylaws can establish, as a special right, two votes for every cent of the nominal value of the quota or quotaholders´ quotas that, in total, do not represent more than 20% of the share capital.
Contributions in kind	The value of the quotaholders’ investments in kind must be assessed by an independent expert.
TRANSFERS	
Restrictions on transfers	Unless otherwise provided in the bylaws, quotas can be freely transferred between quotaholders or with quotaholders’ spouses, ascendants and descendants. In all other cases, transfers are subject to the restrictions provided in the bylaws or in the PCC, which requires the consent of the company in all other transfers of quotas.
TREASURY STOCK AND FINANCIAL ASSISTANCE	
Derivative acquisition of treasury stock	Only allowed, with no set limit, in certain cases: (i) when quotas are acquired at no cost, (ii) under the scope of a judicial action against a quotaholder, or (iii) when the company’s legal reserves are at least double the price of the acquired quotas.
Financial assistance prohibition	There is no provision regarding financial assistance to SQ companies. However, there is a discussion on whether the SA regime also applies to SQs.

SA
€50,000
Shares must be nominative shares and issued as certified or book entry shares. Shares of listed companies can be negotiated on the stock market.
Capital contributions generally must be paid on the date of incorporation. Parties may agree to defer payment of 70% of the capital contributions for up to five years. Non-capital contributions must be fully paid up on the date of incorporation.
Every share is granted one vote, generally. No voting privileges are allowed. Bylaws can grant one vote to a certain number of shares or establish a cap on the number of votes that can be cast by each shareholder.
The value of the shareholders' investments in kind must be assessed by an independent expert.
Restrictions on transferability can only be admitted in specific cases established by the PCC and must be expressly included in the bylaws. Any transfer limitations must be expressly included in the share's certificates or the shares registration account to be effective against third parties.
Allowed up to a maximum of 10% of the share capital. Subject to certain conditions, the 10% threshold can be exceeded, particularly, when (i) the acquisition results from the company's compliance with the law (ii) the acquisition is designed to execute a shareholders' resolution of share capital reduction; (iii) assets are acquired on a universal basis (iv) the acquisition is made at no cost; (v) the acquisition is made in the context of a shareholder's exit; (vi) the acquisition arises from a shareholder not paying capital contributions; (vii) the acquisition is made within the context of enforcement proceeding for the collection of third parties' debt;.
Financial assistance is prohibited except (i) for current bank and financial entities activities; and (ii) for the acquisition of shares by or for the company's employees or of a group company. Please refer to section 3.1 on this issue.

	SQ
FINANCING SOURCES	
Listing and issuing bonds or other negotiable instruments	Some financing sources that cannot be listed are unattainable for SQs.
CAPITAL DECREASE	
Capital decrease	Quotaholders may opt for a share capital decrease to cover losses, free excess capital or for other special purposes.
Publicity and opposition term	The capital decrease resolution must be registered, and, within one month, creditors can judicially request that the court establishes a term in which the company may not make any distributions, if all requirements regarding the creditors are verified.
CORPORATE GOVERNANCE	
General meeting	Resolutions may be made by i) a summoned general meeting; ii) through a universal general meeting; iii) by a written vote or iv) through unanimous written resolutions. There is no general quorum requirement. Resolutions can be passed by simple majority of the issued votes. Some resolutions require a reinforced majority (more than three-quarters of the voting rights for share capital increase or decrease, bylaw amendments, merger and spin off). Bylaws can increase the voting majorities. In SQs, the quotaholders have broader powers to decide on the company's matters than SAs.
Management	Except where the bylaws provide otherwise, where there are several managers, their respective powers are jointly exercised, and resolutions approved with the votes of the majority. The managers can be appointed for an indefinite period or appointed for a specific term of office, depending on what is provided in the bylaws. The managers may delegate certain powers to another manager or managers.

SA
SAs can raise funds through capital markets by issuing/selling shares or issuing bonds or other negotiable instruments.
Shareholders may opt for a share capital decrease to cover losses, free excess capital or for other special purposes.
The capital decrease resolution must be registered, and, within one month, creditors can judicially request that the court establishes a term in which the company may not make any distributions, if all requirements regarding the creditors are verified.
Resolutions may be made by i) a summoned general meeting; ii) through a universal general meeting; or iii) through unanimous written resolutions, where the shareholders sign the resolution on different dates and locations, but they all agree with the content of the resolution and vote the same way. The shareholders meeting can make decisions in first call, regardless of the number of shareholders attending or represented at the meeting, except for certain matters that can only be decided if the shareholders attending or represented at the meeting own shares corresponding to, at least, one-third of the share capital. At second call, the shareholders meeting can pass resolutions regardless of the number of shareholders attending or represented and the share capital they represent. Resolutions are passed when approved by a majority of issued votes, but a two-thirds majority is required in specific cases (e.g., share capital increase and decrease, amendment of bylaws, transformation, merger and spin-off). Bylaws can increase the attendance quorum and voting majorities. The shareholders meeting can resolve management matters at the request of the board of directors. Telematics means are accepted, if not forbidden by the bylaws.
If the share capital does not exceed €200,000, the company may have a sole director. The members of the board of directors must be physical persons, although legal entities may be appointed as directors, in which case a physical person will be appointed to represent it The maximum term of each office is four years, but directors can be reappointed for a new term. The board of directors cannot meet without the majority of its members being present or represented. Resolutions of the board of directors are approved by majority vote and, if not forbidden by the bylaws, the meetings can take place by telematics means.

2.3. Incorporating new companies and acquiring “shelf companies”

When investing in Portugal, investors can either incorporate a new company (“NewCo”) in 24 hours with publicly available, pre-approved template documents or specifically tailor the company’s documents to their requirements. Alternatively, they can buy a company that has already been incorporated but has not yet started to operate (“shelf company”). However, this is more expensive and less common, as a new standard company can now be incorporated within 24 hours.

When investing in Portugal, investors can choose between (i) a simplified procedure to incorporate companies, with pre-approved template documents, or (ii) a more thorough procedure, tailoring the company’s documents to its specific needs

Requirements for incorporating limited liability company (SA or SQ)

- Powers of attorney: To be represented at the incorporation, investors must grant powers of attorney, apostilled according to the Hague Convention or legalized by a Portuguese consul.

- Company name: A certificate approving the NewCo’s proposed name must be obtained (usually takes 1 business day with an urgent request or up to 15 days with a standard request).

- Tax identification numbers: All the NewCo’s foreign shareholders and future non¬resident directors must obtain a Portuguese taxpayer number. Non-EU citizens or those not residing in the EU must appoint a tax representative in Portugal. After obtaining the taxpayer number, the foreign shareholders and future non-¬resident directors receive a password to use the Portuguese tax authority’s website.

- Company’s share capital and cash contributions: The company’s initial share capital and any cash contributions to the NewCo must 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: Investors or their authorized representatives must execute a private written document containing the company’s articles of association, on which 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 the shareholders transfer real estate assets to the company).

  The articles of association also regulate the NewCo’s internal affairs, including the corporate purpose, the registered office, transfer of quotas or shares, the governance structure, the general meeting quorum and voting majorities, as well as any matters that must be addressed in the bylaws:

- Filing the deed of incorporation with the commercial registry office for registration and subsequent online publication.

- Registering with the tax and social security: The Commercial Registration Department will inform the tax and social security authorities of the incorporation of the NewCo. The NewCo's accountant must confirm the beginning of the activity with the tax department and provide the requested information.

The NewCo can operate from the date the deed of incorporation is filed, although it will only have full legal personality when it has been registered.

Commercial companies must comply with disclosure obligations provided under the Legal Framework of the Central Register of Ultimate Beneficial Owner

Requirements for acquiring a shelf company

As in the case of a NewCo, investors must grant a power of attorney if they intend to appoint a representative. All foreign shareholders and future non-resident directors must obtain a taxpayer number. (See the previous section for details of these two steps). It is advisable to make a prior limited due diligence, confirming the status of the shelf company:

- Sale and purchase: Potential investors and the seller must execute a private written document to formalize the sale and purchase. The purchase price is paid as agreed between the parties.

- Foreign investment filings (see section 2.5 on Exchange control and foreign investment regulations).

- Other corporate actions: Once the process of acquiring the shelf company is completed, new directors will have to be appointed and the bylaws amended to tailor the company to the investors' needs (change of corporate name, purpose, registered office, transfer rules and corporate governance). These corporate resolutions must be registered with the commercial registry office.

2.4. Ultimate beneficial owner

Under the new Legal Framework of the Central Register of Ultimate Beneficial Owners (*Registo Central do Beneficiário Efetivo* or "RCBE") commercial companies must comply with certain disclosure obligations.

RCBE is a database that organizes and maintains an updated record of information on individuals or natural persons who have, indirectly or through a third party, ownership or effective control of a commercial company (and other entities) (the "Ultimate Beneficial Owner" or "UBO"). The main obligation is to file the ultimate beneficial owner's disclosure form, which must include information on (i) the entity subject to RCBE; (ii) the identity of the owners of its share capital, with a breakdown of their respective shareholdings; (iii) the identity of the directors or those who carry out management duties (e.g., those holding

powers of attorneys, CEO if not a director); and (iv) the beneficial owners and the applicant.
Under Portuguese law, the UBO is the natural person that ultimately owns or controls, directly or indirectly, a sufficient percentage of shares, voting rights or participation rights in the share capital of a legal person, and the natural person exercising control by any other means over that legal person.

The UBO declaration is made on the electronic platform at https://rcbe.justica.gov.pt/. The type of relationship between the UBO and the entity can be specified in the appropriate field.

Breaching this obligation is a misdemeanor offense punishable with a fine between €1,000 and €50,000, which must be disclosed in the respective commercial registry certificates, as well as other penalties; e.g., not being permitted to distribute dividends or to participate in public services concession tenders, or to transfer or acquire real estate.

2.5. Corporate governance of limited liability companies

There are mainly four alternatives for organizing the managing body of a limited liability company: (i) one or more directors, for SQs; (ii) a sole director for SAs with a share capital that does not exceed €200,000; (iii) a board of directors for SAs (which may include an audit committee, if established); or (iv) an executive board of directors and a general and supervisory board for SAs. The bylaws can establish any of these options; however, it is mandatory for certain companies to adopt a statutory board or a chartered accountant.

Directors are generally under duties of care and loyalty and must act bona fide, in the company's best interest. Directors (and de facto directors) are liable to the company, its shareholders and the company's creditors for any damages they may cause carrying out any acts contrary to law or the bylaws or carried out in breach of the duties associated with their office.

2.6. Exchange control and foreign investment regulations

There is an existing screening mechanism in Portugal, approved by Decree-Law no. 138/2014, of September 151 (the "Decree-Law 138/2014"). However, it is limited to strategic assets in particularly sensitive industry sectors, based on reasons of national defense and security or security of supply of services fundamental to the national interest (including energy), and, to our knowledge, has not been enforced yet.

Historically, Portuguese governments have been very supportive and open to foreign investment, with strategic companies and infrastructures being controlled by foreign investors, some of them non-EU or EEA based, and unless material changes in circumstances occur, we do not foresee a significant change in that political and economic approach.

However, Regulation (EU) No. 2019/452, (the "FDI Regulation"), which technically enters into force on October 11, 2020, establishes a framework regarding control by Member States of foreign direct investment for security or public policy reasons which will be automatically applicable in Portugal, and this may result in several changes in the national screening mechanisms.

3 Providing security

3.1. Preliminary ideas

Portuguese law provides for a financial assistance prohibition, under which a Portuguese company cannot guarantee obligations related to financing incurred for its acquisition

Overview

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

- In rem security, where an asset is granted as security for the fulfillment of obligations.
- Personal guarantees, where a person guarantees the fulfillment of obligations as an additional obligor.

Under Portuguese law, security/guarantees are ancillary to the secured obligations and do not exist per se.

The object of the security/guarantee and the secured obligation must be determined, or at least be capable of being determined under the criteria defined by the parties. Portuguese law does not provide for or allow the creation of floating charges.

Corporate benefit

Under the Portuguese Companies Code, Portuguese companies can only grant guarantees or security for third parties' obligations, provided:

i. the company has a justified corporate interest; or

ii. the company is in a controlling or group relationship with the legal entity or person whose obligations are being secured.

Given that there is some controversy relating to the criteria mentioned in (ii) above, it is advisable that, even in a control or group relationship, companies have a justified corporate interest in granting the guarantee/ security.

Prohibition on financial assistance

Portuguese joint stock companies cannot provide financial assistance to acquire either the shares representing its share capital or the shares representing the share capital of its direct or indirect parent and there is some discussion on whether this prohibition should also apply to private limited companies (SQ).

The prohibition includes indirect assistance; i.e., guarantees or security granted by a Portuguese company cannot guarantee obligations related to financing incurred for its acquisition, as this would constitute unlawful financial assistance and be considered void.

Violating the financial assistance prohibition can also trigger liability of the company's directors.

3.2. Most relevant security and formalities

Types of security

The typical Portuguese security package may include:

- pledges over shares of material guarantors or financed companies;
- pledges over fixed movable assets (i.e., pledge over stock, equipment or inventory);
- pledges over bank accounts;
- pledges over intercompany receivables;
- assignment of receivables;
- assignment or pledge over rights arising from insurance policies and, in some cases (although less frequent), intellectual property rights (i.e., patents and trademarks); and
- depending on the activity and relevant assets of the guarantor/debtor, mortgages over real estate assets.

Formalities

The applicable formalities depend on the type of security being granted; e.g., mortgages over real estate assets require a public deed or a document with a notary's term of authentication, whereas bank account pledges and share pledges require only a simple private document.

We usually recommend public deeds or a notarial term of authentication for certain types of security, as they can be used afterwards as judicial enforcement titles. Certain formalities may also be required to grant certain rights to the beneficiary of the security (e.g., the certification of signatures in a commercial pledge providing for the appropriation of the pledged assets by the beneficiary)

Regarding possessory or other similar actions, the creation of pledges over the movable assets requires the delivery of the asset to the creditor (unless the pledge at stake is a banking pledge).
The assignment of receivables or the pledge of credits requires sending a notice to the respective debtors.

Registration requirements

The registration requirements also depend on the type of security at stake.

Mortgages over real estate or registrable movable assets, such as aircraft, vessels and vehicles, are subject to registration with the competent registry office (real estate or other), whose registry is public.
Pledges over shares are:

- subject to inscription in the respective share certificates and registration with the issuer in the respective share register book (or with a financial intermediary representing the issuer), in the case of certified shares;
- subject to registration with the financial intermediary with which the shares are registered, in the case of book-entry shares (regardless of whether they are integrated in a centralized clearing system), or certified shares integrated in a centralized securities system.

Pledges over quotas of private limited companies (SQ) must be registered with the commercial registry.

Pledges over bank accounts must be registered with the bank that holds the account.

Irrevocable powers of attorney

When creating the security, it is common for the security provider to grant an irrevocable power of attorney to its beneficiary, under which the security provider grants certain powers to the beneficiary related to the creation and enforcement of the security. This irrevocable power of attorney must be notarized.

3.3. Special regime for financial guarantees

There is a special regime applicable to financial collateral arrangements in line with Directive 2002/47/EC of the European Parliament and of the Council of June 2002 on financial collateral arrangements (as amended). This regime includes the following features:

- Security may be granted by transferring title to the asset or right at stake (alienação fiduciária em garantia) or through a financial pledge (penhor financeiro).

- If agreed by the parties, the beneficiary of a financial pledge may have a right of disposal, under which it may transfer or encumber the pledged asset as if it were the owner.

- When expressly agreed, and provided certain requirements are met, the financial pledge may be enforced through appropriation[1].

- The parties may provide for a close-out netting arrangement.

- Automatic clawback actions under the Insolvency Code regarding the granting of security within certain periods before the insolvency procedure do not apply to financial collateral arrangement.

- Financial collateral arrangements are enforceable in accordance with their terms ad conditions notwithstanding the starting of an insolvency procedure.

Portuguese law provides for a special regime applicable to financial collateral arrangements

To grant a financial guarantee, the parties, the collateral and the secured obligations must meet specific requirements.

[1] Appropriation is also possible for commercial pledges (that do not qualify as financial pledges) provided certain requirements are met.

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 conduct that may affect trade between Member States.

The relevant Portuguese statute is the Competition Act ("CA"), provided under Law 19/2012 of May 8. The CA's provisions are enforced by the Portuguese Competition Authority (*Autoridade da Concorrência* or "AdC").

In 2019, AdC issued eight sanctioning decisions with fines totaling over €340,000,000

In 2019, the AdC issued eight sanctioning decisions with fines totaling over €340,000,000, affecting companies from the food retail distribution, banking, insurance, energy and railway sectors. The AdC also issued eight new statement of objection ("SO") on ongoing cases.

The AdC carried out dawn raids in 19 companies and seized over 13,000 files and documents.

AdC carried out dawn raids in 19 companies and seized over 13,000 files and documents

In 2019, the AdC tested a new infringement structure, accusing several international companies of a hub and spoke conspiracy, as a result of the dawn raids carried out in 2017 in the facilities of 44 entities active in the large food retail sector.

The AdC also accused several companies of a bid-rigging cartel infringement in the railway maintenance sector, which led to fines of €3,400,000 being imposed on 5 companies and 5 board members or directors, as well as a two-year' ban on two of those companies on the right to take part in procedures for public works contracts.

The AdC also accused the Portuguese incumbent company in the energy sector of an abuse of dominant position regarding the payment of a compensation relating to stranded costs (CMEC mechanism).

The AdC has also issued SOs in two ongoing cartel investigations in the telecommunications sector. In the first SO, the AdC accused two companies of participating in a cartel for market partitioning and price fixing of mobile services; in the second SO, the AdC accused several telecommunication companies of entering a cartel agreement to limit competition in advertising on Google.

Also, EU and Portuguese antitrust law can be applied to private litigation in Portuguese courts.

4.1. Restrictive practices

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

Collusive practices

In Portugal, all agreements, collective decisions and recommendations, concerted practices or decisions by associations of undertakings that aim to prevent, restrict or distort competition, are prohibited.

These practices include price fixing; limiting or controlling production, distribution, technical development or investment; sharing markets or sources of supply; applying dissimilar conditions to equivalent transactions; and entering into 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 void and may be punishable, depending on the severity of the restriction on competition, with fines of up to 10% of the infringer's total annual turnover in the year before the fining decision or, in the case of associations of undertakings, up to 10% of the aggregate turnover of the associated undertakings in the year before the fining decision.

Other ancillary sanctions the AdC may apply include publishing the decision in the Official Gazette (at the infringing company's expense) and, in the case of bid rigging, a ban of up to 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 exempt if they contribute to improving the production or distribution of goods and services or to promoting technical or economic progress, provided the restrictive practices (i) offer the users of goods or services a fair part of the benefit of these practices; (ii) do not impose unnecessary restrictions on achieving the objectives; and (iii) do not give the undertakings the possibility of eliminating competition relating to a substantial part of the products in question. Also, the AdC may impose on the undertaking(s) concerned behavioral or structural measures considered indispensable for ending the sanctioned practice and its effects.

Abuse of dominant position

The CA prohibits abusive exploitation of dominance, whether by one or more undertakings. This abuse may include applying unfair trading conditions, limiting production to the prejudice of consumers, refusing to deal, predatory pricing or discrimination, putting one or more parties at a competitive disadvantage.

Abuse of dominance is punishable with fines of up to 10% of the infringing company's total annual turnover for the year before the fining decision. Other ancillary sanctions the AdC may apply include publishing the decision in the Official Gazette (at the expense of the infringing company).

In addition, the AdC may impose on the undertaking(s) concerned behavioral or structural measures that are considered indispensable to ending the sanctioned practice and its effects.

Abuse of economic dependence

The CA also prohibits the abuse of economic dependence by one or more undertakings, under which any of its suppliers or customers may find that, as a result, no equivalent alternative is available. Such abuses comprise, e.g., the refusal to deal with or the unjustified termination of a commercial relationship between the undertakings involved, considering their previous commercial relationship, recognized practices in a specific 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 company's total annual turnover in the year before the fining decision. Other ancillary sanctions that the AdC may apply include publishing the decision (at the infringing company's expense) in the Official Gazette.

The AdC may also impose on the undertaking(s) concerned behavioral or structural measures considered indispensable for ending the sanctioned practice and its effects.

Leniency regime

Under the Portuguese leniency regime, companies and individuals subject to liability for restrictive agreements and concerted practices prohibited by the CA may benefit from immunity or up to a 50% reduction of the fine, when they:

- cooperate fully and continuously with the CA, providing all the information and evidence they have;
- stop participating in the infringement; and
- did not coerce any of the other companies to participate in the infringement.

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

Penalties

In judgment 776/2019 of December 17, 2019, the Portuguese Constitutional Court declared the constitutionality of the non-suspensive effects of appeals filed against AdC decisions imposing fines.

When the AdC imposes a fine, payment is due immediately, regardless of whether the company has filed an appeal against the decision in court

(companies may only suspend immediate payment of the fine if they prove that enforcing the decision causes them considerable harm or they provide a guarantee in lieu of the fine). It remains to be seen how the AdC and the courts will apply this rule, particularly regarding what should be considered "considerable harm" for a certain company, as well as the specific determination of the guarantee as the only way to obtain the suspensive effect while the matter is decided in court.

4.2. Merger control

The CA requires prior notification and authorization for mergers and other concentrations, including acquisitions and creation of 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 must be notified to the AdC when:

- a market share of at least 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
- a market share of at least 30% but lower 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 in Portugal in the previous financial year of at least two undertakings involved in the transaction exceeds €5,000,000 net of taxes directly related to that turnover; or
- the aggregate turnover in Portugal of all the undertakings involved in the transaction in the previous financial year exceeds €100,000,000 net of taxes directly related to that turnover, and the turnover in Portugal of at least two undertakings involved in the transaction exceeds €5,000,000.

The CA provides for fines of up to 10% of the parties' turnover implemented before the authorization of the AdC (or the European Commission) if a transaction is not notified or if a transaction is in 2019, the AdC adopted one gun-jumping decision, which led to a fine of €155,000 and adopted one SO. However, the AdC currently has 10 ongoing investigations for gun-jumping infringements.

4.3. Unfair competition

Portuguese unfair competition rules are based on the principle that commercial conduct contrary to good faith is unfair. The Portuguese statute is the Portuguese Industrial Property Code (Decree-Law 36/2003, of March 5, as amended),particularly article 311.

The Portuguese Unfair Competition rules specifically address unfair commercial conduct, including acts of confusion, misleading advertising, certain kinds of gifts and discounts, acts of denigration, acts of comparison and acts of imitation.

4.4. Individual trade practices

Companies producing and distributing goods in Portugal should also consider the legal regime on individual restrictive trade practices, set out in Decree-Law 166/2013, of December 27 (as amended).

The legal regime on individual restrictive trade practices considers 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 or restrictive trade practices. For large undertakings, the fines for restrictive trade practices can be up to €2,500,000.

5 State aid and foreign direct investments

5.1 State aid

State aid is subject to control by the European Commission to ensure that government involvement does not distort competition and trade in the EU

Under EU law, state aid is subject to control by the European Commission to ensure that government involvement at any level (national, regional or local) does not distort competition and trade in the EU. State aid is defined as an advantage in any form (e.g., loans and guarantees) that public authorities grant to entities on a selective basis. Article 107 of the Treaty on the Functioning of the EU does not cover subsidies granted to individuals or general measures open to all enterprises, so they do not constitute state aid.

EU law establishes a general prohibition on state aid measures (which must be notified to and are only implemented after approval by the European Commission), while making allowances for several areas in which state aid can be considered compatible under certain conditions.

5.2 Foreign direct investment

The "FDI Regulation" establishes a framework for the screening of foreign direct investments into the EU by Member States

The FDI Regulation establishes a framework for the screening by Member States of foreign direct investments into the EU on the grounds of security or public order.

The FDI Regulation applies to all sectors, regardless of the economic value of the transaction, and covers the screening of all foreign direct investments in strategic EU infrastructures (e.g. energy, transport, defense, electoral, and financial).

Although the FDI Regulation is due to apply from October 11, 2020, the communication adopted by the European Commission on March 13, 2020, states that the regime provided by the FDI Regulation could also apply to foreign investments taking place before that date.

However, in Portugal, Decree-Law 138/2014 also purports to screen foreign investments relating to strategic assets, particularly sensitive industry sectors, based on reasons of national defense and security or security of supply of services fundamental to the national interest.

Under this framework, the Portuguese Government may initiate an investigation and, ultimately, oppose a transaction (ex post) regarding strategic assets.

If an opposition decision is taken, all contracts and legal acts relating to the transaction at stake (including acts regarding the economic exploitation and the exercise of rights over the assets) would become null. To our knowledge, this procedure has not been enforced yet.

6 Intellectual property rights and personal data protection

Under Portuguese law, 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 copyright legal protection.

The English term "intellectual property rights" includes two different concepts:

- Copyright.
- Industrial property rights (including trademarks, designs, logos, patents and utility models).

6.1. Copyrights

To avoid detrimental copyright transfer agreements, companies may agree to work-for-hire contractual clauses that stipulate the original ownership of the copyrightable content (including moral rights)

The original intellectual, artistic and scientific creation is the object of copyright legal protection, and right holders can exercise their rights, under national regulations, in countries where they request protection. Unlike industrial property rights, copyright legal protection is acquired by creating a literary, artistic or scientific work. No registration or deposit is legally required: making the work apprehensible by our senses in any way is enough. Protection is automatic and exists from when the work is created. However, it is advisable to register the work with the competent authorities, since this proves its existence and ownership and makes it possible to enforce these rights, namely regarding priority issues.

In Portugal, copyright and relating rights are regulated under the Copyright and Related Rights Act, enacted in compliance with several international treaties and EU directives regulating the rights of authors and other "related 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 they 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 works, television and radio works, sculptures and paintings, architectural works and works of engineering, and photographic works.

Copyright includes (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 on its integrity and authenticity), and (ii) rights of an economic nature, based on the exclusive right that is recognized to the author to use and benefit from the work, to authorize its exploitation and which may be assigned to third parties.

To avoid detrimental copyright transfer agreements (limited to economic rights), which under the Copyright and Related Rights Act require a public deed, companies may agree to work-for-hire contractual clauses that stipulate the original ownership of the copyrightable content (including moral rights).

Exploitation rights last for the author's lifetime and 70 years after the author's actual or declared death. Related or sui generis rights have different durations. When the term expires, the works enter the public domain, and the public may use them if they respect the moral rights, which, as stated, have no term of duration.

If these rights are infringed (depending on the type of infringement, but copyright breaches are generally considered a crime or an administrative offense), the holder can apply for cessation of the unlawful activity against the infringer and claim compensation 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 can be applied regarding maintenance and obtaining evidence.

A number of EU directives and international treaties aim to harmonize some features of IP rights.

6.2. Industrial property rights

Rights over intangibles are subject to previous registration with the competent authorities

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

Several intellectual property rights can exist over the same object, i.e., a logo can be protected by copyright, design rights and trademark rights, if the requirements are met.

Trademarks

A trademark is a sign or set of signs capable of being represented graphically, mainly by words, including names, designs, letters, numbers, sounds, colors, the shape of a product or its packaging, or of being represented in a way that shows clearly and precisely the object of the legal protection, provided the sign is appropriate to distinguish the goods or services of one entity from others in the course of trading.

National trademarks

In Portugal, trademark rights are regulated by the Portuguese Industrial Property Code. A national (Portuguese) trademark application must be filed with the Portuguese Industrial Property National Office (Instituto Nacional da Propriedade Industrial or "INPI"), specifying the classes of products and services for which protection is sought, under the Nice classification. Trademark legislation forbids registration of some signs if, for example, they 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.

Trademark registration is granted for 10 years starting on the application date and can be renewed indefinitely for subsequent 10-year periods. A trademark may lapse if its holder has not used it, without having a proper reason for not using it, for five consecutive years for the products for which it was registered.

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 authorization, holders can request the cessation of the unlawful activity against the infringer and claim compensation for any material and moral damages caused. They can also request a preliminary injunction to obtain immediate protection, provided legal requirements are met.

European Union trademark

The European Union Trademark Regulation applies within the EU. The European Union trademark application must be filed with the European

Union Intellectual Property Office ("EUIPO"). Like national registration, EU registration is effective in all Member States for 10 years and can be renewed indefinitely for 10 year periods. A European Union trademark may also lapse if it has not been used for an uninterrupted period of five years.

International protection

The Madrid Arrangement and the Madrid Protocol (together 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 Organization ("WIPO"), allows an international trademark application to be filed directly with the WIPO, which will 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, colors, 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 the overall impression it makes on informed users differs from these users' overall impression of any previous design produced.

In Portugal, design rights are also regulated by the Portuguese Industrial Property Code, and the INPI is responsible for the design's registration. The protection period is five years from the date the application is filed. The rightsholder may renew protection 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. Internationally, many conventions provide design protection, including the Berne Convention, the Paris Convention, the Hague Agreement and the TRIPS Agreement.

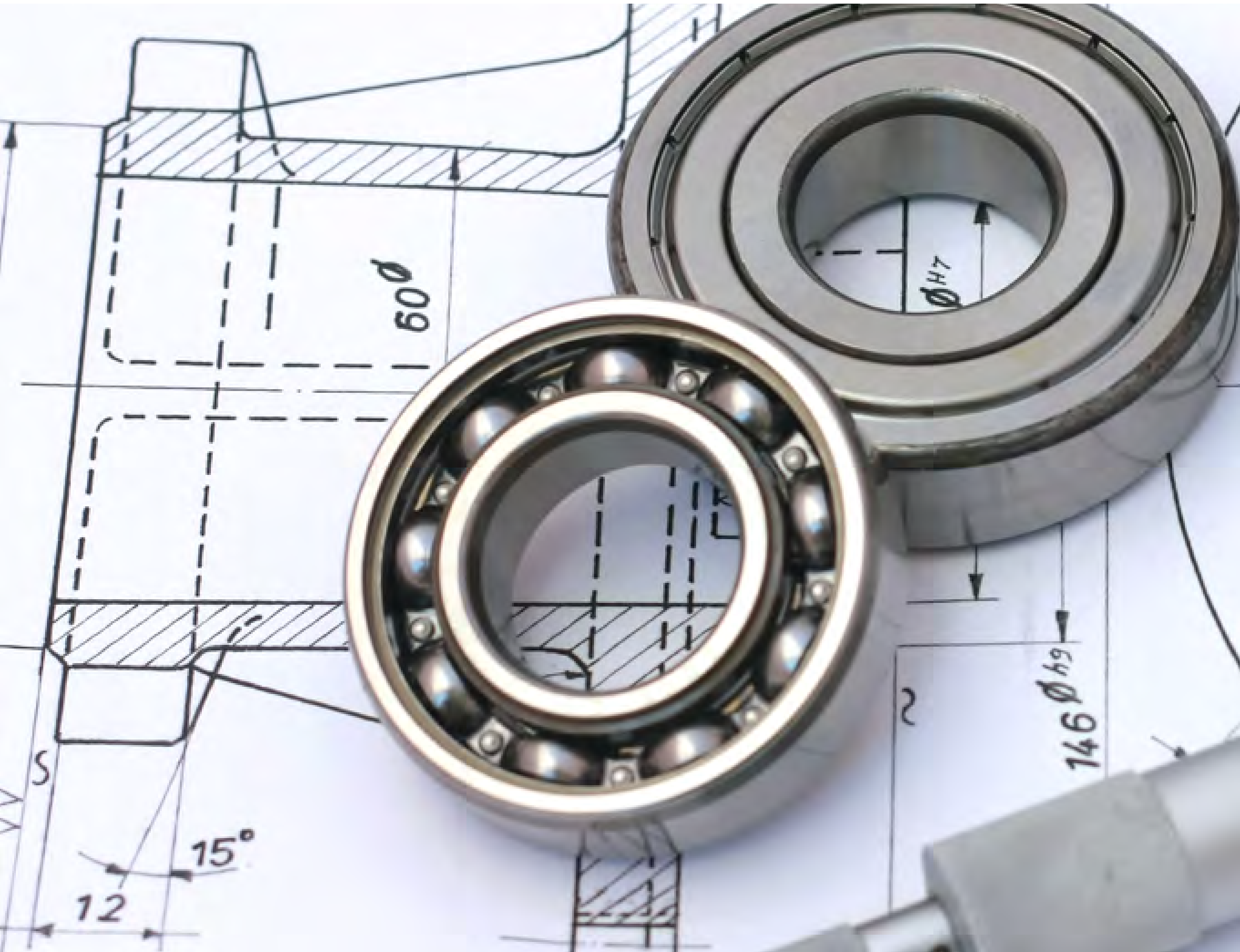
Patents

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 protection rights against third parties.

- It is also possible to request a supplementary protection certificate, which is an industrial



property right that extends the protection granted by a patent for a maximum of five 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 protection granted by a patent. The rightsholder must exploit the invention or license an authorized third party to exploit it. The Portuguese Industrial Property Rights Code provides the 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

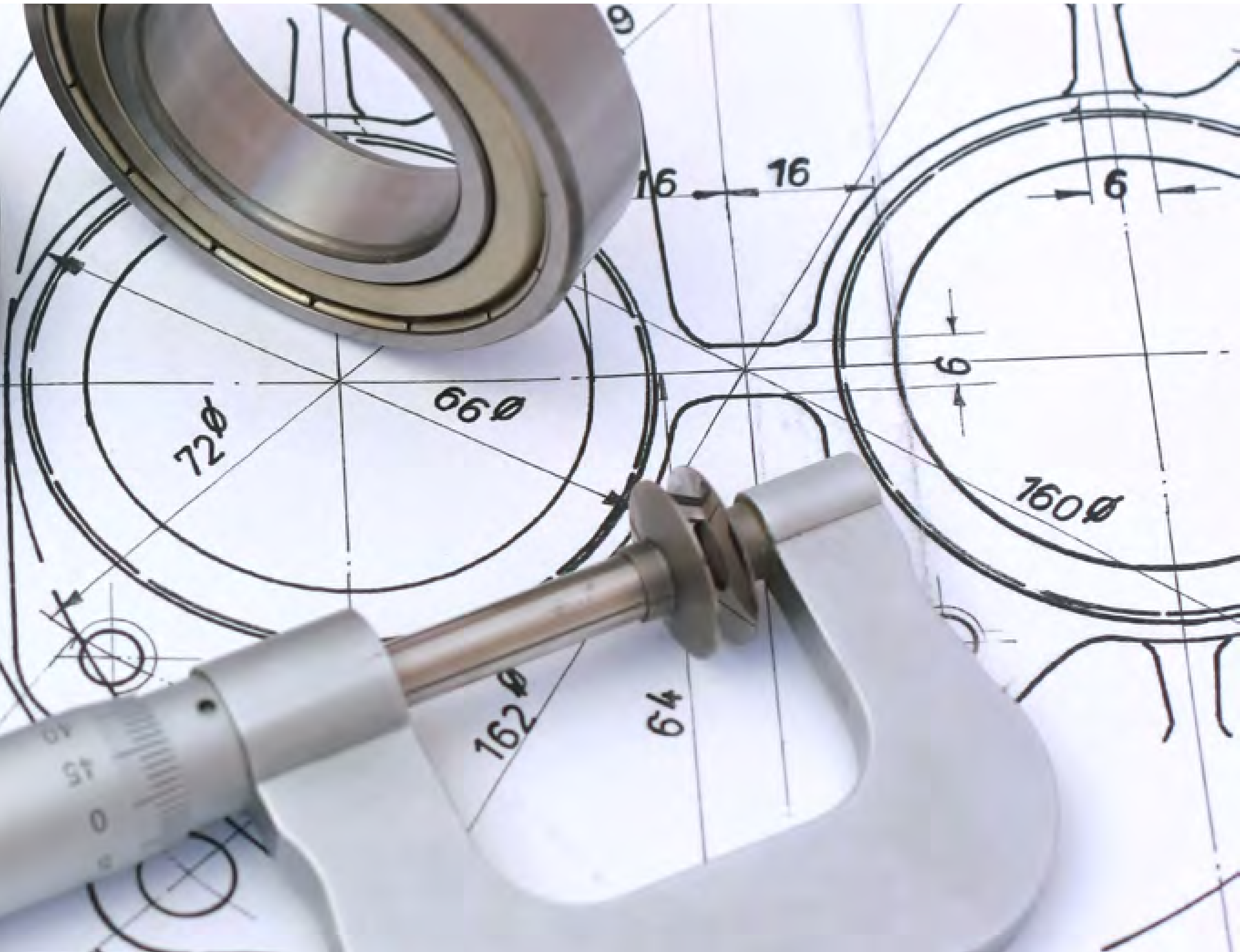
The Munich Convention, of October 5, 1973, created a European patent issuance system under which a single application is filed with the European Patent Office. After registration, the European patent is converted into several national patents enforceable in each of the designated countries. Like the Portuguese 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

In 2012, EU countries and the European Parliament agreed on the "patent package", a legislative initiative consisting of two regulations and an international agreement that lay the ground for unitary patent protection in the EU.

The package consists of:

- A regulation creating a European patent with unitary effect ("unitary patent");



- A regulation establishing a language regime applicable to the unitary patent; and
- An agreement between EU countries to set up a single and specialized patent jurisdiction (the "Unified Patent Court").

The regulations implement enhanced cooperation to create unitary patent protection. All EU countries will participate in this enhanced cooperation, except for Croatia, Norway, Spain, Switzerland and Turkey.

In September 2015, Italy joined the unitary patent and became the 26th member of the enhanced cooperation on unitary patent protection.

Following the adoption of the two regulations in December 2012, the contracting countries, except for Poland but with the addition of Italy, signed the Agreement on a Unified Patent Court.

The process for ratifying the agreement is ongoing.

International patent issuance system

The Patent Cooperation Treaty, signed on June 19, 1970, provides a unified procedure to protect inventions by filing patent applications with the 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" novel inventions with 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 protection period 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. Data protection

Portuguese Data Protection Act

Privacy regarding personal data files is protected under Act 58/2019, of August 8, the Portuguese Data Protection Act (the "Act"), which ensures the execution in the Portuguese legal system of Regulation (EU) 2016/679 of the Parliament and of the Council, of April 27, 2016, the General Data Protection Regulation ("GDPR"). The Act governs all processing of personal data carried out in Portugal, regardless of the public or private nature of the controller or processor, even if the processing is carried out in compliance with legal obligations or within the scope of the pursuit of public interest missions.

Administrative fines for not complying with the regulation may be as high as 4% of the previous year's total worldwide turnover (or €20,000,000, whichever is higher)

The Act also applies to the processing of personal data carried out outside Portugal when (i) the processing is carried out within the scope of the activity of a business placed in Portugal; ii) the processing affects data subjects in Portugal, when the processing activities take place under article 3(2) of the GDPR; or iii) the processing affects data that is registered in consular posts, whose data subjects are Portuguese persons residing abroad.

EU legislation on data protection

Besides the national legislation on data protection, it is crucial to consider the reform of the EU legislation concerning personal data protection, which includes:

- Regulation (EU) 2016/679 of the Parliament and of the Council, of April 27, 2016, on the protection of natural persons with regard to the processing of personal data and on the free movement of this data (General Data Protection Regulation), which came into force on May 24, 2016, and has applied directly in all EU Member States, including Portugal, since May 25, 2018; and
- Directive (EU) 2016/680 of the Parliament and of the Council, of April 27, 2016, on the protection of natural persons with regard to the processing of personal data by competent authorities to prevent, investigate, detect and prosecute criminal offenses or execute

criminal penalties, and on the free movement of this data, which came into force on May 5, 2016, and was transposed in Portugal by Act 59/2018, of August 8.

The GDPR establishes several obligations for controllers and for processors, such as (i) keeping records of all processing activities under its responsibility; (ii) showing compliance with the regulations on personal data processing and privacy; e.g., by adopting codes of conduct or certification systems; (iii) appointing a data protection officer when its core activities consist of processing operations which, by their nature, scope and purposes, require regular and systematic monitoring of data subjects on a large scale; (iv) notifying the supervisory authority and the data subjects if a data breach occurs; (v) performing a privacy impact assessment ("PIA") of the personal data processing operations using new technologies that are likely to have an impact on the rights of the data subjects; (vi) implementing the appropriate technical and organizational measures necessary to ensure that the processing of personal data, both when determining the means for processing and at the time of the processing itself, meets the requirements of the Regulation and protects the rights of the data subjects.

Administrative fines for not complying with the Regulation

Administrative fines for not complying with the Regulation may be as high as 4% of the previous year's total worldwide annual turnover (or €20,000,000, whichever is higher).

Contrary to the GDPR, the Portuguese Data Protection Act establishes the minimum fine values applicable. Breach of the data protection obligations may be fined with:

- penalties of €2,500 to €10,000,000 or €5,000 to €20,000,000

- penalties of €1,000 to €1,000,000 or €2,000 to €2,000,000, or 2% or 4% of the previous financial year's total worldwide annual turnover, whichever is higher, in the case of small to medium-sized companies.

However, on September 3, 2019, the Portuguese Supervisory Authority decided not to apply some of the articles of the Portuguese Data Protection Act (including the article establishing the minimum fine values applicable), as they contradict the GDPR, infringing the principle of primacy of EU law.

NODE 04
NODE 05
NODE 02
NODE 06
BLOCK 02
BLOCK 01

7 Tax

7.1. Introduction

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

- Residence and source of income: income taxes (corporate and personal).
- Location of immovable property: real estate transfer tax and municipal property tax.
- Place where acts and contracts are executed: stamp duty.
- Place where the transaction is considered carried out: value added tax.

These connection factors must be considered general principles aimed at giving the Portuguese State the right to tax. They should be analyzed in light of key concepts and definitions of the Portuguese tax system, e.g., residence and source.

The Portuguese tax system also has exceptions to these general principles, to (i) broaden the scope of the taxable facts, acts and contracts (e.g., in real estate transfer tax, municipal property tax and stamp duty), and (ii) consider the specific nature of the transactions (e.g., in the case of value added tax).

7.2. Main taxes

Below is a brief and general overview of the main Portuguese taxes:

- Corporate Income Tax (“CIT”)
- Personal Income Tax (“PIT”)
- Value Added Tax (“VAT”)
- Real Estate Transfer Tax (“IMT”)
- Municipal Property Tax (“IMI”)
- Stamp Duty

7.3. Corporate income tax

7.3.1. Preliminary remarks

Portuguese-resident companies are liable for CIT on their worldwide income, while non-resident entities are liable for CIT on Portuguese-sourced income only; i.e., income obtained through a local permanent establishment ("PE") or any of the income types listed in the law.

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

7.3.2. Resident companies and PE of non-resident companies

Taxable base

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

CIT adjustments to the accounting results include, e.g., depreciation and amortization, inventory adjustments, impairment losses, losses arising from applying the fair market value, expenses for onerous acquisitions since January 1, 2014, of certain intangible assets with no limited useful life period, and with goodwill acquired in a corporate restructuring process (unless it arises from shareholdings).

Adjustments may also result from non-deductible expenses, e.g.: (i) CIT, including autonomous taxation, municipal and state surtaxes, and any taxes or charges that must be passed on to third parties; (ii) undocumented expenses and expenses supported by documents not complying with 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, unless the taxpayer can show that they relate to real transactions, do not have an abnormal nature, and are not excessive.

Net financial expenses are tax deductible only up to the higher of the following limits: (i) €1 million, or (ii) 30% of annual EBITDA (as adjusted for this purpose). Carry-forward of net financial expenses that are not tax deductible due to exceeding the above limits is possible, as well as the carry-forward of the unused EBITDA limit, for the five subsequent tax periods. This regime provides specific rules for companies taxed under the tax group regime. It excludes entities subject to the supervision of the Portuguese Central Bank and of the Portuguese Insurance and Pension Fund Supervisory Authority, and Portuguese branches of credit institutions, other financial entities, and insurance companies and credit securitization companies incorporated under Decree-Law 453/99 of November 5.

A local PE of a non-resident company is liable for CIT on the income attributable to it, defined under domestic law as the income obtained through the PE and other income obtained in Portugal from activities identical or similar to those carried out through the PE. Under treaties to avoid double taxation ("DTT") entered into by Portugal, this domestic regulation is overridden, and the PE's taxable income corresponds exclusively to that obtained through the PE itself.

A PE's CIT taxable profit is calculated under rules similar to those applicable to resident companies. There is no branch tax on income a branch remits to the foreign head office.

Tax losses

The carry-forward period for tax losses is five years (twelve years for micro, small and medium companies[1] engaged in agricultural, commercial or industrial activities) regarding tax losses incurred in tax periods starting from January 1, 2017. The carry-forward period for tax losses incurred in 2014, 2015 and 2016 is 12 years. Tax losses incurred in tax periods prior to 2014 may no longer be used. The requirement to use the oldest tax losses from previous years first ("FIFO") has been revoked since January 1, 2017.

The carry-forward period for tax losses is five years (twelve years for micro, small and medium companies)

However, offset of tax losses from previous years is limited to 70% of the tax period's taxable profit.

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

Tax rates

The standard CIT rate for resident companies and PEs of non-resident companies is 21%.

Micro, small and medium companies[1] (and PEs of non-resident micro, small and medium companies) benefit from a reduced CIT rate of 17% on taxable income up to €25,000, with the standard 21% rate referred to above applying to the remaining taxable income.

Micro, small and medium companies (and permanent establishments of non-resident micro, small and medium companies) benefit from a reduced CIT rate of 17% on taxable income up to €25,000

The standard CIT rate may be further increased by a municipal surcharge (Derrama Municipal) levied over the year's taxable profit at a rate of up to 1.5%, defined yearly by each municipality.

A state surcharge (Derrama Estadual) is also levied on the year's taxable profit exceeding €1,500,000.00 at the following progressive rates:

Year's taxable profit	Tax rate
Up to €1.5 million	Not applicable
Over €1.5 million and up to €7.5 million	3%
Over €7.5 million and up to €35 million	5%
Over €35 million	9%

(1) As defined under the provisions of Decree-Law No. 372/2007, of November 6.

Autonomous taxation

CIT is also levied over certain expenses incurred by the company:[1]

Expenses	Rates (%) [2]
Undocumented expenses	50/70
Expenses relating to light passenger vehicles, light commercial vehicles and motorcycles[3]	10/27.5/35
Representation expenses	10
Payments made to residents in a territory with a clearly more favorable tax regime or to accounts open in financial institutions resident or domiciled there	35/55
Daily allowances and car mileage paid to employees, for using their own vehicle, not charged to clients	5
Profits distributed to entities wholly or partially exempt from Corporate Income Tax, arising from shares held for less than one year	23
Costs or expenses for compensation on the termination of managers' and board members' functions	35
Costs or expenses for bonuses and other variable remuneration paid to managers and board members	35

[1] Autonomous taxation relief is available in certain situations, provided that certain requirements are met.
[2] Autonomous taxation rates are increased by ten percentage points when taxpayers compute tax losses in the relevant tax period, except for the first two years of activity.
[3] Exemption or reduced rates may apply to "environmentally friendly vehicles".

Transfer pricing

Under the domestic transfer pricing rules, which follow the OECD guidelines, terms and conditions of transactions between related parties should follow those that independent entities in a comparable transaction would establish (arm's length). Otherwise, the tax authorities may adjust the terms and conditions.

Regarding the personal scope, the regulations determine broadly that two entities are considered related when one can exercise directly or indirectly a significant influence over the management of the other. They provide an extensive list of situations under which the "related party test" is considered met.

The regulations further establish specific, yet extensive, documentation compliance requirements, which in certain cases require that a transfer pricing file be prepared and maintained. Taxpayers are also required to disclose in their annual tax and accounting return information on any transactions with related parties, their identity, amount and whether contemporaneous documentation was prepared.

These regulations include the possibility of taxpayers entering into advanced pricing agreements (APAs) with the tax authorities, which may apply for up to four years.

Special regimes

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

For the participation exemption regime to apply, a minimum direct or indirect shareholding of 10% of the subsidiary's share capital or voting rights must have been held uninterruptedly for 12 months.

- **Tax group regime:** The group's taxable income, determined by the controlling company, corresponds to the algebraic sum of taxable profits and losses as assessed individually in the tax return of each company belonging to the group. Timing requirements must be considered when acquiring a company, since applicable rules normally imply a waiting period of more than one year before the regime can begin applying.

  This regime includes specific rules on deduction of tax losses, which, e.g., may restrict the deductible amount in each year that the regime applies regarding tax losses assessed before the regime started applying.

- **Business reorganization:** The CIT law provides for a tax-neutrality regime applicable to restructuring operations, which is generally in line with the Merger Directive.[1]

  This regime provides for deferral of the CIT due, both for the companies and their shareholders, on mergers, divisions and partial divisions, transfers of assets and exchanges of shares.

  Domestic tax law also provides exemptions from real estate transfer tax and stamp duty triggered by the transfer of going concerns and real estate within restructuring operations.

- **Patent box regime:** Under certain conditions, income arising from agreements for the transfer or temporary use of patents or industrial designs or models may benefit from a 50% CIT exemption.

7.3.3. Non-residents without a PE

Portugal currently has more than 78 treaties to avoid double taxation in force, which generally follow the OECD model tax convention

Non-resident entities without a PE are liable for Portuguese CIT on the different types of Portuguese-sourced income listed in the CIT law, including income 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 service fees where paid by residents or attributable to a local PE.[2]

Dividends, interest and royalties obtained by non-residents without a

[1] 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

[2] As a rule, taxation is levied through final withholding taxation, although there are some exceptions; e.g., regarding real estate-related rental income or capital gains, which require non-residents to file a tax return whose periodicity and deadlines depend on the type of income.

PE are generally liable for a 25% withholding tax.

If the requirements are met, the participation exemption regime may 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 double tax treaty.

EU corporate investors may also benefit from withholding tax relief on interest and royalties by applying the regime under the Interest & Royalties Directive.[1]

Portugal currently has more than 78 DTTs in force, which generally follow the OECD model tax convention, despite a few reservations it has made on some of its articles, which are included in several DTTs. Regarding outward-bound payments, Portuguese DTTs normally provide for reduced withholding tax rates, as follows:

- For dividends, the domestic rate is usually reduced to 5%, 10% or 15%
- For interest, the domestic rate is usually reduced to 10%, 12% or 15%
- For royalties, the domestic rate is usually reduced to 5%, 10% or 12%

7.4. Personal income tax

General rules applicable to resident individuals

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

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

- The individual stays in Portugal for more than 183 days (whether consecutive or not) in any 12-month period starting or ending that year.
- Although staying fewer than 183 days in Portugal, the individual has, on any day in the period referred to above, a house or home under conditions that make evident his or her intention to use it as a main residence.
- An individual may also be considered to have tax residence in Portugal in the following 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.

[1] Council Directive 2003/49/EC, of June 3, 2003, on a common system of taxation applicable to interest and royalty payments between associated companies of different Member States.

Since 2014, domestic PIT law has adopted a partial residence concept, so that there is a direct connection between the period of physical presence in Portuguese territory and the status of tax resident. As a rule, the taxpayer will become resident in Portugal from the first day of his or her stay in the Portuguese territory and a non-tax resident from the last day of his or stay in Portugal, with a few exceptions.

The tax period is the calendar year and PIT due for resident individuals is levied, on an annual basis, at general/progressive rates on the total income of the different categories subject to taxation, net the corresponding deductions.

PIT is individually assessed for each taxpayer. The heads of a household (e.g., each member of a married couple or of a couple living under a civil union) may opt to be jointly taxed as a family unit, in which case an income-splitting mechanism applies.

There are six income categories, as follows:

Category A	Employment income, including fringe benefits and fees of members of corporate bodies (other than statutory auditors)
Category B	Business income, including income from a business or independent profession
Category E	Investment income
Category F	Rental income from immovable property
Category G	Net worth increases, including capital gains
Category H	Pensions, including annuities and alimony payments

Currently, the progressive tax scale's highest rate is 48%, applied to annual taxable income exceeding €80,882, which is further liable for an additional solidarity tax at a maximum 5% rate, for taxable income exceeding €250,000 (a 2.5% rate applies to taxable income between €80,000 and €250,000).

There are exceptions to the progressive tax rates scale, e.g., relating to capital gains on the transfer of shares or to real estate rental income, to which a flat 28% rate applies. Investment income is usually liable for final withholding tax at 28%. Taxpayers may opt to have these types of income included in their taxable base together with other income, and taxation is then levied under the progressive tax rate scale.

A favorable PTI regime applicable to non-habitual residents aims to attract skilled professionals for high value-added activities, as well as high-net-worth individuals

Non-habitual resident's PIT regime

A favorable PIT regime applicable to non-habitual residents ("NHTRR") aims to attract skilled professionals for high value-added activities, as well as high-net-worth individuals wanting to move their tax residence to Portugal for retirement or long-term leisure purposes.

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

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

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 tax rate scale.

Former residents' PIT regime

Individuals who become resident for tax purposes in Portugal in 2019 or 2020 may benefit from a 50% PIT exemption on employment and business income (income from Category A and B) provided these individuals (i) were not tax resident in the Portuguese territory in any of the previous three years; (ii) were tax resident in the Portuguese territory before December 31, 2015; and (iii) have their tax situation regularized. This regime is applied for a five-year period.

7.5. Value added tax

There are three different VAT rates: 6% (reduced), 13% (intermediate) and 23% (standard)

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

There are three different VAT rates: 6% (reduced), 13% (intermediate) and 23% (standard).

In the Autonomous Region of Azores, VAT rates are currently reduced to 4%, 9% and 18%, respectively; whereas in the Autonomous Region of Madeira (which used to have rates identical to those applicable in Azores), VAT rates are currently 5%, 12% and 22%, respectively.

7.6. Real estate transfer tax

IMT is a municipal tax levied on the acquisition of real estate in Portugal 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 an LDA owning real estate is also liable for taxation (on the higher of the property's accounting value and its fiscal value).

The acquirer pays the IMT, and the applicable rates are as follows:

- Rural property: 5%
- Urban property for residential purposes: progressive rates up to 7.5%
- Other urban property and other acquisitions: 6.5%
- Rural or urban property when the acquirer is domiciled in a blacklisted jurisdiction: 10%[1]

7.7. Municipal property tax

IMI is a municipal tax levied annually based on ownership of real estate located in Portugal, over the fiscal value of the property, at the following rates:[2]

- Rural property: 0.8%
- Urban property: between 0.3% and 0.45%
- Rural or urban property when the taxpayer is domiciled in a blacklisted jurisdiction: 7.5%[3]

Rates applicable to urban properties are determined annually by the municipalities within the bracket provided by the IMI Code.

[1] This rate does not, however, apply to individuals.

[2] If the property is held in usufruct, pursuant to a surface right or to a lifetime housing right, IMI is due by the owner of these minor rights in rem.

[3] This rate does not apply to individuals.

An IMI surtax (Adicional ao IMI, "AIMI") was introduced starting January 1, 2017, and it is levied on urban property, excluding urban property classified for "commerce, industry or services" or "other" uses.

AIMI is paid by individuals, corporate entities, structures and collective bodies without legal personality and undivided inheritances, and it is levied on the sum of the fiscal value of all the urban properties owned by a taxpayer as determined on January 1 each year.[1,2]

For individuals and undivided inheritance, the taxable base is reduced by €600,000.

Married couples or couples living under a civil union may opt for joint taxation, in which case the deduction amounts to €1,200,000.

Applicable rates are as follows:

Taxpayer	Rate (%)
Individuals	0.7[3]/1[4] /1.5[5]
Undivided inheritances	0.7
Corporations	0.4/0.7[6]/1[7] /1.5[8]
Entities in blacklisted jurisdictions	7.5

7.8. Stamp duty

Stamp duty is due on a list of specified taxable events, when they are considered to take place in Portugal, including a number of operations, contracts, acts and documents, as outlined in the stamp duty table. The main taxable events for foreign investors to consider are as follows:

- Acquisition of real estate: 0.8%

- Acquisition of a going concern: 5%

- Granting of credit: over principal amount at rates varying with the term which funds are used, as follows:

[1] If the property is held in usufruct or pursuant to a surface right, AIMI is due by the owner of these minor rights in rem.

[2] Properties that benefited from IMI exemption in the previous year are excluded from the AIMI taxable base.

[3] To the taxable amount exceeding €600,000, up to €1,000,000 (€1,200,000 up to €2,000,000 for married couples or couples living under a civil union opting for joint taxation).

[4] To the taxable amount exceeding €1,000,000.00 up to €2,000,000.00 (€2,000,000.00 up to €4,000,000.00 for married couples or couples living under a civil union opting for joint taxation) before the €600,000.00 or €1,200,000.00 deduction.

[5] To the taxable amount exceeding €2,000,000.00 (€4,000,000.00 for married couples or couples living under a civil union opting for joint taxation), before the €600,000.00 or €1,200,000.00 deduction.

[6] To the taxable amount up to €1,000,000.00, in the case of properties owned by companies for the personal use of shareholders, members of the board or of any management or supervision bodies.

[7] To the taxable amount exceeding €1,000,000.00 up to €2,000,000.00, in the case of properties owned by companies for the personal use of shareholders, members of the board or of any management or supervision bodies.

[8] To the taxable amount exceeding €2,000,000.00, in the case of properties owned by companies for the personal use of shareholders, members of the board or of any management or supervision bodies.

- Credit for less than one year: 0.04% per month or fraction of month
- Credit for between one and five years: 0.5%
- Credit for five or more years: 0.6%

In the case of credit granted by banks or other financial institutions, taxation is also levied on interest (4%) and commissions (3% or 4%). Under certain conditions, exemptions apply to intra-group funding operations, including cash pooling arrangements.

Guarantees considered granted in Portugal are liable for taxation on the amounts guaranteed at rates that vary, depending on the term, similar to that regarding credit taxation. Guarantees are not taxed if they are materially ancillary to contracts already taxed, to the extent that they are granted simultaneously to the guaranteed obligation.

7.9. Tax benefits

Briefly, the main Portuguese tax benefits generally applicable to businesses include the following:

- Contractual benefits for productive investment projects: CIT deduction varying between 10% and 25% of the investments. Reductions or exemptions from IMT, IMI and stamp duty are also available under this regime.

- Incentive regime for research and development (SIFIDE II): CIT deduction of 32% eligible R&D expenses incurred in the tax year (increased by 15% in the case of micro, small and medium companies) and of 50% of the surplus of expenses incurred in the tax year over the average of the two previous tax years, capped at € 1,500,000.

- Special tax regime to support investments (RFAI): CIT deduction for investments made in the North, Centre and Alentejo regions and in the Autonomous Regions of the Azores and Madeira: (i) for investments up to €15,000,000, a deduction of 25% of the applications is granted; (ii) for investments exceeding €15,000,000, (on the excess part of that amount) a 10% deduction is granted for relevant applications. In the case of investments in the eligible regions of Algarve, Lisbon and Setubal, a deduction of 10% of the applications is granted. In addition, IMT, stamp duty and IMI exemptions may be granted on the acquisition and ownership of eligible real estate.

- Deduction for reinvestment of retained earnings (DLRR): CIT deduction of 10% of the retained and reinvested earnings used to

Important tax benefits are the CIT deduction for investments made in specific regions and the IMI exemption for a three-year period and the IMT exemption on the acquisition of urban properties intended for urban rehabilitation

acquire applications by micro, small and medium-sized enterprises within a four-year period, limited in each year at 25% of the CIT due, with a maximum annual deductible amount of €12,000,000.

- Conventional remuneration of share capital (RCCS): CIT deduction of 7% of the contributions, capped at €2,000,000, on the incorporation of the entity or capital increases, applicable to cash contributions and conversion of credits, or the use of profits from the same taxable period.

- Urban rehabilitation: IMI exemption for a three-year period and IMT exemption on the acquisition of urban properties intended for urban rehabilitation, and on the first sale when the urban rehabilitation is finished, provided the property is located in an urban rehabilitation area, or it was built more than 30 years ago. An autonomous PIT rate of 5% is also available for rental income and certain capital gains obtained from the sale of these properties.

- Acquisition of real estate for resale: IMI exemption for a three-year period and IMT exemption on the acquisition of real estate intended for resale.

7.10. Extraordinary contributions

- Companies operating in certain sectors are subject to special contributions, such as the extraordinary contribution to the energy sector, the bank sector contribution and the pharmaceutical industry extraordinary contribution.

8 Employment

This section is an overview of the main aspects of Portuguese employment law.

8.1. Employment law framework

The main mandatory employment and labor rules are provided in the Labor Code and the applicable collective bargaining agreement for each area of activity. There is also a substantial body of laws on employment, health and safety at work and social security.

8.2. Employment contracts

Types of employment contract

Employment contracts are entered 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, mainly because:

- The company needs to carry out a specific task or service;
- There is an extraordinary increase in the company's activity;
- The company needs to temporarily replace an employee on leave (i.e., 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), employment contracts in general do not have to be in writing.

Apart from specific types of contract, such as term contracts, telework contracts, part-time contracts, service commission contracts (usually for top-management), employment contracts in general do not have to be in writing.

However, employers are obliged to provide employees with basic written information on the key terms, including, e.g. employer identification (if the employer is a company, the information must include the company's group relations) and employee identification, salary, category, working time, workplace, vacation period, accident at work insurance policy, applicable collective bargaining agreement, work compensation fund and work compensation guarantee fund.

Probation period

During the probation period, the parties may terminate the employment contract without notice or severance payment.
The probation period cannot be longer than:

- 240 days for managerial position;

- 180 days for qualified employees, employees with trust functions, employees seeking their first permanent job and long-term unemployed;

- 90 days for all other employees.

For term contracts, the probation period is 15 or 30 days, depending on the length of the contract (less than six months or more, respectively). The legally defined periods may be reduced or eliminated by individual agreement, but they cannot be extended.

Temporary employment agencies

Temporary employment agencies can operate in Portugal, subject to limitations. As well as providing 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 installments: paid every month plus vacation and Christmas allowances.

Salary is subject to general legal provisions on social security and income tax. The employer is responsible for withholdings these taxes and contributions from the employee's salary.
The official minimum wage is established by law and, in 2020, it is set at €635 per month.

8.4. Working hours

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

Employees are entitled to daily breaks of one to two hours and are not allowed to work for longer than five consecutive hours. These limits can be modified with authorization from the Authority for Working Conditions (Autoridade para as Condições do Trabalho).

Time worked (including start and end times and breaks) must be registered daily.

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

Collective bargaining agreements may establish a different payment and compensatory regime.

Under a full-time contract, overtime must not exceed 150 or 175 hours per year, depending on the size of the company. Maximum overtime can be increased to 200 hours per year under the collective bargaining agreement.

The ordinary minimum annual vacation period is 22 working days. Collective bargaining agreements may establish a longer annual vacation period.

The employee is entitled to different types of leaves, paid by the employer or by the social security, including sick and parental leave.

8.5. Changes in employment conditions

The Labor Code establishes several types of employee mobility enabling 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 allowed only for technical or organizational reasons and must end as soon as the circumstances are resolved. If, due to functional mobility, an employee is performing higher functions, he or she will be entitled to the corresponding salary and benefits.

Downgrading is only allowed in case of exceptional needs of the employer or the employee and if agreed by the parties; if downgrading implies a decrease in salary, consent from the Authority for Working Conditions is required.

Geographical mobility

A change in the employee's workplace is allowed when (i) the company changes location, and (ii) it is attributable to economic, technical, organizational or production reasons and does not cause serious damage to the employee.

Employees may be transferred permanently or temporarily. In the first case, and in the situation described in (i) above, the employee may choose between being transferred and being reimbursed for the increased expenses, or terminating the employment contract with the right to the same severance as termination on objective grounds as described below, if the employee can prove that the transfer causes serious damage.

In temporary transfers, the employee's expenses will be reimbursed. However, in normal circumstances, the temporary transfer cannot exceed six months.

Employment contracts may include a transfer of workplace clause waiving the above limitation, but this clause will only be valid for a two-year period.

Other employment conditions modifications:
The employer can determine the employee's working timetable, unless it has been individually agreed with the employee.

Salary is protected under Portuguese law and can only be reduced in exceptional situations. Reducing a salary by simple agreement between the parties is considered void.

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

8.6. Termination of employment

Under the Portuguese Constitution, employees cannot be dismissed without just cause, including subjective (termination for cause) and objective (collective and individual redundancies) causes.

In the case of term contracts and service commission contracts, the employer can unilaterally terminate the contract by giving notice.

Termination for cause

Termination for cause may be triggered when an employee fails to comply with his or her legal and contractual obligations; it is then mandatory for the employer to initiate disciplinary proceedings, applying the most serious disciplinary measure, which is dismissal without compensation.

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

Employees under parental protection cannot be dismissed without consent from 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 procedure applicable will depend on the total number of employees and the number of employees affected by the redundancy.

Collective redundancy

The collective redundancy procedure involves (i) giving written notification and information to the employees or their representatives, (ii) providing information to and negotiating with employees or their representatives, with the participation of the Ministry for Employment, Solidarity and Social Security (Ministério do Trabalho,

Solidariedade e Segurança Social); and (iii) giving the final notification of the decision to the affected employees and the relevant ministry. Objective selection criteria on the grounds of redundancy must be used to select the affected employees.

Notification of termination must be served giving 15 to 75 days' notice, depending on the employee's seniority, and payment in lieu of notice is not permitted. During the advanced notice period, the employee is entitled to two days' paid leave per week to look for a new job, and to terminate the contract giving notice of three business day, without losing the right to full severance.
Employees under parental protection cannot be dismissed without consent from the Commission for Equality in Work and Employment.

On termination of employment under a collective redundancy, employees will be entitled to severance equivalent to 12 days to 1 month's base salary and seniority allowance for every year, and fraction of a year, of seniority. Depending on the starting date of the employment contract, there may be a minimum of three months or a maximum of 12 months' severance.

Individual redundancy

Apart from objective grounds, individual redundancy is subject to additional requirements: (i) impossibility of maintaining the employment relationship (i.e., the company has no other position for the employee or the employee does not accept the new position); (ii) the company cannot have or engage other employees under a term employment contract to perform the extinct functions. When a work position has been eliminated, the selection criterion is determined by law.

As in collective redundancy, all steps in the individual redundancy procedure are legally established. The procedure involves giving written notification and information to the employee and notification to the Authority for Working Conditions. The employee may also request this Authority's opinion on certain aspects of the company's decision.

Advanced notice, severance and parental protection are the same as in a collective redundancy.

In both collective and individual redundancies, the employee's acceptance of severance will be considered acceptance of the termination.

Consequences of unlawful dismissal

A dismissal may be considered unlawful when (i) the grounds for dismissal have been declared unfounded; (ii) the correct procedure has not been followed; (iii) or the procedure is invalid.

In the case of an unlawful dismissal, the employee is entitled to (i) all salaries between the employee was dismissed and the date 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 compensation of 15 to 45 days' base salary and seniority allowance per year or fraction of year, of seniority (or 30 to 60 days for protected employees, such as employees under parental protection) or to be reinstated in the employees' previous work position.

The employee chooses between receiving compensation and being reinstated. The employer may oppose the reinstatement if it has up to nine employees, or if the employee had managerial functions; if opposition is accepted, the compensation will be 30 to 60 days' base salary and seniority allowance per year, or fraction of year, of seniority.

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

Termination agreement

Termination agreement must be entered in writing. The employee may revoke the agreement within seven days from the date of entering into the agreement, unless both signatures (employer's and employee's) are certified in the presence of a notary public.

8.7. Transfer of undertaking

Under the Acquired Rights Directive, employees are automatically transferred to the transferee, preserving all their employment rights. The transfer does not justify any changes to 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.

However, employees have the right to object to the transfer when it may cause serious damage, mainly but not exclusively based on the transferee's lack of solvency or his or her financial status, or if the transferee's work organization policy does not merit the employees' trust.

Once transferred, the employee may also exercise the right of constructive dismissal based on the same grounds.

A transfer of undertaking occurs when the transfer involves an autonomous economic entity, defined as an organized grouping of resources for the purpose of carrying out 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 center or an autonomous production unit.

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

8.8. Collective representation and organizational rights

Trade union and workers council

The initiative to create a workers council depends on the employees.

The employer is not obliged to propose, organize or suggest that a workers council be formed.

However, once the employees make that decision, the employer is obliged to provide the workers council with certain benefits.

The role of a workers council is advisory, aimed at safeguarding employees' interests by becoming involved in consultation on matters such as changes of workplace, plant closure and production changes.

Workers councils may request information on several matters concerning the company, including general plans for the activity and budget, projects to alter the company's object, alteration of the share capital or conversion of the company's activity. The workers council must be consulted on several matters, including 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 carry out union activities in the company.

The initiative to start union activities depends on the employees, and the employer is not obliged to propose, organize or suggest any action on this area. The number of union representatives entitled to specific rights and protection granted by law is limited and relates to the number of unionized employees. Union representatives may join a union commission, and union representatives from different unions will be part of an inter-union commission.

Collective bargaining agreements generally apply only to their subscribers. The government may extend their application to employers carrying out the same activity or within a certain geographical area

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

Employee 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 employer associations. Collective bargaining agreements generally only apply to their subscribers. However, the government may extend its application to employers carrying out the same activity or within a certain geographical area through a ministerial order.

Also, under certain circumstances, non-unionized employees may individually adhere to a collective bargaining agreement.

8.9. Social security issues

The employer's portion of social security contributions is generally 23.75% of the monthly salary and the employees' contribution is 11%

Social security contributions are compulsory for employers and employees. Employers must withhold employees' contributions from their salaries; employers are obliged to make this withholding. The monthly social security contribution is determined by applying the rates provided by law to the employee's income. There is no cap on this contribution.

The employer's portion of social security contributions is generally 23.75% of the monthly salary and the employees' contribution is 11%. Contributions rates may differ for certain areas of activity or category of employees.

8.10. Health and safety at work

Employers must ensure health and safety at work by (i) notifying the labor 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.

Employers must take out a work accidents insurance policy covering all employees.

8.11. Fines and penalties

Portuguese law establishes penalties for infractions committed by employers and under 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 fines depend on the employer's turnover.

The labor and social security inspectors are in charge of monitoring companies and employees' compliance with their labor and social security obligations.

9 Securities regulation

Several securities regulated markets, multilateral trading facilities and central securities depositories operate in Portugal

9.1. Overview

Several exchange management entities operate in Portugal for financial instruments trading: three regulated markets and two multilateral trading facilities. Portugal also has a central securities depositary.
Portugal's three regulated markets are the following:

- **Euronext Lisbon**, a securities regulated market managed by Euronext Lisbon – Sociedade Gestora de Mercados Regulamentados, S.A. ("Euronext")

As a securities regulated market, Euronext Lisbon is suitable for larger companies, as higher listing requirements are in place.

PSI 20 (Portuguese Stock Index) is the Portuguese benchmark index representing a group of companies listed on Euronext Lisbon. The index keeps track of the development of prices of the largest and most liquid equities of companies listed on Euronext Lisbon.

- **Euronext Lisbon Derivatives Market**, a derivative regulated market managed by Euronext

Euronext Lisbon Derivative Market is a regulated market where certain derivatives (e.g., futures and options) may be traded.

- **OMIP Derivatives Market (Iberian Energy Market)**, managed by OMIP–Operador do Mercado Ibérico de Energia (Portuguese Division)

OMIP Derivatives Market is a commodity derivatives market created as part of MIBEL (Iberian Electricity Market) where certain energy derivatives (e.g., futures and swaps) may be traded.

Admission to listing is subject to the requirements established by law and determined by the management entity.

Portugal's two multilateral trading facilities are the following:

- **Euronext Growt**h, managed by Euronext

Euronext Growth is suitable for small and mid-sized companies that want to raise funds to finance growth. It is subject to medium listing requirements.

- **Euronext Access** (including **Euronext Access+** compartment), managed by Euronext

Euronext Access is specifically designed for start-ups and SMEs that want to raise funds to finance growth and benefit from the reputational advantages of being listed. It is subject to lower listing requirements. Euronext Access+ is the special compartment of Euronext Access that is tailored to the needs of start-ups and fast-growing SMEs.

Exchange management entities and listed companies are supervised by the Portuguese Securities Market Commission ("CMVM").

The central securities depository ("CSD") established in Portugal and authorized to manage securities settlement systems and centralized securities systems at national level is:

- **Interbolsa** – Sociedade Gestora de Sistemas de Liquidação e de Sistemas Centralizados de Valores Mobiliários, S.A. ("Interbolsa")

Interbolsa, part of the NYSE Euronext Group, is mainly responsible for (i) organizing and managing securities settlement systems to ensure money transfers associated with transfers of securities or inherent rights and with security relating to securities operations; (ii) managing, at national level, the Centralized Securities System, and (iii) acting as the National Numbering Agency.

Regarding the settlement systems it manages (real-time and foreign currency), Interbolsa:

- settles operations in regulated markets and multilateral trading facilities;

- settles OTC (over-the-counter) operations between financial intermediaries (participants) affiliated to Interbolsa settlement systems;

- settles operations resulting from securities lending operations through the Securities Lending Management System (SGE – Sistema de *Gestão de Empréstimo*);

- carries out the financial settlement relating to the exercise of rights inherent to the securities registered or deposited in the Central Securities System; and

- calculates the corresponding financial settlements and sends the payment instructions to Banco de Portugal (T2S) or to Caixa Geral de Depósitos (SPME), depending on whether the payment is in euros or in non-euro currencies.

The Centralized Securities System managed by Interbolsa is an interconnected group of accounts through which the securities are created and transferred, and the number of securities outstanding and the respective rights are controlled.

Financial intermediaries are responsible for maintaining and moving the securities in individual custody accounts opened in their books, as well as in the global accounts opened in the Centralized System.

Finally, Interbolsa acts as the National Numbering Agency responsible for assigning ISIN (International Securities Identification Number), CFI (Classification of Financial Instruments) and FISN (Financial Instrument Short Name) codes to all financial instruments issued in Portugal.

9.2. Listed companies: obligations and recommendations

This section outlines the main obligations and recommendations for listed companies and other publicly held companies ("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). The law provisions are mainly established in the Portuguese Securities Code and Portuguese Companies Code. Recommendations are set out in the Corporate Governance Code approved by the Portuguese Corporate Governance Institute, a private law association promoting good governance practices in the market.

The Corporate Governance Code is based on the principle of voluntary compliance, subject to the "comply or explain" principle, under which a listed company can choose whether to apply a recommendation, but, if it does not apply the recommendation, it is obliged to inform the market and explain the reasons for its decision. Listed companies must publish an annual corporate governance report to inform the market of their degree of compliance with good governance recommendations.

Some of the most noteworthy provisions of law and good governance recommendations that apply to listed companies are the following:

Provisions of law

- Listed companies are subject to several specific rules regarding general shareholders meetings and shareholders rights, e.g., relating to advance call notices, minimum information, record dates, and casting of votes.

- Listed companies must have an audit committee with a majority of independent members, one of which must be appointed based on its accounting or auditing knowledge and experience, as well as an independent chair of the general shareholders meeting.

- Listed companies must appoint a company secretary (and an alternate) to carry out relevant functions in the governance structure.

- Higher mandatory insurance coverage for board members of listed companies.

- Voting caps can be included in a listed company's bylaws, although they will not apply when a takeover bid results in a bidder attaining 75% of the company's voting rights.

- No restrictions apply regarding listed companies issuing bonds.

- An annual remuneration policy statement on the directors' remuneration must be submitted for approval by the general shareholders meeting.

Good governance recommendations

- The Corporate Governance Code provides several recommendations aimed at strengthening the role of shareholders and non-executive directors.

- The board of directors, including the audit committee, should approve an internal regulation governing its functioning.

- At least one-third of the board should be independent non-executive directors.

- In addition to the mandatory audit committee, one or two separate committees should be created for appointments and remuneration.

- The remuneration policy should be drafted by a remuneration committee and approved by the board of directors. 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.

This description is not comprehensive, and listed companies are subject to additional transparency obligations:

Financial information

Listed companies must publish annual and bi-annual financial reports for the market, following the standard forms published by the CMVM. Listed credit institutions and financial companies must also publish quarterly financial reports.

- **Inside information**

  Listed companies must immediately publish and disclose to the market any inside information, understood as any relevant information which, if disclosed, may reasonably induce an investor to acquire or transfer securities or financial instruments and materially affect their quotation on a secondary market.

  As an exception, the company may postpone publishing a relevant fact, under its own responsibility, if it considers that the information would damage its interests, if this postponement is not likely to mislead the public, and the company can guarantee the confidentiality of the information.

- **Shareholders agreements**

  Signatories to shareholders agreements that intend to acquire, maintain or increase a qualifying shareholding (≥ 2% of share capital or voting rights) in a listed company, or aim to assure or hinder the success of a public offer, must communicate this to the CMVM, which may publish them.

- **Significant stakes**

  Shareholders of listed companies must report the acquisition or sale of a qualifying shareholding, or its existence in the case of an initial listing, when they meet, exceed or fall 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 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.

- **Treasury stock**

  A listed company must disclose the acquisition or sale of own shares when the percentage of own shares exceeds or falls below 5% or 10% of the company's outstanding shares.

Market abuse

The market abuse regime, mostly stemming from EU law, distinguishes two categories of market abuse that are criminal offenses: insider trading and market manipulation:

- **Insider trading**

  Anyone holding inside information must not misuse it and must take the necessary measures to prevent the information from being abusively or unfairly used. For this purpose, inside 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.

  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 inside information.

- **Market manipulation**

  Rather than establishing a closed definition of market manipulation, EU and Portuguese law include a non-comprehensive list of conduct that could be qualified as such.

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 (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 prospectus. 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 toward 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.

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

The definition of "public offer" is very broad, encompassing any notification, regardless of its form and how it is disclosed, if it gives enough 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 those securities.

Given the characteristics of potential investors and the structure of the offer, certain offers are considered private placements and do not

require the CMVM's approval or publication of a prospectus. Private placements include offers addressed solely to professional investors and offers addressed to fewer than 150 people (other than qualified investors) per Member State.

Also, CMVM approval and a prospectus are not required for offers of certain securities (exempt public offerings), including (i) shares offered, allotted or to be allotted in connection with a merger or division; (ii) an offer of securities whose denomination per unit amounts to at least €100,000; or (iii) shares granted as payment of dividends, provided they are in the same category as the shares for which the dividends are 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 takeover bids on securities in 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 a relatively harmonized regime at EU level, with national differences still applying (including the passivity rule and breakthrough rule).

Types of takeover bids

In Portugal, two types of takeover bids open a range of possibilities when designing a strategy for acquiring control of a listed company:

- Mandatory bids, a procedure aimed at ensuring all shareholders will be able to sell their stakes and to access any control premium to be paid in a change of control of a listed company.

- Voluntary bids, a procedure to acquire shares of a listed company through a public offer.

When, because of a bid, a bidder acquires all the shares of a listed company, the company will be delisted and prevented from being admitted to listing for one year.

Definition of control

For the purposes of Portuguese law, control of a company is generally gained when a shareholder:

- acquires the majority of the company's voting rights;

- is entitled to exercise the majority of the company's voting rights; or

- is entitled to appoint or dismiss the majority of the members of the board of directors or of the supervisory board.

However, for the purposes of launching mandatory takeover bids, control of a listed company is gained when a shareholder acquires one-third or half of the company's voting rights (including an aggregation of them). Where the voting rights acquired are higher than one-third and lower than half of the company's voting rights, the shareholder may prove to the CMVM that it does not control the company.

The CMVM may waive the obligation to launch a mandatory takeover bid, provided the requirements established by law are met and the CMVM declares it (e.g., when the thresholds are reached in the context of a financial rescue plan or of a merger, in certain situations). Additionally, the CMVM may suspend the obligation to launch a takeover bid, provided the shareholder that has reached the relevant triggers agrees to reduce its shareholding within 120 days.

As aggregation rules apply, 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.

Characteristics of mandatory bids

Mandatory bids are an important mechanism allowing shareholders to exit after a change in 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, according to the rules established by law, including the premium that the offeror has paid to the sellers of the controlling stake.

The equitable price is understood as the highest of (i) the highest price that the offeror or the persons acting in concert with the offeror have paid for the same securities during the six months immediately before the bid announcement; and (ii) the average price at which the securities have been traded in the regulated market in the same period. If it is not possible to determine the price according to the above criteria, or if the CMVM decides that the price is not equitable or not justified, it will be determined by an independent auditor appointed by the CMVM.

Voluntary bids

Voluntary bids may be partial, freely priced and conditional, provided the CMVM considers that the conditions comply with the law and that compliance can be verified before the acceptance period expires. Voluntary bids are frequently subject to a minimum number of acceptances, removal of voting caps included in the target's bylaws, 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 takeover bid on all of the company's shares, (i) the bidder holds at least 90% of the target's voting rights, and (ii) the bid includes 90% of the voting rights.

The squeeze-out or sell-out rights 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 takeover bid.

10 Regulated sectors

10.1. Financial entities and investment companies

Banking, insurance, energy and telecommunications are regulated sectors.

Prior authorization 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. Credit institutions and UCITS management companies can also provide these services as ancillary activities. To incorporate any of these entities and develop their activities, prior authorization from the Bank of Portugal is also required, except for investment advisory companies, which must obtain authorization from the CMVM.

Credit institutions and investment services companies from other EU Member States are exempt from these authorizations 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 providing 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.

10.2. Insurance

Prior authorization 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 services on a free rendering of services basis. In this case, the home Member State’s supervisory authority notifies the ASF.

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

10.3. Energy

10.3.1 Electricity market activities

Legal overview

The electricity market in Portugal has changed significantly in the past two decades: from centralized planning to unbundling and market liberalization. Currently, it is a highly deregulated market promoting energy from renewable sources.

This transformation is the result of EU regulations and policies, as well as national policies. In line with said European policies and regulations, the Strategic National Plan for Energy and Climate 2021-2030 ("PNEC 2030") was issued on July 10, 2020, establishing the main strategic objectives on national energy and climate for the next decade, as follows (i) decarbonize the national economy; (ii) promote energy efficiency; (iii) reinforce the commitment to renewable energies and reduce the country's energy dependence; (iv) develop an innovative and competitive industry.

In 2006, the new legal framework was implemented providing the rules for establishing the National Electricity System (Sistema Eléctrico Nacional or SEN) and the terms for the activities in the electricity sector, including production, transport, distribution and commercialization of electricity.

Electricity production can operate under normal or special regimes. The production of electricity from renewable energy sources qualifies for the special regime and, as such, can benefit from incentives, i.e., a guaranteed remuneration regime (feed-in tariff).

In June 2007, the power purchase agreements (PPAs) executed under the previous electricity legal framework were terminated and generators currently operate under market conditions, although certain regulations on stranded costs under the PPAs are still in force.

Decree-Law 215-A/2012, of October 8, and Decree-Law 215-B/2012, of October 8, completed the transposition of Directive 2009/72/EC, establishing the common rules for the domestic electricity market. The Third Energy Package was then fully transposed into Portuguese law.
Decree-Law 215-B/2012 changes the concept of production under the ordinary and special regimes, since the production under special regime also covers the production of electricity through endogenous resources under the market remuneration and changes the licensing procedures for electricity production projects under the special regime.

A new regulatory mechanism was established to ensure competitiveness in the electricity wholesale market in Portugal. It liberalized and created the domestic electricity market, focusing on the economic general interest costs of the System Global Use Fee. However, there is still a special contribution in the energy sector mostly regarding the transmission and distribution grid's fixed assets.

Portugal has great potential as a renewable energy producer (solar, wind, hydro, thermal and wave energy). According to the DGEG's statistical information, in July 2020, the production of energy from renewable sources was 32,398 GWh. According to REN data, between January and December 2019, 51% of the energy used by our country was renewable. Furthermore, in May 2020, renewable energy sources contributed 71.6% of total electricity generation.

In recent years, the government has encouraged investment in renewable energy facilities. In addition, by the end of 2030, the National Strategy Plan for Energy and Climate 2021-2030 aims to

reach a quota of 47% of energy derived from renewable sources, in the gross final consumption.

The production of electricity for self-consumption and the sale of electricity to the public grid by small production units using renewable energy have been regulated since 2014.

They cover two types of electricity generation units: self-consumption and small production units, respectively designated by "UPAC" and "UPP."

UPACs should be dimensioned so that electric generation is close to the amount of electric power consumed by the use installation related to it. In other words, the principle is to have almost no energy surplus. UPPs, however, must sell the electricity produced to the Public Service Electric Grid ("RESP"). However, Decree-Law A76/2019 revoked the provisions of Decree-Law 153/2014 applicable to the production of electricity through units based on a single production technology with a net power of 250 kW or less, for the total sale of energy to the grid.

Subsequently, and more recently, Decree-Law 162/2019, of October 25, approved the legal framework applicable to the self-consumption of renewable energy and the legal regime applicable to the renewable energy communities, following Directive 2018/2001. This decree law establishes that the excess energy not consumed in the production unit can be sold in the organized or bilateral market, through the "market participant" or through the "market facilitator."
Logistic operations for switching supplier, regarding electricity and natural gas systems, have been regulated since 2017.

This activity will be performed by a single entity, which must comply with principles of transparency, objectivity and non-discrimination, and follow a simple, fast and effective procedure that is appealing and complies with the competition and consumer defense and promotion rules without colliding with the rights of the previous supplier derived from the law or from a valid agreement.

It is important to highlight the recent enactment of Law 76/2019, of June 3, establishing the launching of the new solar auctions, first launched in the summer of 2019 and 2020. It also made several amendments to the electricity production regime. We highlight the following: (i) the "return" to the guaranteed remuneration regime for certain types of electricity generation models; (ii) the change in the previous procedure for the production of electricity from renewable sources based on a single production technology, with a maximum installed capacity of up to 1MW and intended for the total sale of energy in the RESP; and (iii) the possibility for concessions for the distribution of low-voltage electricity to be part of the municipalities' public lighting network.

Activities

In the electricity sector, the following activities are subject to regulation: (i) transportation; (ii) distribution; (iii) last-resort supplier; (iv) logistic operations for switching supplier; (v) management of organized markets and (vi) production. Tariffs are determined according to an add-in system and based on fixed assets rate of return, plus other allowed profits, and in some situations, other aspects such as recovery of the tariff deficit.

Here are the main players in the above activities:

Transportation – REN - Redes Energéticas Nacionais, SGPS, S.A.

This company is the sole concessionaire of the national transportation grid, which operates in a very high voltage. The concession includes the planning and global technical management of the National Electricity System to ensure the harmonized operation of its infrastructures, as well as the continuity of service and security of electricity supply.

Distribution – EDP Distribuição – Energia, S.A.

This activity is carried out through the national distribution grid, which operates in a medium and low voltage, and through the low voltage distribution grids. The operation of the national distribution grid is subject to a 35-year concession agreement. There are several other small players in this sector but with a very limited market share.

It is important to highlight the enactment of Law

31/2017, of May 31, envisaging public tender proceedings (to be launched by the municipalities) to attribute concession agreements for the exclusive operation of the municipal low-voltage distribution grids. This law regulates two main aspects: (i) the public tender proceedings specifications; and (ii) several rules concerning the future concession agreements.

Last-resort supplier - EDP Serviço Universal, S.A.

This company is responsible for purchasing all electricity generated under the special regime. It also supplies customers who are still buying electricity under regulated tariffs. There are several other small players in this sector but with a very limited market share.

Market-Oriented Suppliers - EDP Comercial - Comercialização de Energia, SA; Endesa – Endesa Energia Sucursal Portugal; Galp Power S.A.; Iberdrola Clientes Portugal, Unipessoal, Lda.; Union Fenosa Comercial, S.L. – Suc. Em Portugal.

Production – EDP Gestão da Produção de Energia, SA; Iberdrola Endesa, Galp Energia, Acciona and Iberwind.

The Iberian Electricity Market (MIBEL) is also important.

The MIBEL is a joint initiative of Portugal and Spain, which aims to create a regional electricity market. The idea is that consumers will be able to buy electricity in the competitive market from any producer or retailer in Portugal or Spain. The MIBEL initiative focuses on integrating the Portuguese and Spanish electricity systems to create a market with transparency, free competition, and which is self-financing and self-organized, with a single reference price. The market players are granted free access to the market, with equal conditions, rights and obligations.

Administrative authorities

The Energy Services Regulatory Authority ("ERSE") is responsible for regulating the electricity sector. ERSE's activities aim (i) to protect the interests of consumers, particularly vulnerable customers, with regard to prices, service quality and access to information; (ii) to ensure the existence of economic and financial balance conditions for the activities exercised by the regulated sectors in the public interest, when managed properly and efficiently; (iii) to promote competition in the energy markets as regulator and under applicable law; (iv) to encourage efficient energy use and protection of the environment; and (v) to arbitrate and resolve disputes, encouraging out-of-court settlements.

The Directorate General for Energy and Geology ("DGEG") is the Portuguese public administration authority. Its mission is to contribute to planning, promoting and evaluating energy and geological resources policies in terms of sustainable development and ensuring security of supply.

Business opportunities

The main political intentions of the XXII Portuguese Government Program are in line with those of the former government and aim to continue leading energy transition toward renewable energy sources, acknowledging Portugal's huge wind, solar and water potential, and aiming to export this energy. In this context, we highlight the following recent governmental measures:

- Ensuring that the corridors established for trans-European electrical connection allow for the flow of solar energy produced in Portuguese territory to Europe.

- Strengthening the electrical interconnections with Europe to place Portugal as a privileged renewable energy exporter. France, Spain and

  Portugal has issued the Madrid Statement, which states that "(...) the European Commission, Spain, France and Portugal also stress the importance of completing the electricity interconnection of Portugal and Spain, between Vila Fria-Vila do Conde-Recarei (PT) and Beariz-Fontefría (ES), which, on completion, will allow Portugal to attain 10% of interconnections".

- Encouraging the construction of small dams (with little environmental impact), preferably with reversible pumping systems (to store energy);

- Launching, in partnership with the State and local authorities, a micro-generation program, particularly from solar energy, in public establishments (e.g., schools, health centers, sports facilities, barracks and markets). The solar energy market has undergone a major improvement with the creation of a small production system allowing the consumer to generate its own electricity and sell the excess to the grid. This is a great opportunity for marketing solar panels and for a business model in which one owns the production unit and then sells electricity to consumers and the excess to the grid.

- Launching new solar energy auctions: Last summer, the Portuguese government launched a big photovoltaic auction, for the allocation of 1.4 GW, distributed over 24 lots, covering mostly the Alentejo and Algarve regions and the center of the country. This auction was considered very successful, as the electricity prices awarded after the several bid rounds were some of the lowest in the world. This auction contemplated both a market price remuneration scheme and a feed-in tariff. A new solar auction is expected to be launched in the following months.

  During the summer of 2020, a new solar energy auction was launched, providing for the allocation of 0.7 GW distributed over 12 lots also located in Alentejo and Algarve, allowing for the implementation of a storage system for the energy produced. Due to the strong demand and competition between the promotors of renewable energy production projects, the solar energy price achieved a new global record as the lowest price ever transacted in similar proceedings all over the world.

- Evaluating and testing the potential of renewable energy production (particularly wind power) in offshore areas: we highlight the wind float project, in which EDP is the main partner, building an offshore wind farm off the coast of Viana do Castelo, in the northwest of Portugal which is already producing and injecting energy in the public grid.

- Approving the national hydrogen strategy, estimating an investment of 7 to 9 billion euros in hydrogen projects until 2030 as well as providing for the inclusion of the low carbon gases and gases of renewable origin in the guarantees of origin system, provided for in Decree-Law No. 141/2010 of 31 December, in order to prove to the final consumer, through the issuance of electronic certificates, the share or amount of energy from renewable sources present in the energy mix of supplier.

10.3.2. Gas market activities

Legal overview

Portugal has no natural gas resources. 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.

Until February 2006, the Portuguese natural gas market was organized in two large areas: (i) import, storage, transport and regasification of natural gas or LNG, where the only concession was issued to a subsidiary of Galp Energia (Transgás); and (ii) local and regional distribution under the license issued to the local or regional distribution companies. Natural gas consumers with an annual consumption below 2 Mm3 were supplied by regional or local distribution companies, whereas those with an annual consumption of at least 2 Mm3 were directly supplied by Transgás. For large customers, consuming over 50,000 Mm3, prices were at free-market rates, whereas for customers with an annual consumption below 50,000 Mm3, prices were established in the concession agreements.

The current structure of the market was established by Decree-Law 30/2006 and Decree-Law 140/2006, under which the market was deregulated, giving any company free access to the market, unbundling energy suppliers from the distribution network, and strengthening ERSE's independent position. These new laws were imposed on the last-resort suppliers, whose gas price is regulated by the tariffs.

In the EU, the main regulation is Directive 2009/73/CE, of the European Parliament and of the Council, of July 13, 2009, which established common rules for domestic natural gas market and repealed Directive 2003/55/EC, the former main EU regulation on natural gas. There is an ongoing legislative process to review Directive 2009/73/CE.

Activities

The Portuguese Natural Gas System (SNGN) is mainly organized based on exploiting the public network comprised of 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 following activities are regulated: (i) reception, storage and LNG regasification; (ii) underground storage; (iii) transmission, distribution and natural gas last resource supply; and (iv) logistic operations for the switch of supplier.

Tariffs are determined according to an add-in system and based on fixed assets rate of return, plus other allowed profits, and in some situations, other aspects as recovery of the tariff deficit. Commercialization is free, although subject to ERSE's commercial conditions regulation.
A special contribution applies to the transmission and distribution network's fixed assets.

Here are the main players in each of the above activities:

Transport: REN – Gasodutos, S.A.

Distribution: Setgás – Sociedade de Distribuição de Gás Natural, as; Lisboagás GD– - Sociedade Distribuidora de Gás Natural de Lisboa, SA; Lusitaniagás – Companhia de Gás do Centro, SA; Tagusgá– - Empresa de Gás do Vale do Tejo, S.A.; Beiragás – Companhia de Gás das Beiras, S.A; Ren Portgás Distribuição, S.A.

Commercialization: Galp Gás Natural, S.A.; Edp Gás - Serviço Universal, S.A.; Iberdrola Clientes Portugal, Unipessoal, Lda; Endesa Energia, Sucursal em Portugal

Administrative authorities

The reception, storage and regasification of LNG and the underground storage, distribution and supply of last resort, as well as the logistic operation of the change of supplier and of the management of organized markets are subject to ERSE's regulation.

However, DGEG still has various powers regarding the natural gas sector's activities.

10.3.3. Oil market activities

Legal overview

Regarding operation and production activities, there are two coexisting applicable regulations: Decree-Law 109/94, of April 26, which applies to the activities licensed after its entry into force, and Decree-Law 141/90, of May 2, which applies to the activities licensed before the entry into force of Decree-Law 109/94.

The main law for downstream oil activities is Decree-Law 31/2006. Trading in oil and oil products is free, although it is subject to custom duties and taxes. In addition, the entities trading in oil and oil products are subject to registration with ENSE, E.P.E. (defined below). Other requirements include (i) ensuring the regular supply; (ii) ensuring prices are published; (iii) providing relevant information to the authorities.

Decree-Law 38/2015 implements the maritime space planning regime under which the allocation plans require the environmental impact assessment. However, the environmental impact assessment is flawed, because of: (i) insufficient content of the allocation plans; and (ii) insufficient regulation relating to the assessment of the environmental cumulative impact of investments.

It is important to stress that legislative reform is under way to review the oil sector legislation in Portugal.

Activities

Portugal has no oil deposits and is almost fully dependent on imports. It has well- diversified crude oil supply sources. In 2018, Russia was Portugal's biggest oil supplier (19.6% of total crude oil imports), followed by Angola, Azerbaijan and Saudi Arabia.

The Portuguese oil sector comprises production, refinement, storage, transport, distribution and commercialization.

Administrative authorities

The main administrative authority in the Portuguese oil sector is Entidade Nacional para os Mercados dos Combustíveis ("ENMC"), ensuring compliance with the obligations entered by Portugal within the framework of the European Union and the International Energy Agency regarding emergency reserves of petroleum and petroleum products as stipulated in national law.

However, after the enactment of Decree-Law 69/2018, of August 27, there were important modifications in the energy sector's regulatory and supervisory entities. As a result, ENMC was restructured and attributed supervisory powers to oversee the whole energy sector. This entity is now called the National Entity for the Energy Sector, E.P.E ("ENSE, E.P.E."). Under this legislation, the former ENMC, E.P.E., now ENSE, E.P.E., has become the specialized inspection entity for the entire energy sector, without prejudice to the powers ERSE provided in its statues and under the energy sanctioning regime.

ENSE, through its oil reserve unit, the central storage entity (CSE), is responsible for ensuring a 30-day reserve for national security. Market operators are obliged to maintain security reserves of 90 days, 30 of which are secured by CSE. They are responsible for the remaining 60 days and for notifying ENSE E.P.E. of their location.

Business opportunities

Galp Energia is the largest player in the oil market. It owns two refineries: one in Sines holding 70% of the country's total capacity and the other in Matosinhos. Galp Energia recently upgraded the Sines and Matosinhos refineries, to adjust their production profile to the needs of the whole Iberian market by maximizing annual diesel production and reducing the share of fuel oil production exceeding domestic demand. Galp Energia is the main shareholder of Companhia Logística de Combustíveis S.A. ("CLC"), the Portuguese logistics company that owns the only multiproduct pipeline in Portugal. The other CLC shareholders are BP Portugal, S.A. (15%), Repsol Portuguesa, S.A. (15%) and Rubis Energia Portugal, S.A. (5%). This multiproduct pipeline connects the Sines refinery and the tank farm at Aveiras. The Matosinhos facility is connected by pipeline to the storage facility in Boa Nova. There is also a four-kilometer jet fuel pipeline running from the Porto refinery to Sá Carneiro, the Porto's international airport.

There were several oil prospection activities going on in the Algarve and Alentejo regions to assess whether there is a profitable oil well. However, the government has terminated most of the concession agreements in force.

The transport sector is dominated by three major players: CLC - Companhia Logística de Combustíveis, S.A, Petróleos de Portugal – Petrogal, S.A. and CLT - Companhia Logística de Terminais Marítimos, S.A.). Under certain circumstances, these companies may consider selling their positions.

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

Entities operating in the media sector must disclose any direct or indirect ownership in newspaper, TV and radio operator companies

Under Decree-Law 39/2015 of March 16, ANACOM ("Autoridade Nacional de Comunicações") is the main regulator, supervisor and representative of the communications sector in Portugal. ANACOM is responsible for (i) ensuring network access for communications operators under conditions of transparency and equality; (ii) promoting competition and development in communications markets, namely in the context of convergence of telecommunications, media and information technologies; (iii) ensuring the application and supervision of laws, regulations and technical requirements and communications operators' compliance with provisions of the respective licenses or concession contracts; (iv) ensuring the existence and availability of a universal communications service that fulfills the corresponding obligations; and (v) ensuring the correct use of spectrum resources and granted numbering.

Under the Electronic Communications Law (Law 5/2004, of February 10), providing electronic communications networks and services, regardless of whether they are publicly available, is only subject to prior notification of commencement of activity. The right to use a spectrum frequency is assigned for a 15-year period, renewable for an equal period. Market players can access a list of frequencies that have been assigned by the National Frequency Allocation Board (QNAF).

The Electronic Communications Law also establishes several mandatory provisions applicable to consumer contracts, such as (i) minimal service quality, (ii) duration of contract and related terms, (iii) price details and (iv) a detailed description of all services rendered. Contracts with consumers are also subject to consumer protection legislation, such as the Consumer Defense Law, Law 24/96, of July 31, Law 24/2014, of February 14, related to at-a-distance contracts, Decree-Law 67/2003, of April 8, related to consumer goods and guarantees and the Standard Contractual Clauses Law (Decree-Law 446/85, October 25).

Regulation (EU) 2015/2120 of the European Parliament and of the Council of November 25, 2015, establishes rules to safeguard equal and non-discriminatory provision of internet access services and related end users' rights. Although not prohibited, zero-rating would infringe the regulation and bandwidth throttling will be permitted where imposed by law, a court, or public authority decision.

Business opportunities

During 2020, ANACOM will launch an airwaves rights procedure related to the 700 MHz, 900 MHz, 1800 MHz, 2.1 GHz, 2.6 GHz and 3.6 GHz spectrum bands. These frequencies include the spectrum required to implement fifth generation (5G) mobile network technologies. The auction will establish acquisition caps for bidders and price-discounts for "new entrants" (operators that do not have airwaves rights).

This auction will be interesting for new investors particularly, as it previews the possibility of imposing national roaming obligations and infrastructure-sharing to accommodate the large investment required to implement 5G technologies.

Advertisement, broadcasters and media

Law 53/2005 of November 8 created ERC (Entidade Reguladora para a Comunicação Social), the public agency responsible for regulating and supervising all entities operating in the media sector in Portugal.

Under both the Television and Radio Law (Law 27/2007, July 30, and Law 54/2010, December 24, respectively), television and radio broadcasting activities are subject to prior licensing, granted by the ERC.

Entities operating in the media sector must disclose to the ERC any direct or indirect ownership in newspaper, TV and radio operator companies, and identify board members, officers with management duties and officers responsible for broadcast content and supervision. The public can access this information on the ERC's website.

To safeguard the pluralism and diversity of the press, TV and radio markets, the ERC must ensure, in coordination with the competition authorities, that no excessive concentration of ownership in the share capital of companies operating in the media sector occurs.

In 2015, Law 78/2015 of July 29 was passed to preserve the values of freedom of expression and editorial independence, creating an additional obligation for entities operating in the media sector to disclose their financing sources to the ERC.

Regarding advertising, broadcasters are subject to several provisions that restrict the nature and amount of airtime of advertisements. Broadcasters must also respect the principles and rules of advertising established in the Advertisement Code (Decree-Law 333/90, October 23) and in other sectorial legislation.

11 Insolvency

These are the key aspects of Portuguese insolvency law.

11.1. Definition of insolvency

Insolvency is generally defined as the debtor's inability to fulfill its obligations as they fall due

Insolvency proceedings are only triggered if the debtor becomes insolvent, which is generally defined as the debtor's inability to fulfill its obligations as they fall due (cash flow test).

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

11.2. Insolvency procedure

Portuguese law establishes a single procedure for all debtors, whether companies or individuals

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

According to the Insolvency and Restructuring Companies Code ("CIRE"), the insolvency procedure is a universal enforcement procedure to satisfy creditors' claims, through an insolvency plan aimed at the recovery of the company integrated in the insolvency estate, or, if recovery is not possible, the liquidation of the insolvency assets and the distribution of the proceeds among the creditors.

11.3. Voluntary insolvency

The debtor must file for insolvency within 30 days of becoming aware (or when it should have become aware) of its insolvency situation. If the debtor fails to fulfill this obligation, directors can become personally liable.

11.4. Mandatory insolvency

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

- Generalized suspension of payments of matured obligations.
- Default of one or more obligations which, given the amount or default circumstances, reveals that the debtor is unable to meet most of its obligations in time.
- Owner or directors of the insolvent company abandon the company or the place where the company has its head office or performs its main activity as a result of the debtor's lack of solvability and provided no reputable substitute is appointed.

- Dissipation, abandonment, hasty or loss-making liquidation of assets and fictitious constitution of credits.

- Insufficient assets to seize for payment of credits verified in an enforcement procedure filed against the debtor.

- Default of obligations established in an insolvency plan or payment plan approved by the creditors in previous insolvency proceedings.

- 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

  - Rents for any kind of lease, including financial lease, installments related to an acquisition price or a mortgage on the place where the debtor carries out its activity or it has its residence or head office

- In the case of legal entities, the debtor's liabilities clearly exceed its assets according to the last approved financial statements, or there is a more than nine-month delay in the approval or deposit of the accounts.

11.5. Aggravated or culpable insolvency

Insolvency may be considered fortuitous, aggravated or culpable

Once a court declares insolvency, a procedure to classify the insolvency may be initiated. The insolvency may be considered fortuitous, aggravated or culpable (where insolvency is a result of the debtor's willful or gross negligence or of its legal or de facto directors within the three years before the beginning of the insolvency proceedings). The law provides for circumstances where (i) insolvency is automatically classified as aggravated or culpable; and (ii) fraud or gross negligence is presumed.

11.6. Effects on debtors

A declaration of insolvency transfers the power to run a company from its directors to an insolvency administrator, who becomes the debtor's representative for all purposes. The debtor's management bodies may continue to operate (when requested by the debtor, if the insolvency is voluntary, or with the agreement of the creditors), but any actions carried out by the debtor that breach the insolvency administrator's supervision may be declared null.

A declaration of insolvency means all debts become due immediately, provided 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, if 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 Portuguese law on insolvency is that creditors must receive equal treatment

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, including special statutory liens (e.g., state credits over real estate property tax, mortgage, income assignment and pledge). They are paid with the proceeds of the sale of the secured asset, after 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 benefit from general creditor's privilege (e.g., credits arising from an employment contract) over assets that comprise the insolvent estate. Due to their nature, these credits are paid on a pro rata basis with the proceeds of the unsecured assets and according to their inner ranking. 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 on 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 these credits are not entitled to vote at the general meeting of creditors, except for approving an insolvency plan.

- There is another special and prioritized 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 actions

The insolvency administrator is entitled to revoke any act and contract considered detrimental to the insolvency estate, provided these acts were performed or omitted within two years before the insolvency proceedings start.

Requirements of clawback actions:

- Detrimental acts: Acts that reduce, frustrate, prevent, jeopardize or potentially delay the payment of the insolvency creditors.

- Bad faith: Bad faith is presumed in acts performed or omitted within two years before the insolvency proceedings start and in which a person with a special relationship with the insolvent participated or took advantage, even if there was no special relationship at the time. Acknowledgement of any of the following circumstances is considered bad faith:

    - That the debtor was in an insolvency situation.

    - The detrimental nature of the act and that the debtor was in an imminent insolvency situation at that time.– That the insolvency proceedings had started.

Clawback actions without requirements

CIRE also establishes acts subject to clawback actions without fulfillment of any other requirement.

11.9. Key pre-insolvency instruments

Portugal offers entrepreneurs several agile legal mechanisms enabling them to revitalize companies (as well as individuals), including the following:

- RERE – Regime Extrajudicial de Recuperação de Empresas (Out-of-Court Recovery Proceedings) (“RERE”)

- PER – Processo Especial de Revitalização (Special Revitalization Proceedings) (“PER”)

- PEAP – Processo Especial para Acordo de Pagamento (Special Payment Agreement Proceedings) (“PEAP”)

RERE

RERE (Extrajudicial Business Recovery Regime), approved by Law 8/2018, of March 2, entered into force on March 3, following one of the measures of the Capitalize Program (approved by the Council Resolution of Ministers 42/2016, of August 18).

RERE can be used by corporate or natural debtors (owners of companies) facing economic difficulties or in an imminent insolvency, that intend to start negotiations with one or more creditors (representing at least 15% of non-subordinated credits) aiming to reach an agreement for their recovery. The parties must enter into a negotiation protocol (they can freely establish the content between them and is it generally confidential) that must be filed with the commercial registry office.

During negotiations, which may not exceed three months, creditors that have not subscribed to the negotiation protocol may adhere to it at any time. Once the negotiation protocol is entered between the parties, and during the negotiation period, public service companies, including water, electrical power, natural gas, and telecommunications suppliers, are prevented from suspending their services while negotiations are ongoing.

When the negotiations end, a restructuring agreement is drawn up, the content of which is freely agreed between the participants. This agreement is a single written document signed by all parties and is generally confidential.

Once the restructuring agreement is filed with the commercial registry office:

- the negotiation period ends;
- declarative, executive or precautionary lawsuits (excluding those of a labour nature) related to credits included in the restructuring agreement are immediately extinguished; and
- any insolvency proceedings initiated against the debtor by the creditors who signed the restructuring agreement are immediately extinguished.

If the restructuring agreement is approved by creditors representing the majority required to approve the recovery plan, the debtor may submit it to the court. The court will then approve the restructuring agreement and make it binding before all creditors, even those that did not sign or did not participate in the negotiation procedure.

PER

PER was created by Law 16/2012, of April 20 (approving the introduction of articles 17-A to 17-I to the CIRE).

This procedure allows companies in financial difficulties or imminent insolvency, but whose recovery is still feasible, to enter into negotiations with creditors to reach an agreement, leading to their revitalization. By adopting the PER, it is no longer required to obtain the debtor's prior declaration of insolvency, as a situation of imminent insolvency or a difficult economic situation is enough to launch the proceedings. This allows debtors to achieve their recovery or viability through negotiation, without first being subjected to the stigma of being declared insolvent (which often prevents their viability). PER proceedings are urgent and heard in the court with jurisdiction to declare the debtor's insolvency. In procedural terms, under the PER, there are two possible ways of reaching a restructuring agreement with creditors: after submitting the PER request (PER under article 17-A of CIRE) or before it is submitted (PER under article 17-I of CIRE).

The consolidation of several PERs for companies within the same group is admitted. The judge may admit this consolidation of proceedings ex officio or following the provisory judicial administrator's request.

Only the debtor may submit the request in court for PER under article 17-A of CIRE. This request must include a written statement jointly subscribed by the debtor and by creditors, although not related to the debtor company, holding at least 10% of non-subordinated credits, expressing the intention to engage in negotiations leading to the revitalization, through the approval of a recovery plan.

A recovery plan proposal must be attached to the PER application, as well as a statement describing the company's assets and financial situation.

Companies legally required to have their accounting books revised must, along with the PER application, submit a statement issued by a certified accountant or an auditor asserting that the company is not currently in a situation of insolvency.

The debtor will also certify and declare, in writing, that it meets the conditions for revitalization. These statements are addressed to the court, which, after receiving these statements, immediately appoints an interim judicial administrator (Administrador Judicial Provisório or "AJP").

The order appointing the AJP is published on the CITIUS platform (the court's official website) and the debtor must inform all its creditors (that did not sign the statement mentioned above) that negotiations have started and invite them to participate. The creditors must submit their credit claims to the AJP within 20 days from the date of publication, so the AJP may prepare a provisional list of credits, which will also be published on the CITIUS platform.

After the 20-day period and, specifically, after the deadline for submitting appeals from the provisional list of claims, the negotiations must be completed within two months (this deadline may be extended for another month, subject to previous agreement by the debtor and the AJP). Any creditor can participate in the negotiation process as long as the negotiations last. The debtor can stop negotiations at any time.
Once the AJP is appointed:

- declarative, executive or precautionary lawsuits, ongoing against the debtor related to credits included in the restructuring agreement, are suspended;

- any insolvency proceedings initiated against the debtor are suspended.

Public service companies, including water, electrical power, natural gas, and telecommunications suppliers, are prevented from suspending their services while negotiations are ongoing.
Also, during this period, no creditor can file a declarative, executive or precautionary lawsuit against the debtor aiming to collect any credit.

The recovery plan will be approved in either of the following cases:

- It is voted by creditors whose claims represent at least one third of the total claims with voting rights, as established in the provisional claims list, receiving favorable votes from more than two thirds of all the votes cast and more than half of them correspond to non-subordinated claims.

- It receives favorable votes of creditors whose claims represent more than half of all the claims associated with voting rights, and more than half of these votes correspond to non-subordinated claims.

In either case, abstention is not counted.

The judge must approve or reject the recovery plan within 10 days. This decision will be published in CITIUS and is binding for the debtor and for all its creditors (even if they did not vote in favor of the plan or did not participate in the negotiations).

If the court approves the recovery plan:

- declarative, executive or precautionary lawsuits related to credits included in the recovery plan are immediately extinguished, unless the recovery plan provides otherwise;

- any insolvency proceedings initiated against the debtor before the PER are immediately extinguished.

If it is not possible to reach an agreement for the approval of the PER, the proceedings will end and will have no effect, if the debtor is not insolvent. Otherwise, the court will declare the debtor's insolvency within three business days and the special process of revitalization is attached to the insolvency proceedings.

If debtor and creditors fail to reach an agreement, or if the judge rejects the approved recovery plan, the debtor cannot submit another special process of revitalization for two years.

PER under article 17-I of CIRE

PER can also be initiated by filing an extrajudicial recovery plan signed by the debtor and creditors representing at least a majority of votes needed to approve the recovery plan in general. In this case, a simplified procedure will apply (which notably removes the need for negotiations).

Protection against clawback actions

To provide the debtor with the funds needed for its recovery, the agreements executed in the context of the PER cannot be subject to clawback actions.

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

New money privilege

Finally, creditors that finance the debtor's activity by providing the funds needed for its recovery benefit from special statutory liens over moveable assets, which rank prior to special statutory liens over moveable assets granted to employees.

PEAP

PEAP was created by Decree-Law 79/2017 of June 30. This procedure only applies to debtors that (i) are not companies, (ii) are in a difficult economic situation or an imminent insolvency situation, and (iii) aim to negotiate with their creditors to reach a payment agreement.

PEAP is intended to enable the recovery of individuals through the approval of a payment agreement that provides for a restructuring of their liabilities, thus avoiding their personal insolvency.

PEAP is intended to enable the recovery of individuals through the approval of a payment agreement that provides for a restructuring of their liabilities.

The PEAP regime is similar to the PER regime. Thus, please take into consideration the above regarding that regime.

12 Dispute settlement

Most decisions issued in first and second instances are immediately enforceable, even if subject to appeal

12.1. Litigation: jurisdiction and civil procedure

Jurisdiction

Jurisdiction is determined by several criteria: (i) subject (mainly civil and commercial, criminal, administrative, labor, tax, intellectual property, competition and family), (ii) instance (first instance court, second instance court and Supreme Court), and (iii) territory.

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

The general territorial rule is that the claimant must file the claim in the place where the defendant resides, even though other special rules may apply, depending on the grounds for the claim; e.g., claims based on tort law must be filed in court where the tort occurred.

Civil and commercial procedures

Regardless of the different procedures governing tax and administrative matters, civil and commercial declaratory procedures are subject to the provisions of the Portuguese Civil Procedure Code ("PCPC").

These procedures mainly consist of (i) a statement of claim accompanied by documentary evidence and producing witnesses and expert evidence that will be presented later during the procedure; (ii) a statement of defense, together with the documents, witnesses and expert evidence that support the defense; (iii) a preliminary hearing that aims to attempt to conciliate the parties, to solve procedural issues, to determine the object of the dispute and the controversial issues, and to propose additional evidence; and (iv) a trial, in which witnesses and experts are heard.

The PCPC is also residual to other procedures, including administrative procedures, meaning that it will apply if there is no specific provision regulating administrative procedures.

Appeals

Most first instance decisions can be appealed in a second instance court, frequently with a three-judge panel, usually depending on the value of the proceedings (e.g., proceedings below €5,000 cannot 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 in the Supreme Court, provided (i) the value of the proceedings is higher than €30,000, and (ii) the second instance court has not confirmed the decision issued by the first instance court. There are some exceptions to this rule; e.g., when there is a general interest that justifies a Supreme Court decision on that particular case, or when there are contradictory rulings from appeal courts concerning a matter of law that must be clarified.

Enforcement procedures

The PCPC also establishes enforcement procedures. Public instruments (documents issued before a notary public or equivalent) are directly enforceable, if they contain a debt confession, which means that prior declaration proceedings will not be necessary to enforce them.
Most decisions issued in first and second instances are immediately enforceable, even if subject to appeal, unless the losing party requests the staying of the effects of the decision and pays a retainer to the order of the court.

The European order for payment simplifies collection in some cases of crossborder debts. It is recognized and enforced in almost all EU countries without requiring a declaration of enforceability.

12.2. Commercial arbitration and mediation

Portugal is a privileged seat for arbitration involving Portuguese-speaking countries, and Portuguese state courts have a practice of respecting the arbitral jurisdiction

Arbitration

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

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

Under the Arbitration Law, the parties can submit any economic dispute to arbitration, unless exclusively submitted under special law to state courts or to compulsory arbitration. If the dispute does not involve these kinds of interests but the parties can reach a settlement on the issue under dispute, the arbitration agreement is also valid.

The Arbitration Law contains several provisions to ensure that state courts respect the arbitration and to prevent parties not interested in having the dispute decided through arbitration from sabotaging it. This is the case of the provision that establishes that a state court to which a lawsuit is submitted in a matter subject to an arbitration agreement must dismiss the case, unless the arbitration agreement is clearly null, is or becomes inoperative, or is impossible to execute.

The current Arbitration Law (different from the former arbitration law from 1986) regulates interim measures and preliminary orders, multiple parties and third party joinder.

The parties can agree on the rules of the arbitral proceedings, as long as the following principles are observed: (i) the respondent must be summoned to submit its defense; (ii) the parties must be treated equally and given a reasonable opportunity to present their case before the final award is granted; and (iii) in all phases of the procedure, the principle of adversarial process will be guaranteed, with the exceptions established in the law.

Unless otherwise agreed by the parties, the arbitral award cannot be appealed and may only be set aside in very limited cases; e.g., when the subject of the dispute cannot be decided by arbitration under Portuguese law, or the content of the award conflicts with the principles of Portugal's international public policy.

Portugal is a privileged seat for arbitration 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 several arbitration centers in Portugal, the most important being the Centro de Arbitragem da Câmara de Comércio e Indústria Portuguesa. Portugal has also been a seat of international arbitration proceedings under the Rules of Arbitration of the International Chamber of Commerce.

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 January 16, 1995. Portugal declared that it would apply the NY Convention only to recognition and enforcement of awards made in 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 August 1, 1984. To the extent of our knowledge, no ICSID award regarding the Portuguese state has ever been rendered, and nor has any ICSID award ever been enforced in Portuguese courts.

Mediation

Although Portugal approved the legal regime on civil and commercial mediation in 2013 – Law 29/2013, of April 19, most mediations are still taking place in Julgados de Paz, special types of courts that can rule on cases whose value does not exceed €15,000, and on procedures submitted by the Portuguese Securities Market Commission and consumer protection entities.

13 Real estate

The use and occupation of real estate in Portugal is acquired through an ownership right or by contracting other forms of in rem rights.

13.1. Ownership and other rights

Under Portuguese law, there are no restrictions on nonresidents or foreign investors owning real estate or on acquiring companies owning real estate

The ownership right (direito de propriedade) is the highest in rem right over real estate in Portugal. The owner of a property has full and exclusive rights of use, fruition and disposal of real estate, within the legal limits. The Portuguese legal concept is similar to the French propriété, the British freehold and the German voll eigentum.

Under Portuguese law, there are no restrictions on non-residents or foreign investors owning real estate or on acquiring companies owning real estate, although certain formalities may be required, including previously obtaining a Portuguese taxpayer number for the purchaser beforehand.

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). Under this regime, the “co-owners” simultaneously hold the ownership right over the same asset, exercising their rights and obligations in proportion to their respective quotas.

Under Portuguese law, it is also possible to divide a building into several independent units, under the horizontal property regime (propriedade horizontal), to be operated as a condominium. Under this regime, 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 the stairs, lifts and hallways, are co-owned by all unit owners. Division under the horizontal regime may also be applicable to separate buildings or complexes if these meet the applicable requirements.

The Portuguese legal framework also provides for other in rem property rights, of which the surface right (direito de superfície) is the closest to an ownership right. This right does not include ownership of the land but consists of the legal right to build or hold, permanently or temporarily, a construction on land owned by a third party, or to carry out or maintain plantings on the property. At the end of the term of the surface right, when temporary, the construction built on the land will revert to the landowner.

Any facts that create, acknowledge, acquire or modify any real estate right (including asset deals, as detailed below) are subject to mandatory registration with the land registry office (conservatória do registo predial) within two months. In most cases, the effects against third parties depend on this registration. Also, based on the principle of priority of registration, a right registered in first place prevails over any subsequent registered conflicting right or act.

13.2. Real estate transactions

Acquiring rights over real estate can be direct, i.e., by directly acquiring an asset ("asset deal"), or indirect, i.e., by acquiring shares of a company or any other vehicle that owns real estate property ("share deal"). In both cases, the acquisition may occur through an investment vehicle.

Although the most common property investment vehicles in Portugal are commercial companies, joint stock companies (sociedades anónimas or "SA") and private limited companies (sociedades por quotas or "SQ"),[1] there are other investment vehicles such as property investment funds (real estate investment funds - fundos de investimento imobiliário - or real estate special investment funds - fundos especiais de investimento imobiliário) and property investment companies (sociedades de investimento e gestão imobiliária, which are the Portuguese equivalent of real estate investment trusts).

Asset deals

The purchase and sale of real estate must be carried out in writing, either by public deed, executed before a notary public, or through a private document certified by a person or entity legally qualified for this procedure, e.g., a notary public, a lawyer or a registry officer. Apart from compliance with the tax obligations resulting from acquiring real estate,[2] several documents are required to transfer property ownership, depending on the type of property at stake, such as:

- the property's energy performance certificate;
- the residential technical document (ficha técnica de habitação), when required for residential properties;
- the use permit (autorização de utilização) issued by the municipal authorities (although this document may not be required if the property was built before August 7, 1951, and no further construction subject to licensing was carried out in the meantime).

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 on the real estate owned by the seller, namely through representations and warranties, conditions precedent and specific indemnities related to potential or actual contingencies identified in the property.

The legal requirements for transferring shares depend on the type of company being transferred.

[1] Please refer to section 2 - "Ways of doing business

[2] Please refer to section 7 - Tax

13.3. Urban lease agreements

The legal regime for urban lease agreements is essentially set out in the Portuguese Civil Code and in Law 6/2006, of February 27, as amended.

Under a lease agreement, one of the parties (the landlord) grants the other party (the tenant) the temporary use of a real estate property, in exchange for payment of rent. The lease agreement must be formalized in a written document and leases with an initial term of more than six years must be registered with the land registry office.

Unless otherwise established by both parties, the tenant may not assign its position in the lease agreement to a third party without the landlord's consent, except in the case of a transfer of business (trespasse) that also includes the lease.

If a leased property is sold, the lease agreement is transferred to the new owner with the same terms and conditions, and the new owner assumes the position of the landlord without further requirements. However, under certain conditions, tenants are granted a pre-emption right if the property is being sold.

The use of property under lease agreements must comply with the use permit issued for the property, under penalty of nullity.

Urban lease agreements can be divided into urban leases for (i) residential or (ii) commercial purposes.

The main aspects of urban leases for residential purposes, including early termination, opposition to the renewal and expiry of the agreements, are provided by law.

Regarding commercial lease agreements, their main characteristic is the parties' contractual freedom to establish the provisions on duration, termination and opposition to renewal. If the parties do not establish these provisions, the legal provisions for residential agreements will apply.

Residential lease agreements are subject to a maximum mandatory limit of 30 years, while in commercial lease agreements the landlord and tenant may agree a longer duration (although this would result in tax implications).

In January 2020, a new right entered into force allowing for access to residential properties – the right to durable housing (direito de habitação duradoura).

Under a durable housing right, the resident is entitled to a permanent and lifelong agreement by paying the landlord an initial deposit based on the market value of the property, as well as periodic installments.

13.4. Planning and licensing

The main urban planning and property project licensing laws are (i) the Basis Law on Territorial and Urban Planning Policies (*Lei de Bases da Política dos Solos, Ordenamento do Território e Urbanismo*), (ii) the Territorial Planning Instruments Regulations (*Regime Jurídico dos Instrumentos de Gestão Territorial*) and (iii) the Legal Regime of Urban Planning and Building (*Regime Jurídico da Urbanização e da Edificação*).

Under the Legal Regime of Urban Planning and Building, both national and local public authorities (state and municipal) can approve the rules of use, occupation and transformation of the land, defining goals and principles to which land use should conform. These rules are contained in plans, the main territorial management instruments, and all urban operations must comply with their regulations.

Under the main urban planning legislation, both national and local public authorities (state and municipal) can approve use, occupation and land transformation rules, defining goals and principles to which land use should conform

Current territorial management instruments have a different nature, notably sectorial or special planning instruments, including Natura 2000 and the special plan for the coastal area ("POOC"), and a different scope (national, regional or municipal plans).

However, the most recent amendment to the Legal Regime of Urban Planning and Building aims to simplify access for interested parties to all the regulations applicable to a certain urban project, and it establishes that they must all be concentrated in a single plan (the municipal or inter-municipal plan).

The RJUE establishes the rules for executing real estate projects, urbanization, building and allotment operations.

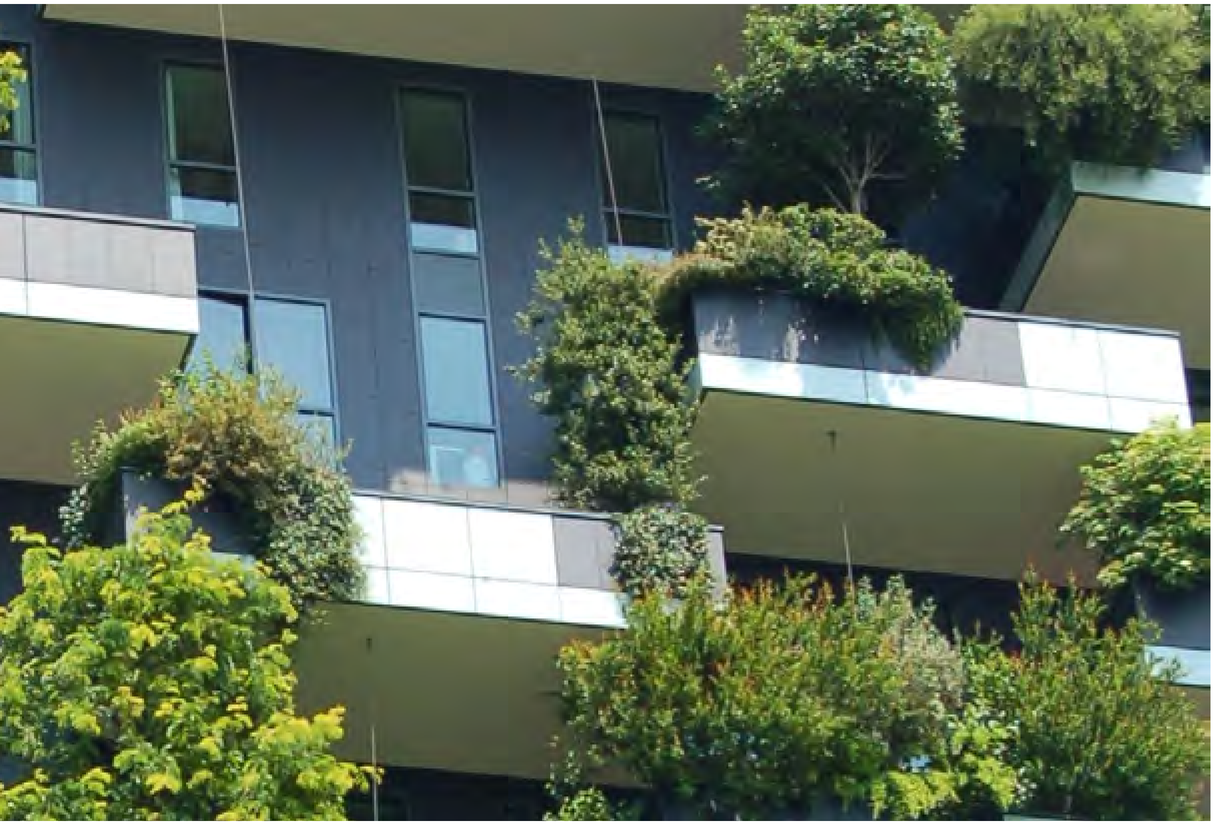
Municipalities are responsible for assessing whether the execution of a certain urban project is according to the applicable laws and territorial management instruments.

However, although municipalities play an important role in executing urban projects, other entities may be asked to give their opinion (e.g., the Public Heritage Department [Direcção-Geral do Património Cultural] or the Tourism Authority [Turismo de Portugal]). In some cases, their opinion can be binding, which means to proceed with a specific urban project, the project may need these entities' approval.

The execution of urban projects may be subject to different procedures. Before filing for one of these procedures, any interested party can obtain information on its viability and its legal or regulatory constraints with a prior information request (pedido de informação prévia). Municipalities have a set term to decide on the request, and their decisions are binding on the competent bodies. The effects of these decisions remain in force for one year.

Depending on the type and importance of each project, as set out in the RJUE, it may be subject to one of the following procedures: licensing (licenciamento), advance notice (comunicação prévia) or use permit (autorização de utilização). Projects without relevant urban impact (generally maintenance works) may not depend on any of these procedures, although they may be subject to municipal supervision.

Once the project is completed, and the construction complies with the project that was submitted and approved (or, in advance notice procedures, not rejected by the municipality), a use permit will be issued. The use permit is the legal document that verifies (i) the completion of the construction works; (ii) that the works conform with the building permit (licença de construção); and (iii) the authorized use that may be given to the building.



14 Private equity

14.1. Introduction

Law 18/2015, of March 4, as amended ("Law 18/2015"), regulates private equity activity in Portugal, which is supervised by the Portuguese Securities Market Commission ("CMVM").

Private equity activity in Portugal is regulated by Law 18/2015, as amended, and supervised by the Portuguese Securities Market Commission

There is no real distinction under Portuguese law between private equity and venture capital, even though this distinction is commonly based on the stage of investment (venture capital enclosing seed capital, start-up and early-stage investment, while expansion, capital replacement, turnaround, refinancing of debt, management buy-out and management buy-in investments qualify as private equity in the strict sense). Therefore, since the distinction does not result from the law, the term "private equity" is also used in its broadest sense, comprising private equity activities in all their forms, including venture capital.

In 2015, there was a regulatory change regarding the legal framework of private equity activities, with the enactment of Law 18/2015, transposing into the Portuguese legal system EU Directive 2011/61/EU, of the European Parliament and Council, on alternative investment fund managers ("AIFMD"), and EU Directive 2013/14/EU, of the European Parliament and Council, on alternative investment funds' excessive dependence on credit ratings. Further, Law 18/2015 ensures the application of Regulation (EU) 345/2013, of the European Parliament and Council, on European private equity funds.

14.2. Regulatory frameworks

Simplified framework and qualified framework
Law 18/2015 created two distinct regulatory frameworks for private equity investment, depending on the global amount of the assets under management.

- Qualified framework

A more demanding and qualified regulatory framework applies to entities managing directly or indirectly assets exceeding (i) €100,000,000, when their portfolios include assets acquired with leverage; or (ii) €500,000,000, when their portfolios do not include assets acquired through leverage and when there are no reimbursement rights enforceable within a five-year period from the date of the investment. For this purpose, the increase of the risk exposure of the portfolio or of the funds through cash or securities' loans, derivatives or any other means is considered leverage.

Entities that fall within these thresholds are subject to tighter requirements, namely regarding (i) authorization and registration procedure; (ii) internal organization; (iii) conflict of interest policies; (iv) risk management policies; (v) valuation rules; (vi) remuneration policies; (viii) reporting obligations and (ix) delegation and sub-delegation of functions to third parties.

These entities can sell units of private equity funds in other European countries and third countries under the EU Passport rules, as established in Law16/2015, of February 24.

- Simplified framework

Under Portuguese law, "private equity" comprises private equity activities in all their forms, including venture capital

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, when their portfolios include assets acquired with leverage; or (ii) €500,000,000, when their portfolios do not include assets acquired through leverage and with no reimbursement rights enforceable within a five-year period from the date of the investment, are as follows:

- Management companies must now have capital of at least €125,000 (formerly, at least €750,000 for companies whose management included both their own and external assets, and €250,000 for companies whose activity was exclusively the management of private equity funds).

- When the global net value of the assets under management by private equity companies exceeds €250,000,000, they must have their own funds corresponding to 0.02% of the global net value exceeding this limit (with a possible exemption of up to 50% of that amount if they benefit from a guarantee in the same amount issued by a European financial or insurance entity).

- Private equity companies must report annually to the CMVM their main investments, main risk exposures and main concentrations of the private equity funds under management.

These private equity companies may opt to request authorization to carry out their activities as a managing entity falling above the AIFMD thresholds (opt-in procedure) subject to a tighter legal framework to be able to benefit from the rights granted under the AIFMD (e.g., applicability of the EU marketing and management passport).

Innovation of the Portuguese framework

Another aspect of the Portuguese framework worth highlighting is the possibility to create sub-funds.

The legal framework also establishes a penalty system, under which infractions are punishable with fines of up to €5,000,000.

Other relevant legal aspects

Portuguese law establishes two distinct regulatory frameworks for private equity investment, depending on the global amount of the assets under management

The Portuguese legal framework leaves room for contractual freedom, since it enables fund investors and management companies to enter into an agreement to establish the rules governing equity (the rules of procedure of private equity funds) regarding the type of assets in which it can invest, portfolio composition, definition of investment policy and the fund's borrowing limits. There are laws and regulatory provisions that should also be considered regarding (i) assets investment diversification thresholds, (ii) permitted or prohibited transactions, (iii) conflict of interest, and (iv) winding-up and dissolution.

Changes to the legal framework

Since the enactment of Law 18/2015, the legal framework on private equity has been reviewed three times: (i) by Decree-Law 56/2018, which removed the 10-year limitation applicable to the qualification of private equity investments, allowing management companies to adopt a more flexible investment policy; (ii) Decree Law 144/2019, which enabled the creation of credit funds, aimed at fostering the capital market and diversifying the sources of financing; and (iii) law 25/2020, which adapts the penalty system provided for in the legal regimes applicable to entities managing investment funds and/or securitization funds.

Conclusion

The legal regime for private equity is harmonized with the EU regulations (although the transposition of the AIFMD in Portugal has resulted in some local differences), as well as the amendments to the legal framework introduced by Decree Law 56/2018, Decree Law 144/2019 and Decree Law 25/2020, aiming to provide greater flexibility, simplify and, consequently, promote the increase of private equity activity. The regime ensures strong protection for the investor, establishing demanding rules in areas as diverse as supervision and sanctioning, activity access, information disclosure, risk and liquidity management and remuneration, and aligning the national framework with AIFMD and the practice in the rest of the European Union.

15 Permit for investment activity program (ARI)

Under Portuguese law, non-EU citizens carrying out investment activities in Portugal may be granted a residence permit, provided they meet certain requirements

15.1. Investment program associated with residence permits

Under Portuguese law, non-EU citizens carrying out investment activities in Portugal may be granted a residence permit, provided they meet certain requirements.

Initially enacted through Law 23/2007, of July 4, approving the legal regime for the entry, permanence, exit and removal of foreigners from Portugal, as amended, this investment program associated with residence permits has subsequently been developed by Law 84/2007 of November 5, as amended.

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

- residence visa waiver for entering Portugal;
- residence permit in Portugal;
- free access to the Schengen Area;
- possibility of family reunification;
- access to a profession or to carry out a business in Portugal;
- same access to the health and education systems as Portuguese citizens;
- access to justice; and
- possibility to apply for (i) permanent residence (general) or permanent residence for ARI holders, after holding the temporary permit for at least five years; or (ii) citizenship after six years if the requirements are met.

15.1.1. Investment activities

Under Law 23/2007, of July 4, as subsequently amended, an investment activity is any activity carried out by an individual or through a company (in the case of a limited liability company with a sole quota holder) that generally leads to at least one of the following situations in Portugal and for a minimum of five years:

- Capital transfer of at least €1 million

  This type of investment includes the acquisition of or investment in

  Portuguese listed and unlisted companies and covers 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.

It is also possible to invest in the Portuguese state's public debt instruments, including treasury bonds, savings certificates and treasury certificates.

- Creating at least 10 jobs

  Investors can either incorporate a company or invest in companies already incorporated in Portugal. However, the 10 jobs legally required must be created after the ARI regulations were enacted, i.e., after August 9, 2012.

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

- Acquiring real estate with a purchase price of €500,000 or more

  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 can be (i) through joint ownership, provided that the applicant is a joint owner and invests €500,000 or more; or (ii) through a purchase and sale commitment agreement, if the down payment is €500,000 or more; or (iii) through a limited liability company with the applicant as the sole quota holder.

  The procedure for purchasing real estate in Portugal involves: (i) carrying out a due diligence on legal and tax matters, (ii) signing a purchase commitment agreement to secure the property purchase and later a purchase contract, or directly entering into a purchase contract, (iii) paying the price or the down payment (in the case of a purchase commitment agreement), and (iv) registering the property with the land registry and inform the tax authorities about the real estate purchase.

- Purchasing real estate that was built at least 30 years ago or is located in urban rehabilitation areas for rehabilitation purposes, for €350,000 or more.

- Capital transfers of €350,000 or more to be applied to research activities carried out by public or private scientific research institutions that are part of the Portuguese scientific and technological system.

- Capital transfers of €250,000 or more to be applied to investment or to support artistic output recovery or maintenance of the Portuguese cultural heritage.

  The investment may be carried out through central and peripheral direct administration services, public institutes, entities forming part of the business public sector, public foundations, private foundations with a public utility statute, 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.

- Capital transfers of €350,000 or more to be applied to the acquisition of participation units in investment funds or in venture capital funds incorporated in Portugal, focused on the capitalization of companies.

  At the time of the investment, the funds must have a maturity of at least five years and at least 60% of the invested capital must be carried out in companies based in Portugal.

- Capital transfer of €350,000 or more to be applied to the incorporation of companies with head offices in Portugal, combined with the creation of five permanent jobs. This value may also be applied to invest in the increase of share capital of a company already incorporated, combined with creating or maintaining jobs, with a minimum of five permanent employees and for a minimum period of three years.

Since July 1, 2015, provided the investment is carried out in low density territories, the minimum amount requirement for the investment activities mentioned in subparagraphs b), c), d), e) and f) may be 20% lower. For these purposes, low density territories are the level III territories of the Nomenclature of Territorial Unities for Statistical Purposes (NUTS III) with less than 100 inhabitants/km2 or with a GDP per capita below 75% of the national average.

The law allows those with Portuguese residence permits or those who apply to ARI to also apply for residence permits for their family dependents

15.1.2. Family reunification

The law allows those with Portuguese residence permits or those who apply to ARI to also apply for residence permit for their family dependents, which include:

- spouse;
- children, as well as adult children with disabilities;
- adopted children;
- single, adult children studying at a school or educational institute in Portugal or abroad and financially dependent on their parents;
- siblings who are minors, of which the investor has custody granted by the authorities in their country of origin and recognized in Portugal; and
- financially dependent parents of the investor and of the spouse.

Under certain conditions, ARI holders can apply for permanent residence permits and for Portuguese citizenship

15.1.3. Permanent residence permit

The residence permit granted under the investment program offers holders the possibility of applying for permanent residence permits or permanent residence permits for ARI holders, provided the applicants:

- have had a temporary residence permit for at least five years;
- have not been sentenced, individually or cumulatively, to over one year of imprisonment in the past five years of residence in Portuguese territory;
- have means of ensure their livelihood;
- have accommodation;
- have basic knowledge of the Portuguese language; and
- regarding residence permits for ARI holders, the investment activity that was carried out for the ARI concession must be kept.

15.1.4. Portuguese citizenship

ARI holders can apply for Portuguese citizenship, if they:

- are of legal age or emancipated under Portuguese law;
- have been legally residents in Portugal for at least five years;
- have sufficient knowledge of the Portuguese language (A2 level); and
- have not been convicted of a crime punishable with more than three years' imprisonment under Portuguese law.

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