LEGALINK

INVESTMENT AND BUSINESS START UP IN PORTUGAL

(A) Legal system

1. **What is the legal system (i.e. common law system, civil law system or both) in your country?**

   The Portuguese legal system is a civil law system.

2. **What are the major law courts in your country?**

   The major law courts in Portugal are the Supreme Court of Justice, the Supreme Administrative Court and the Constitutional Court.

3. **What are the sources of laws (such as constitution, statute law and common law) in your country?**

   The main sources of law are the Constitution and statutory law. The principle of the primacy of EU law over the internal law of the Member States applies. With regard to custom, it is difficult to identify cases in which it is accepted that an actual solution has custom as its source. *Stare decisis* does not apply, decisions of appellate and supreme courts being persuasive (although relevant) authorities. The Constitutional Court may declare the unconstitutionality or illegality of norms with generally binding force.

4. **What is/are the official language(s) in your country?**

   The official language in Portugal is Portuguese.

(B) Foreign investment

5. **Are there any restrictions faced by a foreign individual or company when they want to invest in your country? Is an approval or permit required if a foreign individual or company wants to enter a certain industry?**

   Foreign investments do not have to be authorized by the Portuguese authorities (Decree-Law no. 295/2003, of November 21).

6. **Are there any exchange control or currency regulations in your country?**

   As a general rule, no restrictions apply to external operations or exchange operations. Please note that temporary restrictions may be determined on the grounds of serious political reasons or of emergency, as provided for in international law provisions binding upon Portugal (Decree-Law no. 295/2003, of November 21).

Information regarding external operations or exchange operations may have to be reported to the Portuguese central bank as provided for in instructions issued by said central bank.

Any person entering or leaving the European Union through Portugal and carrying cash of a value equal to EUR 100,000 or more must declare this sum to the Portuguese customs authorities [Decree-Law no. 61/2007, of March 14, and Regulation (EC) no. 1889/2005 of the European Parliament and of the Council, of 26 October, 2005, on controls of cash entering or leaving the EU].

7. What grants or incentives are available to a foreign individual or company to encourage investment in your country?

Several grants and incentives are available to both nationals and foreigners. Please find a brief description of some of them below. On the other hand, with regard to foreigners, the so-called golden residence permit programme should also be highlighted.

- Large investment projects (Decree-Law no. 203/2003, of September 10):

  Large investment projects may be granted the following benefits:

  - Financial incentives;
  - Tax benefits, as provided for in the law;
  - Public funding.

  On an exceptional basis, large investment projects may also be granted the following benefits:

  - Co-financing with regard to training;
  - Compensation with regard to scarcity of qualified personnel;
  - Compensation with regard to distance from know-how and innovation sources;
  - The provision of infrastructure by the government.

  The following qualify as large investment projects:

  - Investments of more than EUR 25 million;
  - Investments made by companies with a consolidated turnover of more than EUR 75 million;
  - Investments made by entities other than companies with an annual budget of more than EUR 40 million.

- Projects of potential national interest (Decree-Law no. 174/2008, of August 2008, as amended by Decree-Law no. 76/2011, of June 20; Decree-Law no. 285/2007, of August 17):

Projects qualifying as of potential national interest, taking into account their value from an economic, social, technological, energy or environmental sustainability perspective, may be monitored by an evaluation and monitoring committee up to the moment the implementation of the project is initiated, applicable administrative procedures being speeded up by means of an institutional collaboration on the part of the competent authorities.

- Tax relief on contractual investments in production units (Tax Benefits Statute; Investment Tax Code)

  Projects for investment in production units effected until December 31, 2020, amounting to EUR 5 million or more, deemed relevant to the development of sectors considered of strategic interest to the national economy and to the reduction of regional inequalities, leading to the creation of jobs and helping to boost technological innovation and national scientific research, may be entitled to tax benefits on a contractual basis for a period of up to 10 years.

  Said benefits may be granted with regard to the following investment projects: (i) extractive and processing industries; (ii) tourism and activities declared to be of interest to tourism; (iii) computer technology and activities and associated services; (iv) farming, aquaculture, stock-rearing and forestry activities.

- Tax benefits for entrepreneurial research & development (SIFIDE II)

  SIFIDE II is a system of tax incentives for R&D in force until 2015. It operates by deduction of R&D costs not subsidized by the State from corporate income tax.

- Golden residence permit programme (Law no. 23/2007, of July 4, as amended by Law no. 29/2012, of August 19; Order no. 11820-A/2012, as amended by Order no. 1661-A/2013)

  Those who perform investment activities in Portugal may apply for a residence permit. Minimum quantitative requirements imply at least one of the following: (i) capital transfer with a value equal to or above EUR 1 million; (ii) the creation of 10 or more job positions; (iii) purchase of real estate property with a value equal to or above EUR 500,000. An investment period of at least 5 years is required and minimum permanence periods apply with regard to residence permit renewals.

(C) Business vehicles

8. What is the most common form of business vehicle used by foreign investors in your country?

The most common types of companies under Portuguese law are the private limited liability company ("*sociedade por quotas*" or "*Lda.*") and the limited liability company by shares ("*sociedade anónima*" or "*S.A.*").

In these types of companies shareholder liability is limited to the payment of the subscribed capital.

The Lda. type is commonly adopted by small companies and the S.A. type for medium- and big-sized companies.

Moreover, Portuguese law foresees and regulates another two types of companies – the unlimited liability company ("*Sociedade em Nome Colectivo*") and the company type that combines shareholders with limited liability and shareholders with unlimited liability ("*Sociedade em Comandita*"). However, these two company types are rarely used, as they involve unlimited liability of all or part of the shareholders.

Please provide details on:

i. Registration formalities:

Our law establishes a special procedure of immediate incorporation of companies under which it is possible to incorporate a company in one single day.

However, considering that under this procedure a company's by-laws must follow a pre-established form (standard by-laws should be used), a tailor-made company shall follow the classical incorporation procedure, as follows:

a. Application for the approval of the company's name by the National Registry of Collective Persons (RNPC);
b. Drafting of the company's by-laws;
c. Resolution of the competent corporate body of the parent company(ies) approving the incorporation of the subsidiary;
d. Opening of a bank account in the name of the company to be incorporated and deposit of the cash participations subscribed by the shareholders, a deferral of this payment not being allowed;
e. Application for the attribution of a Portuguese taxpayer number to the non-resident shareholders who do not have one;
f. Signature of the articles of association (the articles of association assume the form of a private document, in which the signature of the shareholders/representatives of the shareholders must be certified);
g. Appointment of the company's corporate bodies in the articles of association or later in a resolution of the general shareholders' meeting;
h. Registration of the company at the Commercial Registry Office.

ii. Minimum (and maximum) share capital:

For Lda. Companies, Portuguese law has abolished the minimum capital requirement for their share capital. Previously, a minimum share capital of € 5,000.00 (five thousand euros) was required.
Nowadays, the amount of the share capital may be freely established by the shareholders. Considering that the minimum nominal value of each share ("quota" as referred to in the subsequent number), is of € 1.00 (one euro), the share capital may correspond to the sum of quotas with the nominal value of € 1.00 subscribed by each shareholder.

The share capital of S.A. companies is divided into shares ("*acções*"). The minimum share capital for this type of company is €50,000.00 (fifty thousand Euros).
A maximum limit is not applicable.

iii. Whether shares can be issued for non-cash consideration, such as assets or services (and any formalities):

The shareholders may make capital payments in kind, namely by transferring to the company the ownership of assets. This kind of payment is subject to specific rules, as the value of the assets of which they consist must be certified by an independent chartered accountant (auditor).

Nevertheless, in S.A. and Lda. companies, shares cannot be issued for service consideration.

iv. Any restrictions on foreign shareholders:

There aren't any restrictions applicable to the nationality of the shareholders.

However, the foreign shareholders who are not Portuguese residents need to obtain a Portuguese tax payer number. In the event of the foreign shareholders not being residents of a European Union member state, they will need to appoint a Portuguese resident (an individual or company) as a tax representative in Portugal.

v. Management structure and any restrictions on foreign managers:

The management and representation of Lda. companies is committed to one or more directors who must necessarily be individuals (Lda. companies may not be appointed directors of a Lda. company).

Pursuant Portuguese law, there aren't any restrictions on foreign managers. However, those directors who are not Portuguese residents shall need to obtain a Portuguese tax payer number. In the event of the directors not being residents of a European Union member state, they will need to appoint a Portuguese resident (an individual or company) as a tax representative in Portugal.

The management of S.A. companies may be committed to a Board of Directors or to a Sole Director. The Directors do not need to be shareholders of the company and are appointed at the shareholders' general meeting for a maximum term of 4 years, which may then be renewed.

Moreover, a company may be appointed as a director of a S.A. company, whereas it appoints an individual to assume its representation.

The S.A. companies whose share capital exceeds the amount of € 200,000.00 are not allowed to have a Sole Director and shall appoint a Board of Directors.

The directors' liability must be guaranteed by a deposit of a minimum amount of € 50,000.00 and of € 250,000.00 with respect to companies issuing securities admitted in a regulated market, as well as to companies that have exceeded certain limits for two consecutive years (total balance sheet: € 100,000,000.00; total net sales and other

profits -€ 150,000,000.00) and number of workers employed on average during the fiscal year (150).

The deposit may be replaced by an insurance contract.

Except in companies issuing securities admitted in a regulated market or in companies that have exceeded the above mentioned limits for two consecutive years, the payment of the deposit/the insurance contract may be waived by the general shareholders' meeting.

vi. Directors' liability;

a) Liability before the company:

The directors may be liable for the damages caused by any act or omission resulting from the breach of their legal or contractual duties, unless they prove that they did not act guiltily.

Furthermore, directors' liability shall be considered excluded if the directors prove that they have acted in a duly informed way, free from any personal interest and according to criteria of business reasonability.

Likewise, the directors who did not participate in a collegiate resolution of the directors, or whose votes did not prevail, shall not be liable for the damages caused to the company.

b) Liability before the company's creditors:

The directors shall be liable before the company's creditors if, due to negligent breach of legal or contractual provisions regarding the creditors' protection, the assets of the company become insufficient to pay creditors for the company's debts.

c) Liability before shareholders and third parties:

The directors shall also be liable, in general terms, before the shareholders and third parties for direct damages resulting from the exercise of their duties.

vii. Parent company liability; and

As a general rule, the parent company liability is limited to the payment of the subscribed capital.

However, in certain cases, such as the case where a parent company has a subordination contract with the subsidiary or owns 100% of the subsidiary's share capital, it can be liable for the debts of the subsidiary.

viii. Reporting requirements (including filing of accounts):

Regarding the filing of accounts whether in Lda. companies or S.A. companies, it is the responsibility of the directors to prepare the annual accounts and the management

report of the companies and submit them to the company's audit body/chartered accountant, if applicable, for examination and certification.

In S.A. companies the legal certification of accounts and the issuance of a report by the supervision body are mandatory.

The annual accounts and the management report must be submitted for approval by the general shareholders' meeting within three months after the end of the fiscal year.

After being approved by the general shareholders' meeting, the annual accounts, the management report and most of the documents of rendering of accounts must be deposited at the competent Commercial Registry Office. Presently, such deposits are made by filing an annual electronic declaration to the Ministry of Finance, also in compliance with tax, accounting and statistics reporting duties ("*Informação Empresarial Simplificada*").

(D) Employment

9. What are the main laws regulating employment relationships in your country?

The most relevant legal rules concerning employment relationships are in the Labour Code (LC), which contains the rules of the so-called *individual labour law* and of *collective labour law*, including rules about workers' representation, trade unions, collective bargaining agreements (CBA) and strikes. The LC presently in force was approved in 2009 (Law n. 7/2009, 12 February). The last significant revision occurred in June 2012 (Law n. 23/2012, 25 June), as a result of the measures foreseen in the Memorandum of Understanding on Specific Economic Policy Conditionality (MoU), signed between Portugal, the International Monetary Fund, the European Central Bank and the European Union.
The LC covers private employment relationships. Civil servants or public employment relationships are subject to special legislation. The employment relationships with public enterprises (owned or controlled by the State or other public bodies) are, in general, covered buy the LC.
Other relevant laws are the one that covers accidents at work (Law n. 98/2009, 4 September) and the LC complementary legislation (Law n. 105/2009, 14 September).

10. Is a written contract of employment required in your country, and if so, must it contain any particular language? Are any agreements and/or implied terms likely to govern the employment relationship?

Employment contracts of indefinite duration are not subject to any written form requirement, although in practice the written form is usually applied. Written form is mandatory for some special employment contracts, being the most relevant the fixed-term employment contract, which is the normal form of hiring of new employees, despite the law foreseeing that these types of contracts are permissible only if necessary to satisfy temporary needs of work or for reasons of employment politics, such as to promote the hiring of certain categories of employees (first-time job seekers and long-term unemployed) and the start-up of new enterprises or establishments.

A written form is also required for other employment contracts, such as: contracts with foreign employees, part-time employment contracts, teleworking and temporary employment contracts. Also some specific clauses must be included in writing, such as non-competition clauses.

Although it is not mandatory to use the local language, in cases where a written form is mandatory, if the language used is not Portuguese, the employer must be in a condition to prove that the employee understands the language used.

11. Do foreign employees require work permits and/or residency permits if they work in your country? If so, how long does it take to obtain them and how much do they cost?

The law (Law 23/2007, 4 July, modified by the Law 29/2012, 9 August) demands that if a foreigner intends to perform his/her professional activities within Portuguese territory he/she must apply for a visa. This is not necessary if the person in question is a national of an EU Member States or a citizen of a third State with which the EU has signed a free movement of persons agreement.

The following are the types of visas that allow for employment in Portugal:

a) *Temporary stay visa* - allows entry into Portuguese territory for several purposes, especially to complete a professional assignment, either dependent or independent, whose duration does not exceed, as a rule, a six-month period;

b) *Residence visa* – allows its holder to enter into Portuguese territory in order to apply for a residence permit (for example, for purposes of subordinated professional activity). The residence visa is valid for two entries into Portuguese territory and enables its holder to remain for a period of four months.

12. Are employees entitled to management representation and/or to be consulted in relation to corporate transactions (such as redundancies and disposals) in your country?

Employees have the right to create works councils at enterprise level. This right applies to all employees, regardless of the dimension and the nature of their employer.
Work councils are entitled to several rights, such as: the right to information, to scrutiny of management; to manage or co-manage welfare facilities; to have regular meetings with the enterprise management bodies, the right to be consulted on the reorganization of production units, the right to distribute information and display notices and the right to organize meetings in the workplace. Despite the relevance the law gives to work councils, in practice, nowadays, the significance of these representative bodies is very small. There are only a couple of hundred companies with work councils, mostly State owned.

Trade unions also have the right to appoint representatives at enterprise level (called union delegates), who are elected by the unionized employees. If there are several union delegates in the enterprise, they can organize themselves into a workplace union committee.

Regarding some specific issues, the LC also foresees the employer's obligation to inform and consult the workers' representatives (work council or trade union

representatives within the enterprise), as it is the case in redundancy procedures (see *infra*, n. 16) and in the case of transfer of business or undertaking.

13. Are there any employment protection laws (such as minimum wage law and/or maximum working hours law) in your country?

There are several protection laws in Portugal. The most relevant are the following:

a) *Minimum wage*, which is set by the Government every year. Since 2011 the minimum wage remains at € 485.00 per month, as it has not been updated due to the economic crisis;

b) *Holiday and Christmas bonus* - all employees are entitled to these allowances that in general amount to a basic monthly remuneration;

c) *Holidays* – it is mandatory to give employees 22 days of annual leave each year;

d) *Working time*: the LC foresees the following maximum working hours: 8 hours per day and 40 hours per week;

e) *Special protection* – some categories of employees (such as pregnant women, minors, students and disabled people) are entitled to a special protection in terms of working time and termination.

14. Is there any pension system in your country? Is it on a mandatory or voluntary basis? If so, please give details.

There is a mandatory pension system in Portugal that is part of the social Security System that covers all employees.
The execution of an employment contract within Portuguese territory obliges both the employer and the employee to be registered with Portuguese Social Security.
As to the contributions, the general applicable rates for Social Security purposes are of 23.75% for the employer, and 11% for the employee (this amount is deduced from the employee's monthly retribution). These percentages are calculated on the remuneration amount paid, every month, to the employee.

The retirement pension is granted to those people who have made contributions to the Social Security system for a minimum period of 15 years (the "contribution period") and have reached 65 years of age, provided that they request the retirement (which is not mandatory). The amount of the retirement pension varies according to the length of the contribution period and the amount of the remunerations paid during the same period. All years of the contribution period are considered up to a limit of 40 years.

In some companies there are also private, complementary pension schemes.

15. How is the termination of individual employment contracts regulated in your country? Under what circumstances is the dismissal of an employee unlawful?

Article 53 of the Portuguese Constitution states that "workers are guaranteed security of employment, and dismissal without just cause or for political or ideological reasons is prohibited". This rule implies that all dismissals must be justified or based on circumstances that are considered as "just cause". Thus, the concept of just cause

includes not only disciplinary dismissal but also other forms of dismissals, provided they are justified according to the law.
The LC foresees the following kinds of dismissals: dismissal based on an unlawful conduct of the employee (or disciplinary dismissal); redundancies or dismissals resulting from the elimination of jobs (collective dismissals and individual redundancy); and dismissal for failure to adapt.

In disciplinary dismissals, the motive or "just cause" consists in culpable behavior on the part of the employee, which, due to its seriousness, makes the continuance of the employment relationship immediately impossible in practice. The essence of the concept of just cause consists in the impossibility, in practice, of continuing the employment relationship. The law gives some examples of situations qualified as just causes, such as: unjustified disobedience to instructions from a superior; repeated lack of due diligence in the performance of one's duties; unjustifiable absences causing serious damage or risk to the employer, or, regardless of damage or risk, when the absence exceeds in each calendar year more than five consecutive working days or more than ten non-consecutive working days; failure to observe standards of hygiene or safety at work; unusual reductions of productivity.
Even when an employee's behavior is of such seriousness that it may justify dismissal, this may only occur after the carrying out of the proper procedure. The procedure is quite complex and usually requires several weeks to complete. The works council should be informed of the procedure and it has the right to give a written opinion, although it is not binding.
In case of a disciplinary dismissal, the employer does not have to pay any compensation for the termination of the employment contract.

If the dismissal is not justified according to the law or if the employer does not observe the proper procedure, and if the court rules that the reasons invoked for the dismissal were insufficient or haven't been properly proved, the termination of the employment contract can be considered null and void, and, therefore, the contract remains in force, which can lead to reinstatement or compensation.
For this it is necessary that the employee contests the dismissal in court (labour courts have exclusive jurisdiction over the legality of dismissals) within a period of 60 days after being dismissed or of 6 months in case of collective dismissal.
If the court considers the dismissal unlawful the employee is entitled to receive the pay that he/she would have otherwise received from the date of the dismissal up to the date of the final ruling. With respect to the period subsequent to the ruling, the employee may choose to be reinstated with all rights and guarantees unaffected or to receive compensation that shall be established by the court between 15 and 45 days of basic pay and seniority allowances per each year or part year of service for the company, with a minimum of three months' pay.
Reinstatement can only be avoided by the employer in limited cases: if the dismissal took place in a company with less than 10 employees or if the dismissed employee is a director. However, the decision not to reinstate the employee must be made by the court. If this is the case, the compensation due to the employee shall be established by the court between 30 and 60 days of basic pay and seniority allowances per each year or part year of service for the company.

16. Are redundancies and mass layoffs regulated in your country? If so, please give details.

Like other types of dismissals, redundancies are regulated by law. What is understood as redundancy is the termination of the employment relationship, initiated by the employer, due to reasons connected with the enterprise, that led to the elimination of jobs. Redundancies can assume two forms: *collective dismissal* and *individual redundancy*.
A dismissal is considered to be collective whenever the employer terminates, either simultaneously or within a period of three months, the employment contracts of at least:

- 2 employees, in the case of companies with up to 49 employees;
- or 5 employees, in companies with 50 or more employees.

If these numbers are not met, the system regulating "individual redundancy" is applicable.

In both cases the dismissal must be justified by the closure of one or more departments of the company or by the elimination of jobs or work positions due to economic or market forces, technological or structural reasons.

For both types of dismissals the law foresees a complex procedure that implies the pre-notification to the work council of the intention to carry out a dismissal and of the respective reasons (or if the company does not have a work council, the trade union representatives within the enterprise) and the Ministry of Employment. If there are no employee representative structures, all potentially-affected employees must be notified and may elect, among them, a committee to negotiate the dismissal with the employer. In the case of individual redundancy, the initial notification is always sent to the employees in question. In the initial communication, the employer also has to indicate the criteria that are going to be used in selecting the employees to be dismissed.

In collective dismissals, a phase of negotiations and consultation is open between the employer and the employees, in order to reach an agreement regarding the method of carrying out the dismissals and the adoption of alternative measures (what could be called a social plan, although in practice it is very rare that such a plan is effectively drawn up). In individual redundancies, the negotiation is replaced by the possibility of the employee affected and the employee representative structure to issue a written opinion about the dismissal.

The services of the Ministry of Employment participate in the negotiation process for collective dismissals, attending the meetings between the parties, but they don't have any power to authorize or to prevent the employer's decision to carry out the dismissal.

In collective dismissals the employer may issue his/her decision fifteen days after the initial communication, giving a written notice to each employee to be dismissed, stating the specific grounds for the dismissal and the date on which the contract is to be terminated. The dismissal decision must also be sent to the Ministry of Employment, accompanied by several documents, including a list with the relation of each employee dismissed or other measures that have been decided. This list must also be sent to the employees' representation.
In the case of an individual redundancy, the employer must wait five days (after the employee or his/her representatives have issued their opinion on the dismissal) before taking the final decision. This must also be sent to the employee representatives and to ACT.

In all redundancies the employer is obliged to grant a prior notice period to the employees, from the date of the final decision to the date of the actual termination of the employment contracts. The prior notice can be 15, 30, 60 or 75 days, depending on the employee's seniority.

These dismissals are accompanied by the payment of compensation. As already mentioned, the rules about compensation have been recently changed, which implies that the regime varies depending on whether it applies to contracts concluded since November 1, 2011 (*New Contracts*) or to contracts concluded until October 30, 2011 (*Old Contracts*):

a) For *New Contracts* compensation corresponds to 20 days of basic pay and seniority allowance per each year of employment (in the case of a fraction of a year, payment is calculated proportionally), the total amount being subject to the following limits:
   - The base for calculation may not exceed 20 times the guaranteed minimum monthly salary, which presently corresponds to a total amount of € 9 700;
   - The total value of the compensation may not exceed 12 times the basic monthly salary and the seniority allowances of the employee in question or 240 times the minimum wage (currently, € 116.400).

b) For *Old Contracts* compensation is made up of two installments:
   - The first installment corresponds to one month basic salary and seniority allowances per each complete year of seniority worked until October 31, 2012 (here also a fraction of a year worked is calculated proportionally);
   - The second installment is 20 days of basic salary and seniority allowances for each full year worked, starting from November 1, 2012.

   The maximum limits created for the new contracts are also applicable in this case, as follows:
   - If the value of the first installment is equal to or higher than 12 basic monthly salaries and seniority allowances or 240 times the amount of the minimum salary, the employee receives the calculated amount but does not receive the second installment;
   - The sum of the two installments may not exceed the two referred limits.

The law presumes that the employee accepts the dismissal when he/she receives the compensation.

(E) Tax

17. In relation to employees, what is the basis of taxation (i.e. whether territorial source principle, tax residency principle or other principle is adopted) in your country?

In Portugal the taxation is based on the territorial source principle (please see **item 18**).

18. Under what circumstances are employees subject to taxation in your country?

Resident employees are taxed on their overall income. Non-resident employees are taxed on the income related to their work in Portugal or due by a resident company or by a permanent branch of a foreign company. Please note, in any case, that the double tax treaties usually include rules on the taxation of labor income.

19. What income tax or social security contributions must be paid by:

i. Employees?

Personal income tax

Residents are subject to personal income tax with progressive rates according to the income value. The rates applicable vary between 14.5% and 48%. Additional surcharges are applicable for income exceeding € 80,000.00 and € 250,000.00 – 2.5% and 5% respectively.

Resident employees' gross income is subject to a monthly withholding tax calculated according to an annual estimation established in a governmental ordinance. The amount withheld is deducted from the personal income tax assessed at the end.

Non-resident employees are subject to a definitive personal income withholding tax at the rate of 25% applicable to their gross income.

EU residents may opt for the Portuguese residents' regime provided that certain conditions are met.

Social Security contributions

Employees' gross income is subject to an 11% social security tax rate, which is withheld and delivered to the Tax Authorities by the employer.

ii. Employers, in relation to their employees?

Employers must withhold personal income tax and social contributions from their employees. Additionally, employers ought to contribute to the social security system with monthly contributions calculated on employees' gross salary. The rate applicable is 23.75%.

Non-profit entities are subject to lowers rates (21.8% or 20.8% for private solidarity institutions).

20. In relation to corporations, what is the basis of taxation (i.e. whether territorial source principle, tax residency principle or other principle is adopted) in your country?

Taxation of corporations is based on the territorial source principle (please see **item 21**).

21. Under what circumstances are incorporations subject to taxation in your country?

In general, incorporations are subject to Portuguese Corporate Income Tax ("CIT") for their profits from Portuguese source.

Incorporations can also be subject to Portuguese Property taxes for their Portuguese real estate assets.

Also, incorporations may be subject to Value Added Tax ("VAT") on their transactions made or related to the Portuguese territory.

22. What are the main taxes that potentially applicable to a corporation and what are their tax rates?

Corporate Income Tax (CIT)

Resident corporations are subject to Portuguese CIT for their overall profits.

Permanent branches of foreign companies in Portugal are subject to Portuguese CIT on the profits imputable to them.

The general corporate income tax rate is 25%. Profits higher than € 1,500,000.00 are subject to a surcharge of 3%. For profits higher than € 7,500,000.00, the surcharge rate is 5%.

There is also a local surcharge applicable to profits of resident companies and permanent branches. This additional tax is annually established by municipal entities and can vary from 0% to 1.5%.

Foreign companies with no permanent branch in Portugal are subject to Portuguese CIT on their Portuguese source earnings at different rates according to the type of income (please see **item 23**).

Social Security Contributions

Contributions for employees (please see **item 19. ii**).

Municipal Transfer Tax on real estate

Rates applicable:

a) Acquisitions of residential real estate – from 1% to 6% according to the real estate assets' tax value;
b) Land acquisitions– 5%;
c) Other assets including building plots – 6.5%;
d) Acquisitions made by companies resident in countries listed as tax havens – 10%.

Municipal Property Tax

Real estate ownership is taxed at annual rates according to the tax asset value.

Rates applicable:

a) Land – 0.8%;
b) Urban real estate (residential and other immovable assets) – 0.5% to 0.8%;
c) Urban real estate which tax value was assessed under the Municipal Property Tax Code – 0.3% to 0.5%;
d) Real estate owned by companies resident in countries listed as tax havens – 10%

Value Added Tax (VAT)

Considering the European VAT rules, this tax applies to transactions of goods and services according to their nature.

Rates applicable:
Normal rate: 23%
Intermediate rate: 13%
Reduced rate: 6%
Different rates are applicable for goods and services in Madeira and the Azores.

23. Please explain how each of the following is taxed in your country:

i. Dividends paid to foreign corporate shareholders?

Dividends paid to foreign corporate shareholders with no permanent residence in Portugal are subject to withholding CIT at a 25% rate. Note, however, that:

a) Double tax treaties often reduce the applicable rate to 15%, 10% or 5%;

b) Dividends paid by Portuguese companies and subject to 2011/96/UE Directive regime are tax exempt. Similarly, this rule is also applicable to dividends paid to corporate shareholders resident in EEA countries; and

c) Dividends paid to companies resident in countries listed as tax havens or to unidentified beneficiaries are subject to a 30% withholding CIT rate

ii. Dividends received from foreign companies?

Dividends received by Portuguese companies are included in the CIT taxable income and taxed according to the common terms (please see above, **item 22**). Withholding tax paid abroad is deductible up to the correspondent national tax accessible on the dividends. Finally, it should be noted that dividends paid to Portuguese companies or to foreign companies' permanent branches in Portugal and subject to the 2011/96/UE Directive are tax exempt. In similar conditions, this rule also applies to dividends received from EEA subsidiaries.

iii. Interest paid to foreign corporate shareholders?

Interest paid to non-resident companies is subject to withholding CIT at a 25% rate. However:

a) Double tax treaties often reduce the applicable rate to 15% or 10%;

b) Interest paid to foreign corporate shareholders and subject to the *savings Directive* (2003/49/EC) are subject to a 5% withholding tax rate until 1 July 2013 and are tax exempt from that day on; and

c) Interest paid to companies resident in countries listed as tax havens or to unidentified beneficiaries are subject to a 30% withholding CIT rate.

iv. Intellectual property (IP) royalties paid to foreign corporate shareholders?

IP *royalties* are subject to withholding corporate tax at a 15% rate. However:

a) Double tax treaties often reduce the applicable rate to 12%, 10% or 5%;

b) Just like interest, royalties paid to foreign corporate shareholders and subject to the *savings Directive* (2003/49/EC) are subject to a 5% until 1 July 2013 and are tax exempt from that day on; and

c) Royalties paid to companies resident in countries listed as tax havens or to unidentified beneficiaries are subject to a 30% withholding CIT rate.

24. Are there any thin capitalization rules (i.e. restrictions on loans from foreign affiliates) in your country? If so, please give details.

For tax periods from 2013 on, the Portuguese CIT Code establishes that financial costs greater than the lower of the following values:

a) € 3,000,000; or,

b) 70% of the EBITDA in 2013, 60% of the EBITDA in 2014, 50% of the EBITDA in 2015, 40% of the EBITDA in 2016 and 30% of the EBITDA from 2017 onward are not deductible (except for financial institutions and insurance companies). The non-deductible amount may be deducted over a five year period, provided that the limits are not met.

25. Are there any controlled foreign company rules (i.e. the profits of a foreign subsidiary must be imputed to a local parent company) in your country? If so, please give details.

In principle, profits obtained by a foreign subsidiary subject to a *more favorable tax regime* are imputable to the local parent company if:

a) This parent company owns at least 25% of the subsidiary's share capital or is entitled to 25% of the votes; or, alternatively,

b) The parent company owns at least 10% of the subsidiary's share capital or is entitled to 10% of the votes, provided that at least 50% of the share capital or votes are controlled by Portuguese entities.

For this purpose, a tax regime is qualified as *more favorable* whenever:

a) The foreign country is listed as a tax haven;

b) The subsidiary is not subject to a tax similar to the Portuguese CIT; or

c) The tax paid abroad is lower or equal to 60% of the CIT the subsidiary would pay in Portugal.

26. Are there any transfer pricing rules (i.e. restrictions on the pricing of transaction between a local entity and a foreign entity) in your country? If so, please give details.

Transactions between related entities must be made *at arm's length prices*, according to the OECD guidelines on this matter. The tax Authorities may adjust the prices for tax purposes (therefore altering companies' taxable income) and may also enter into advanced agreements with the taxpayers.

27. How are imports and exports taxed in your country?

Portugal is an EU Member State and, therefore, the Common Customs Tariff and the European Value Added Tax rules apply. It should be noted that, for tax purposes, imports and exports correspond only to transactions with non-EU Members.

28. Is there a wide network of double tax treaties in your country? If so, please give details.

The Portuguese double tax treaties network comprises 57 treaties in force, plus another 8 already signed but not yet in force, all available at the Tax Authorities website (http://info.portaldasfinancas.gov.pt). These treaties are extensively based on the OECD model convention. Additionally, Portugal has an extensive network of tax exchange information agreements, including with most of the listed tax haven countries.

(F) Competition

29. Is there any competition law in your country? If so, please give details.

Yes. Portuguese Competition Law is laid down in Law 19/2012, of May 8, that replaced Law 18/2003. The Portuguese Competition Law is publicly enforced by a Competition Authority (created in 2003 through Decree-Law 10/2003 and named *Autoridade da Concorrência*, hereinafter NCA)

Law 19/2012 was one of the measuring elements of the 2011 *Portugal - Memorandum of Economic and Financial Policies* (MEFP, §40)[1] and of the *Portugal - Memorandum of Understanding on Specific Economic Policy Conditionality*, adopted on 17 May 2011 (hereinafter the *MoU*). The reform of independent administrative authorities with economic regulatory powers is in course and pending before the Parliament.

The NCA is a public body with administrative and financial autonomy and statutory functional independence, except for:

- The general competition principles, established by the Government;
- The need for ministerial supervision regarding the approval of the budget, of certain acts with financial consequences to the budget or to the Annual Activities Plan.

30. Are restrictive agreements and practices regulated by competition law in your country?

Yes, at least since the 1980s. The 2003 Law gave the NCA the exclusive power to carry out the public enforcement of all competition rules in all areas of economic activity, including restrictive practices and merger control. No area, even when subject to regulation, is excluded from the Competition Law.

Moreover, unlike the former 1993 Competition Law, since 2003 all merger control lies with the NCA and not the Government, even in the financial and insurance sectors.

National competition law is now even closer to the TFUE articles 101 (restrictive agreements, decision of associations of undertakings and concerted practices) and 102 (abuse of dominant positions), considering the effects of restrictive practices on the relevant national markets. These are articles 9 and 10, on the one hand, and 11, on the other.

As EC Regulation 1/2003 imposes, the NCA has the power to apply articles 101 and 102 of the Treaty on the FEU and to impose fines and penalties for the infringement of either national or national and EU competition law.

Substantially, the NCA follows the EU European Court of Justice (ECJ) and the General Court competition case law and the European Commission guidelines, although no subsidiary application of EU law is directly provided for in the Competition Law, except in the case of the EU block exemptions. Prior assessment of agreements and other

[1] See http://www.portugal.gov.pt/pt/GC19/Documentos/PCM/MEFP_20110517.pdf.

restricted practices are no longer foreseen in the Competition Law. Companies must rely on self-assessment.

Unlike what used to happen under EU law before the 2003 decentralization reform, Portuguese Competition Law never instituted a mandatory notification regime of restrictive practices.

Investigations of restrictive practices may be initiated *ex officio* or upon request of any undertaking or of a public body, including a sector regulator. If initiated following a complaint, the NCA may not close the proceedings before giving the complainant the opportunity to express its views. The new law introduces the possibility for the NCA to define priorities in its actions, in general and more particularly in the use of sanctioning powers, in line with an arguably inadequate reception of the *Automec* criteria. This is seen by the NCA as establishing a "principle of opportunity" on behalf of the NCA. However, given this latitude of powers, the law recognises a formal status of plaintiff, giving him/her the right to a reasoned decision and to appeal against a decision not to proceed against the defendant.

The NCA may decide to impose interim measures, if urgent and needed to restore competition or to prevent serious and irreparable damage to the competition.

The new Law 19/2012 reinforces, in an extraordinary way, the NCA's already significant investigatory powers and may impose the supply of any information deemed necessary, even if confidential. All confidential information is protected from disclosure to third parties. However, supervisory inspections may only occur if the company authorises them.

A company may refuse the delivery to the NCA of legal privileged information and self-incriminating evidence only. The *nemo tenetur* principle is increasingly being interpreted more closely to the ECJ case law. The Constitutional Court has recently adopted significant decisions in these regards.

Since 2006 there exists a leniency regime that is now included within the Competition law itself. Since 2012, however, the leniency regime is only applicable to agreements between competitors, and the law recognises the basis of a mark-up regime. Moreover, unlike before 2012, every company or even individual that would otherwise be liable to a competition law infringement (the circle was enlarged in 2012) may apply for leniency if their information represents an added value to the investigation and increases the possibility of a condemnatory decision by the NCA.

Fines and penalties for restrictive practices are determined in a similar way to the equivalent penalties for the infringement of EC competition law and may amount to 10% of the annual aggregate turnover of the company involved.

In addition to this, the NCA has the power to order companies to cease the infringement, and may impose on them both behavioural and/or structural remedies, in line with the equivalent solution of article 7 of Regulation 1/2003.

One major change introduced by Law 19/2012 is the fact that appeals against NCA decisions do not have a suspending effect and the Tribunal may only, under the conditions laid down therein, suspend the effect of the NCA decision if a "caução" guarantee is provided.

31. Is unilateral (or single-firm) conduct regulated by competition law in your country?

Unilateral conduct may be prohibited under article 12 of the Competition Law (economic dependence abuse) if there is no equivalent alternative for the provider and illicit conduct affects the market structure.

This prohibition has not yet been applied.

32. Are mergers and acquisitions subject to merger control in your country?

Yes, since 1988. As said, since the 2003 Law, the NCA enforces competition rules in all economic areas, including merger control. No area, even when subject to regulation, is excluded from the Competition Law.

The notion of merger is basically similar to that given in the EC Regulation 139/2004, and Portuguese legislation and practice closely follow EU law and practice in other areas, such as the delimitation of relevant markets or of the turnover of the companies concerned.

As it happens in other EC Member States, if a merger has EU-wide dimension and fulfils the criteria laid down in Regulation 139/2004, it is not notifiable to the NCA, even if it fulfils the thresholds laid down by article 37 of the Competition Law, which are:

- If, with the merger, a market share of above 50% is created, acquired or reinforced in the relevant national market for a particular product or service; it needs to be said that the NCA has considered in the past that a mere transfer of market share (0% acquiring 50%, e.g.) is considered to fulfil this threshold and the reference to the acquisition of such a market share intends to consolidate this jurisprudential interpretation; or
- If, through the merger, a market share of above 30% is created, acquired or reinforced in the relevant national market for a particular product or service; and
- If, in the previous financial year, the:
    - Undertakings involved had a global turnover in Portugal of more than € 100 million, notwithstanding directly related taxes; and
    - Individual turnover of at least two of the undertakings involved exceeded € 5 million.

Procedural and financial aspects of notifications

If any of the thresholds is met, a notification is mandatory and, since the entry into force of the new Competition Act, the notification may occur at any given time chosen by the notifying party, from the moment the essential elements of the transaction are determined and, of course, always before the actual implementation of the merger. The new regime follows closely EC Regulation 139/2004. In the case of a public takeover or exchange bid, the notification deadline starts with the publication of the preliminary announcement.

If a notification is mandatory and the concentration is implemented before a final decision of non-opposition or approval with commitments or obligations is adopted by the NCA, the deal is ineffective, penalties may be imposed on the infringer and the NCA may impose the notification under an *ex officio* regimen.

The law foresees the existence of a preliminary procedure in order to allow for formal and informal guidance regarding the need to notify a concentration and the assessment of the concentration. The NCA adopted the *guidelines* on April 3rd 2007 (see Press Release 7/2007, available at www.concorrencia.pt).

A new notification form was recently approved by Regulation 60/2013 of the NCA, also available at the NCA website.

The notification is only effective if it is completed and after the filing fees have been paid.

The filing fees were adopted through Regulation 1/E/2003 of the NCA, which, essentially, goes as follows, according to the NCA's website[2]:

«1. The basic fee payable for the appraisal of concentrations subject to prior notification pursuant to Article 9 (1) of Law 18/2003 of 11 June is fixed in the following amounts:

a) € 7 500, when the previous financial year's combined turnover in Portugal for the companies involved in the concentration, calculated according to the provisions of Article 10 of Statute No. 18/2003 of 11 June, is equal to or less than € 150 000 000;

b) € 15 000, when the previous financial year's combined turnover in Portugal for the companies involved in the concentration, calculated according to the provisions of Article 10 of Statute No. 18/2003 of 11 June, exceeds € 150 000 000 and is equal to or less than € 300 000 000;

[2] References to Law 18/2003 must read as referring now to the New Competition Act (article 97).

d) € 25 000, when the previous financial year's combined turnover in Portugal for the companies involved in the concentration, calculated according to the provisions of Article 10 of Statute No. 18/2003 of 11 June, exceeds € 300 000 000.

2. The fee referred to in paragraph 1 shall be payable from the date on which the notification is presented, by means of a bank transfer to an account duly identified to the Competition Authority, and the respective documentary evidence shall be forwarded to the Authority on the day of payment.

3. The fee referred to in paragraph 1 shall consist of double the amount when the Competition Authority initiates official proceedings under Article 40 of Statute No. 18/2003 of 11 June.

4. If the Competition Authority proceeds to a detailed investigation pursuant to Article 35 (1) c) of Statute No. 18/2003 of 11 June, in addition to the basic fee referred to in paragraph 1 a further fee of 50% of the basic fee shall be payable.

5. In the cases provided for in paragraphs 3 and 4, the fee shall be paid within the period stipulated in the relevant notification forwarded by the Competition Authority to the persons or undertakings responsible for the presentation of the notification. The provisions of paragraph 2 apply to the means of payment and the respective documentary evidence.»

If the merger occurs in a regulated market (e.g. telecoms, energy, water, etc.), the NCA must request the sector regulator's opinion before deciding on the merger.

Assessment of mergers

Until the operation benefits from the express or tacit decision of non-opposition or from an approval decision, even if subject to commitments or obligations, the Parties may not enforce it and the operation is suspended.

Basically, the NCA must adopt a decision within 30 working days, unless it decides to initiate an in-depth investigation if significant competition concerns are raised by the proposed concentration. In this latter case, a decision must be adopted within a period of 60 days.

Regarding the substantial assessment of the merger, the new Law 19/2012 tries to follow the EC Regulation 139/2004 criteria and the NCA now evaluates if the merger gives rise to a significant impediment of competition, namely through the creation or reinforcement of a dominant position.

If the NCA considers that the concentration is prohibited, the undertakings may appeal to the newly established Tribunal da Concorrência, Regulação e Supervisão, established in 2011. This Tribunal was established in the city of Santarém, circa 65 Km from Lisbon and the appeals from its decisions are lodged before the Tribunal da

Relação de Évora, in Alentejo. The same applies to any other interested party that does not agree with a non-opposition or an approval decision adopted by the NCA Council.

Moreover, the law continues to foresee, at least for the time being, the possibility of an extraordinary appeal to the Minister of Economy, during a period of 30 working days starting from the notification of the NCA decision to prohibit a concentration. The Minister may reverse the NCA decision if he/she considers that the concentration is beneficial to fundamental interests of the national economy and may impose conditions and obligations on the parties in order to allow the operation.

(G) Intellectual property

1. **Please outline the main intellectual property rights that are capable of protection in your country. In each case, please state:**

   The main intellectual property rights that exist in the Portuguese legal system are divided into two different areas: that of copyright and neighboring rights and that of industrial property rights.

   While copyright and neighboring rights are generally intended to protect artistic and literary creations and are therefore subject to a legal regime without relevant specificities, the area of industrial property includes a broader range of rights destined to protect, in different ways, its three main domains: inventions, designs and signs.

   According to the Portuguese Industrial Property Code, the inventions in all fields of technology may be protected essentially by means of patents (i), supplementary protection certificates (ii), and utility models (iii).

   On the other hand, the protection of written signs, such as pictures or words that are used to identify products, services, establishments or entities in the market are protected essentially by means of trademarks and logotypes.

   Finally, the aesthetic form resulting from the creative activity of companies and designers can be protected by means of a design.

   The nature, protection, enforcement and duration of the abovementioned titles are as follows:

   Copyright and neighboring rights

   Nature of the right: Generally perceived as a global right covering several specific subjective rights aimed at permitting the legal use and exploitation of an intellectual work.

The intellectual creations of the literary, scientific and artistic domains that are by any means exteriorized are subject to copyright protection. On the other hand, the participation of artists, interpreters, performers, audio and video producers and of broadcasters is protected by neighboring rights.

How it is protected: Protection arises automatically, although registration with the General Inspectorate of Cultural Activities is advisable – exception is granted to titles of newspapers and other periodical publications that may be registered with the Regulatory Authority for Media.

How it is enforced: Copyright and neighboring rights are civilly and criminally enforced. Civilly, the rights holder can enforce said rights through a court action against the infringer or by means of provisional and protective measures to be adopted before the final ruling. In parallel, the infringer may be subject to criminal charges.

Length of protection: In general, the length of protection of copyright is 70 years from the death of the author. For neighboring rights, the length of protection is generally 50 years from the first performance of an artistic creation, audio, video or film recording, or first broadcast, including cable or satellite.

Industrial property rights

I. Patents

Nature of the right: The patent is a title that confers an exclusive right to the exploitation of an invention. The invention may pertain to any field of technology and may consist both of a new product and of a process for obtaining a known product, or even, in some circumstances, a new way of using a known product.

For an invention to be patentable it must: a) be new; b) involve an inventive activity; c) be capable of industrial application; and d) be of a technical nature. Furthermore, it must not be contrary to the law, public order, public health or good morals. The patent holder is not only allowed the exclusive right to exploit the invention – thus preventing others from using it – but is also obliged to commercialize it.

How it is protected: Patent applications can be filed with the Portuguese Industrial Property Office. The rule is that the patent registry is necessary for its owner to benefit from the right to exclusively exploit it. Once the patent has been granted, its owner is the sole holder of the right to exploit it. Between the application and the decision, the invention is provisionally protected by a legal mechanism that allows the applicant to claim damages before a court for the violation of its expected right – this right is, however, dependent on the effective granting of the patent.

How it is enforced: The patent owner's right is administratively, civilly and criminally protected. The administrative protection includes the right to oppose a request for a patent before the Portuguese Industrial Property Office. The infringer may also be subject to a fine for the violation of the right. The civil protection includes the possibility to judicially appeal from an administrative decision granting a patent which

directly and effectively affects the claimant. It also includes the right for a patent owner to request the annulment or declaration of invalidity of a patent. The patent owner may also request an indemnification for damages caused, as well as that the infringer or imminent infringer be prevented from continuing or initiating its activity. The law also allows for the patent owner to request a provisional measure to be adopted by the court in order to protect its right before the court reaches a final ruling. The infringement of a patent right may also result in criminal responsibility.

Length of protection: 20 years from the date of the application. If the patent pertains to a product, medicinal or plant protection, a Supplementary Protection Certificate may be granted, thus extending the patent protection for another 5 years.

II. Utility models

Nature of the right: The utility models hold the same legal nature of the patents, given that they both confer the exclusive right to develop an invention – though the procedure leading to their granting is swifter. They are, however, different in a sense that they are primarily aimed at protecting innovations that result from an alteration in the shape of a known product, though its use may be extended to protect inventive processes. This type of protection is not available for inventions dealing with biological material or chemical and pharmaceutical substances or processes.

How it is protected: The main difference between the protection of patents and utility models is that the latter are subject to a merely formal, specific, simpler and swifter administrative procedure leading to the granting of a provisionary protection. This protection may last until the termination of the length of protection of the utility model, unless a third party challenges the invention, in which case it will be subject to a substantive exam. If the utility model passes such exam, its protection will be reinforced.

How it is enforced: The enforcement of the utility models is essentially the same as the one mentioned previously for the patents.

Length of protection: 6 years, subject to a maximum of two renovations of 2 years each.

III. Trademarks

Nature of the right: The trademark is an exclusive right to use a sign, thus insuring its owner that no third party may use the same with identical purpose. For a sign to be registered as a trademark it must hold a distinctive character and capability of graphic representation. Furthermore, the sign must be new, respectful of other people's rights (such as copyright or personality rights) and unable to facilitate the practice of acts of unfair competition. It must also not be contrary to the law, public order and good morals

How it is protected: The trademark must be registered before the Portuguese Industrial Property Office.

How it is enforced: Trademark rights are enforced in the same way as patent rights (see above).

Length of protection: 10 years from the date of registration. This period is renewable indefinitely for further periods of equal length.

IV. Logotypes

Nature of the right: A logotype is a sign apt to publicly identify and distinguish an entity that provides services or commercializes products and it may be used, for example, in establishments, commercials or correspondence. The logotype consists of a sign or a number of signs that are subject to graphic representation, namely through the use of nominative or figurative elements or through the combination of both. For its registration, a logotype must fulfill the requirements legally imposed on trademarks (see above *III. Trademarks*)

How it is protected: The logotype must be registered before the Portuguese Industrial Property Office.

How it is enforced: Trademark rights are enforced in the same way as patent rights (see above *I. Patents*).

Length of protection: The registration is valid for 10 years, counting from the date of the grant.

V. Designs

Nature of the right: A design gives the holder the exclusive right to exploit the aesthetic aspect of a utilitarian object destined for industrial reproduction. It protects the visual features of a product – such as lines, colors, materials or shapes of the product or of its decoration – in order to identify specific products or services. For the design to be registered, it must be original, which means it must be new and singular.

How it is protected: The design must be registered before the Portuguese Industrial Property Office in order for ownership and exclusive rights to be granted.

How it is enforced: Design rights are enforced in the same way as patent rights (see above *I. Patents*).

Length of protection: Protection lasts for five years, subject to five-year renewals up to a maximum of 25 years.

(H) Marketing agreements

1. Are marketing agreements regulated in your country? If so, please give brief details in respect of the following arrangements:

i. Agency;

In Portugal, the agency agreement is a typified agreement and is regulated by Decree-law n. 176/86, of 3 July, which was amended by the Decree-law n. 118/93, of 13 April. The agency agreement is an agreement by means of which one of the parties undertakes to promote, on behalf of the other party, the conclusion of agreements in

a continuous and stable manner, against remuneration. In certain cases, the agency may be restricted to a certain area or circle of clients.

The main aim of the referred law is the social promotion of the agent, with the aim of imperatively protecting the agent's rights. For this reason, the referred Decree-law contains a number of mandatory provisions to protect agents, including: a) the right to a pecuniary compensation, if the remuneration is not settled in the agreement, and the right to a commission in the concluded business; b) the minimum notice period for termination of agency agreements concluded for an undetermined term; c) the right to an indemnity or compensation in the event of the agreement being terminated without the minimum notice period and d) the right to a clientele indemnity or compensation as a result of the termination of the agreement, calculated over the annual average of the remunerations received by the agent during the previous five years.

However, the powers that are granted to the agent in order to execute agreements on behalf of the other party shall be in writing and the agent is bound to accept the instructions of the other party and to provide it with the relevant information.

ii. Distribution; and

The distribution agreement is an agreement by means of which one of the parties (the "distributor") undertakes to purchase a certain amount of goods for the counterparty, with the aim of selling them on in a determined area and at the distributor's own risk. In other words, it represents a range of purchases for resale.

The *lato sensu* definition of distribution agreement includes not only the referred distribution agreement, but also the agency agreement and the franchising agreement, which are also types of distribution agreements.

As the distribution agreement represents an innominate/atypical agreement under Portuguese law, it is not expressly governed or regulated by the Portuguese Commercial Code or by the Portuguese Civil Code. Nevertheless, the Portuguese judicial decisions have been arguing for the submission of this type of agreement to the provisions applicable to "agency agreements" by analogy (i.e., the above mentioned Decree-law n. 178/86, 3 July), in what concerns the protective regimen of the agent, not only because there are significant similarities between their subjects, but also because the agency agreement has been assumed as the typical negotiating scheme in trade relations. However, recently, a significant part of Portuguese authors have defended that the rules of the Decree-law regulating agency agreements should not apply to distribution agreements.

iii. Franchising

The franchising agreement is also an atypical agreement. Therefore, it also represents an innominate agreement, considering that it is not governed or regulated by any specific legislation and lies in the sphere of the negotiating autonomy of the parties.

(I) E-commerce

1. Are there any laws regulating e-commerce (such as electronic signatures and distance selling) in your country? If so, please give brief details.

E-Commerce is regulated by Decree-Law no. 7/2004, of January 7, which is the result of the transposition of Directive 2000/31/CE (E-Commerce Directive). This Decree-Law regulates the principles by which Internet Service Providers may conduct their activity within Portuguese territory as well as the basis for their responsibility and sanctioning for unlawfully acting or failing to act. Furthermore, Decree-Law no. 7/2004, of January 7, stipulates the substantive and formal requirements for electronic contracts to be deemed valid, along with specific rules for the transparency and effectiveness of such contracts.

Electronic signatures are regulated by Decree-Law no. 290-D/99, of August 2nd. The purpose of this law is not only to establish a legal framework for electronic signatures, but also the creation of a legal regime that could facilitate and promote trust and efficiency in electronic commerce. This Decree-Law also stipulates binding conducts, conditions and requirements, under penalty by means of a fine, for the certifying entities.

(J) Data protection

2. Are there any data protection laws in your country? If so, please give brief details.

Yes, there are data protection laws in Portugal. Apart from article 35 of the Constitution (on the use of information technology), the following legal diplomas should be highlighted:

- Law no. 67/98, of October 26 – Law on the Protection of Personal Data transposes into the Portuguese legal system Directive 95/46/EC of the European Parliament and of the Council, of October 24, 1995, on the protection of individuals with regard to the processing of personal data and on the free movement of such data;

- Decree-Law no. 7/2004, of January 7 (as amended by Decree-Law no. 62/2009, of March 10, and by Law no. 46/2012, of August 29) – transposes into the Portuguese legal system Directive 2000/31/EC of the European Parliament and of the Council, of June 8, 2000, on certain legal aspects of IT services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce') and article 13 of Directive 2002/58/EC of the European Parliament and of the Council, of July 12, 2002, concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications);

- Law no. 41/2004, of August 18 (as amended by Law no. 46/2012, of August 29) – transposes into the Portuguese legal system Directive 2002/58/EC of the European Parliament and of the Council of July 12, 2002, concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications);

- Law no. 43/2004, of August 18 (as amended by Law no. 55-A/2010, of December 31) – Establishes the National Data Protection Committee;

- Law no. 32/2008, of July 17 - transposes into the Portuguese legal system Directive 2006/24/EC of the European Parliament and of the Council, of March 15, 2006, on the retention of data generated or processed in connection with the provision of publicly available electronic communication services or of public communication networks and amending Directive 2002/58/EC;

- Law no. 46/2012, of August 19 – transposes into the Portuguese legal system Directive 2009/136/EC of the European Parliament and of the Council, of November 25, 2009, amending Directive 2002/22/EC on universal service and users' rights relating to electronic communication networks and services, Directive 2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications sector and Regulation (EC) no. 2006/2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws (with the regard to the amendment of Directive 2002/58/EC only).

(K) Product liability

3. Are there any laws regulating product liability and product safety in your country? If so, please give brief details.

Yes, there are.

Specifically regarding «product liability», meaning liability of manufacturers and other persons for damages or personal injuries caused as result a of defective products, the act in force is Decree-Law no. 383/89, of 6 November (as changed by the Decree-Law no. 131/2001, of 24 April).

This decree-law transposes into Portuguese law Council Directive no. 85/374/EEC of 25 July.

Apart from the manufacturer, the liable persons include those who have imported the products into the EU for distribution.

This liability covers death or personal injury and damage to property used by the injured persons for personal purposes.

However, depending on the circumstances, liability for tort in general and even criminal liability may also apply in cases of product liability, therefore including other kinds of damages and consequences.

Regarding «product safety» there is a general regime on product and service safety established by Decree-law no. 69/2005, of 17 March, as changed by Decree-Law no 126-C/2011, of 29 December.

Such decree-law transposes into Portuguese law Directive 2001/95/EC of the European Parliament and of The Council of 3 December 2001.

It foresees a general safety requirement and other related duties for manufacturers based in the EU, importers into the EU and others within the distribution channel whose activities may affect safety features of the products placed in the market.

As to the consequences, this regime foresees mainly the application of penalties and product withdrawal.

July 2013