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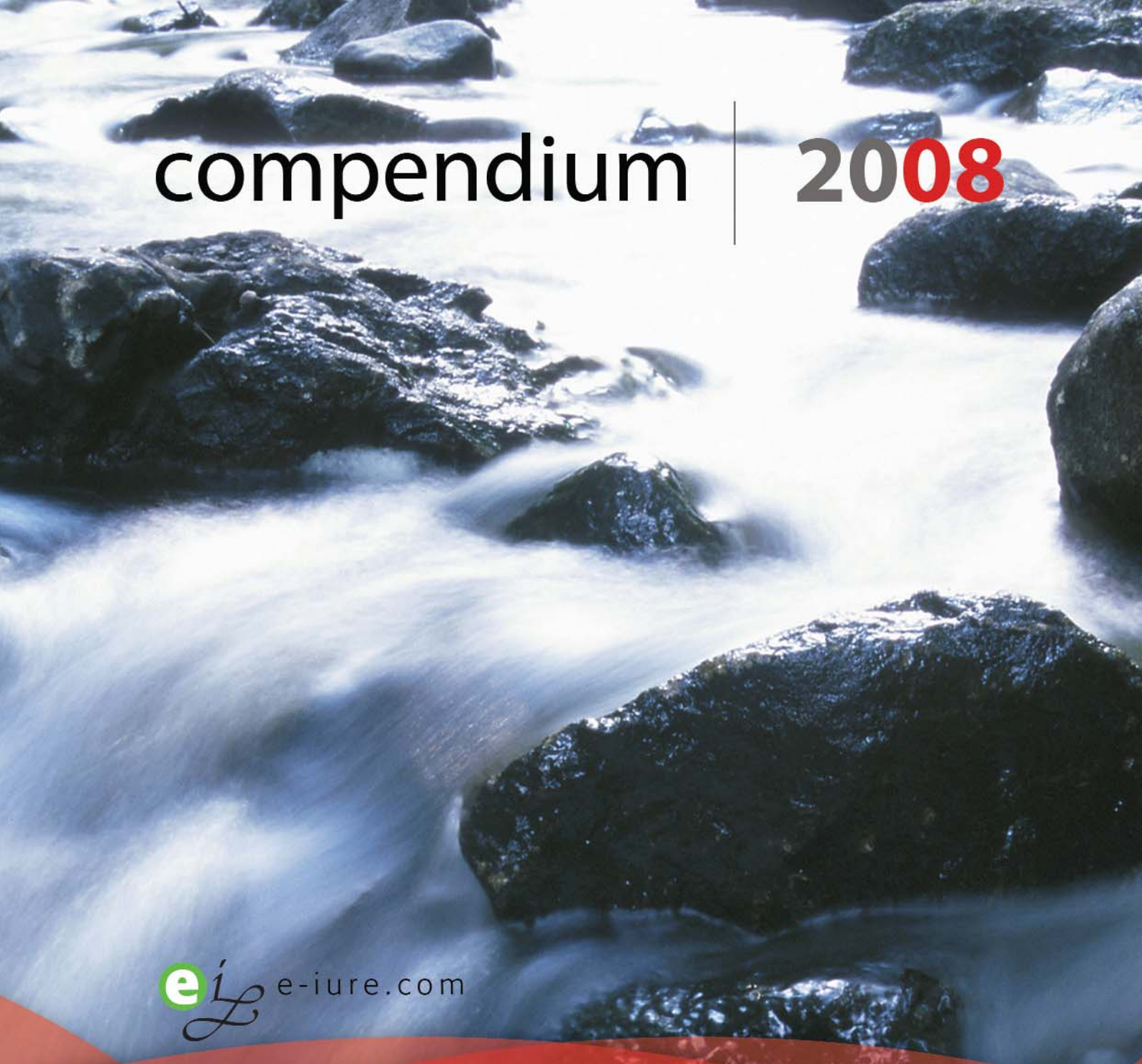

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Portugal

SOUSA MACHADO, FERREIRA DA COSTA & ASSOCIADOS

Portugal

SOUSA MACHADO, FERREIRA DA COSTA & ASSOCIADOS

content

Address: Rua Castilho, nº 5 - 4º 1250-066 Lisboa
Tel: +351 210924800
Fax: +351 213854815
Email: mail@mailsmfcnet.com
Web: www.smfcnet.com

The law firm Sousa Machado, Ferreira da Costa & Associados, Sociedade de Advogados RL ("SMFC") was founded in 1991 by 4 partners and now comprises the 4 founding partners, 10 associates and 6 trainee lawyers.

SMFC offers legal advisory services particularly in the following practice areas:

1. Corporate Law/M&A, notably:

- Day-to-day business assistance (incorporation of companies and amendments to company's by-laws, preparation and assistance for general and board meetings, corporate governance, director and officer liability, negotiation and drafting of shareholders' agreements);
- Corporate financing transactions (public and private debt and equity instruments);
- Mergers, acquisitions, and joint ventures, as well as equity investments and a variety of change of control transactions (acquisition of company shares or assets, public offers, merger, management buy-outs, private equity; across the board corporate assistance, from the drafting of preliminary agreements to undertaking due diligence and drafting and negotiating appropriate contracts).

2. Labour Law, notably:

- General labour assistance (as drafting of employment contracts and further documentation necessary to comply with the legal requirements relying on the employer);
- Advising on termination of employment contracts (negotiation and disciplinary procedures) as well as in labour restructuring procedures (individual and collective redundancy) and litigation;
- Corporate reorganizations, sales acquisitions and other commercial transactions;
- Drafting Due Diligence reports as to identify and prevent labour contingencies;
- Social Security related matters, namely in respect to members of corporate bodies (managers and directors).

3. Family and Inheritance Law, notably:

- Divorce by mutual agreement (negotiations, drafting of legally required agreements, division of common assets and regulation of parental rights).
- Various procedural stages of the litigation process, as well as proceedings that occur once the judicial process is completed;
- Resolution of all inheritance-related questions (with special emphasis on the negotiation of extra-judicial agreements on estate-sharing and conducting inventory proceedings).
- Drafting of after-death planning instruments (such as last will and testament).

4. Litigation, pre-litigation and debt recovery, notably:

- Assistance in all areas of litigation (as civil, labour, commercial, insolvency, debt collection, administrative and tax);
- Arbitration;
- Undertaking of legal representation of clients with a large number of cases that require legal action, even when they may not always involve large amounts (debts recover).

5. Telecommunications and Information technology law, notably:

Assistance in the drafting and review of:

- Software licensing contracts;
- Rendering of IT services (namely in the form of outsourcing);
- Technology transfer;
- Rapport with the respective regulatory entities.

6. Civil and Commercial contracts, notably:

- Analysis and negotiation of civil law contracts (sale and purchase contracts, rental, public work contracts, proxy, real and personal guarantees, rendering of services and new contractual models), with regard to responsibility incurred under breach/resolution of contracts;
- Drafting of commercial contracts to satisfy the needs of each business, continuous assistance and follow-up on the contracts (including rental contracts)
- Drafting of partnership contracts (joint venture or consortium)
- Drafting of distribution contracts,
- Drafting of transport, supply, franchising, and outsourcing, industrial contracts and the structuring of general sales conditions and general contract clauses.

7. Other practises, notably

- Administrative Law (as licensing, procurement procedures, concession contracts, public works contracts, public supply and services contracts);
- Real Estate Law (as leases, assignments, establishment undertaking, promissory agreements, sales, leasing and time-sharing);
- Pharmaceuticals;
- Insurance Law.

The expertise of SMFC – combined with the personal experience of the partners gained throughout their years as solo practitioners - enables the firm to represent leading companies in a wide array of business areas, including mobile communications, information technology, insurance, automobiles, real estate, facility services, chemical and the farming & food industry, pharmaceuticals and cosmetics, as well as a host of private clients.

The assistance provided by SMFC offers the highest standards of quality to ensure a prompt and efficient response in helping members of today's entrepreneurial universe accomplish their objectives.

SMFC is referred in the Legal 500 guide on Corporate Law and M&A, Litigation, Labour Law and IT Law and partners Manuel Ferreira da Costa and Alexandre de Sousa Machado are individually recommended in the European Legal Experts guide (section of Corporate and M&A).

Sousa Machado, Ferreira da Costa & Associados
Email: mail@mailsmfcnet.com
Web: www.smfcnet.com

1. FRAMEWORK

The most relevant legislation to companies in Portugal is:

- the Commercial Code ("Código Comercial", dated 1888);
- the Portuguese Companies Code ("Código das Sociedades Comerciais", Decree law no. 262/86, dated September 2 – , as amended);
- the Portuguese Securities Code ("Código dos Valores Mobiliários", Decree law no. 486/99 dated November 13, as amended);
- several specific laws and regulations.

2. CORPORATE STRUCTURES AVAILABLE

There are four types of corporate entities available in Portugal: general partnership companies (sociedade em nome colectivo), private limited liability companies (sociedade por quotas), public limited companies (sociedade anónima) and limited co-partnership companies (sociedade em comandita).

European Companies (Societas Europaea) may be incorporated in Portugal, provided that they have their registered office in Portugal or if they are participated by companies governed by Portuguese companies law.

Notwithstanding, the three most common legal structures that may be considered when envisaging the settlement of a business or activity in Portugal consist of the following:

- Representation office or branch
- Sociedade Anónima (SA)
- Sociedade por Quotas (Lda.))

3. BRANCH

A branch is merely a permanent representation of a foreign company, organized to conduct the business outside its original country. It differs from a company due to the following characteristics::

- The branch is not legally independent from the head-office, while a subsidiary company operates as a different legal entity;
- The branch does not require a share capital (although the head-office must allocate an amount of designated capital to the branch for operational purposes), while limited liability companies must have a minimum share capital;
- The branch shall appoint a legal representative to manage the business, while limited

liability companies must appoint members of the corporate bodies (management body and an audit body).

The procedure for registering a branch in Portugal is simple and consists mostly on the submission of a resolution from the head-office and other documents evidencing the legal existence of the foreign company.

With the approval of the branch on the spot ("Sucursal na Hora"), in April 2008, the procedures for the incorporation of branches became simpler due to the possibility to execute all required acts with the same public authority. The increase of the efficiency of this process turns the procedure about 80% less expensive. Nowadays the registry of a "branch on the spot" costs only 100,00 Euros.

During the experimental period (that terminates on July 15, 2008) the "branch on the spot" is only available in 8 public services (Bragança, Cascais, Elvas, Lisboa, Loulé and Vila Nova da Cerveira), after which shall be expanded to the entire Portuguese territory.

4. COMPANIES

SAs and Lda.s differ from other structures available where the shareholders' liability is unlimited (sociedade em nome colectivo and sociedade em comandita), although the latter are rarely used nowadays.

When deciding what legal form the subsidiary should assume, the foreign investor must take into consideration the differences between a SA and a Lda., which may influence significantly their business operations. From a day-to-day point of view, the two can be managed in broadly similar terms, although Lda.s may in some cases be less formally managed due to the fact that they comprise a lighter corporate structure, hence being more appropriated for short-term investments. As for SAs, they are usually recommended for enduring investments, especially where a large number of investors is envisaged.

Share Capital

The minimum share capital for a SA is 50,000.00€, of which at least 30 percent must be fully paid up until the date of incorporation.

The minimum statutory capital for a Lda. is 5,000.00€. The lower of 5,000.00€ or 50 percent of the value of all quotas must be paid up on the date of incorporation.

Under general Portuguese Companies Law, a S.A. must have at least five founding shareholders. Notwithstanding, a company is entitled to incorporate a SA of which it will initially be the sole shareholder under the special regime applicable to groups of companies. Conversely, a Lda. must have at least two shareholders unless it adopts the structure of a single quota holder company (sociedade unipessoal por quotas) in which case the share capital is totally held by a sole quota holder.

Shares and quotas

The share capital of a SA is divided in shares, all with the same nominal value (of no less than 0,01€ per share). Share certificates are issued to represent one or more shares in accordance with the Company's by laws.

Shares can be nominative or bearer ("ao portador") and may be represented either by certificates or dematerialized. Bearer shares can be transferred simply by physical delivery of the

certificate, whilst nominative shares are transferred by endorsement statement signed by the transferor on behalf of the transferee and the correspondent registration with the Company (or the financial institution, if applicable).

Each class of shares must have something that makes it different from the other classes and all the shares within one class must confer the same rights. Common ("ordinárias") shares are the securities that represent ownership in a corporation. Holders of common shares exercise control by electing the management board and voting on corporate policy. Preferred ("preferenciais") shares bestow some sort of rights and privileges upon common stock. The nature of these rights or privileges shall consist of patrimonial advantages (mainly concerning dividends).

The share capital of a Lda. is divided in quotas, which can have different nominal values with a minimum of 100,000€. Quotas are not materialized in a document and its transfer must be executed by written agreement, followed by the respective deposit with the Commercial Registry Office.

Liability of shareholders

In both SAs and Lda.s, the liability of each shareholder is limited to the nominal value of his interest in the company. However, the quota holders of a Lda. are joint and severally liable for any unpaid capital contributions foreseen in the company's by-laws.

Corporate Governance

SAs management and supervision bodies' composition depends on the organization system adopted, which may be organized either on (i) a traditional 2-tier structure consisting of a Board of Directors (or a sole Director, should the share capital not exceed 200,000.00€) and an Audit Board or a Single Auditor; or (ii) under a 1-tier structure consisting of a Board of Directors, which shall comprise an Audit Commission and a Chartered Accountant; and (iii) under a 3-tier structure consisting of an Executive Board of Directors, a General and Supervisory Council and a Chartered Accountant. SAs with a capital not exceeding 200.000,00€ may have only one Director instead of a Board of Directors.

The corporate bodies of a Lda. are the General Meeting of Shareholders and the Management (which may be composed of one or more directors). Although a Supervisory Board is not mandatory, in some situations Lda.s are required to appoint a statutory auditor.

5. GENERAL MEETING OF SHAREHOLDERS

Although most powers to run the company are vested in the directors, the following resolutions are reserved to the Shareholders:

- Approval of financial statements and distribution of profits.
- Appointing and removal of the Directors and members of the Audit Board.
- Amendments to the Bylaws.
- Merger, spin-off, transformation or dissolution of the company.
- Transfer and encumbrance of real estate properties (only applicable to Lda.s).
- Issuance of Preferred Shares.
- Issuance of Bonds.
- The division and consent for the transfer of quotas to third parties (only applicable to Lda.s).

Quorum Majority*
- SAs

	Quorum	Majority
First call	No quorum or 1/3 for matters comprising the changing of articles of by-laws, merger, spin-off, transformation or dissolution	Majority of votes cast or 2/3 for matters comprising the changing of by-laws, merger, spin-off, transformation or dissolution
Second call	No quorum	Majority of votes cast or, for changing the matters described above, 2/3 of the votes cast or simple majority if at least 50% of the share capital is present or represented

- Lda.s

Quorum	Majority
No quorum	Majority of the votes cast or 3/4 of the share capital for matters comprising the changing of by-laws, merger, spin-off, transformation or dissolution

*Certain resolutions may require unanimous vote or other majority according to the company's Bylaws.

6. DIRECTORS

SAs are required to have a board of directors (or an Executive Board of Directors and a General and Supervisory Council, depending on the organization structure adopted).

Lda.s are managed by one or more directors ("gerente/gerência plural"), although there is not a formal management board.

Managing corporate bodies of SAs and Lda.s have very broad authority to bind the company. Although restrictions may be contained in the by-laws, these are not enforceable against third parties provided the actions of the directors are within the limits of the corporate purpose.

In a SA, the shareholders appoint the board of directors, generally for a four-year term (but the by-laws can provide for a shorter term). There are no requirements for independent directors (except for listed companies). In a Lda., the directors may be appointed for terms of office or without a definite term, in this case remaining appointed until dismissal or resignation.

The directors may be remunerated or not.

Annual Accounts

Portuguese law foresees that all companies must approve, at the annual general meeting, the respective year-end accounts within a 3-months period (as from the end of the financial year) and, in special cases, within a 5 months period (in case of companies with consolidated accounts).

The documents to be approved are: (i) the year-end financial statements (comprising a detailed balance sheet), (ii) the management report, (iii) a report issued by the audit body, and (iv) in case of SAs, a legal certification of the accounts must be issued by a Chartered Accountant.

Once approved by the general meeting, the accounting documents must be submitted, by internet, under a new system called Informação Empresarial Simplificada (IES), under which the annual financial and accounting information is sent simultaneously to all the relevant public services (tax authorities, commercial registrar, etc.).

In case of permanent representations of foreign companies in Portugal (Branches), the process is even easier, as it is only required a declaration confirming that the head-office received the supporting documents of the branch's accounts.

Incorporation of a company

The incorporation of a company (except when depending on special approvals or when the start-up capital is to be made through contributions in kind) may be fully performed in one day, if the shareholders choose to create a company under the special regime that allows a company to be incorporated "in one hour" (on the spot company – "empresa na hora"), with or without acquiring or possessing a trade mark. This process is carried out before a Commercial Registry Office or a Company Formalities Centre (CFE).

On the other hand, it is now possible to launch and set up a company throughout digital means – the so-called "online company registration".

Listed companies

Listed companies have to comply both with the Portuguese Companies Code and with the Portuguese Securities Code. This act establishes cooperation, communication and publicity duties for corporations, as well as the regulation and supervision of the respective activities by the Portuguese Securities Market Commission.

Several changes in the matter of Corporate Governance have been recently approved, mainly in respect of the composition of the board of directors and remuneration of its members and the exercise of voting rights, as well as changes resulting from the implementation of the Markets in Financial Instruments Directive and of the Transparency Directive.

Portugal

Sousa Machado, Ferreira da Costa & Associados
Email: mail@mailsmfcnet.com
Web: www.smfcnet.com

1. Introduction

Foreign investment is much encouraged in Portugal throughout a non-discriminatory policy concerning the entry of foreign capital, where the national origin of the investment is overlooked.

The recent changes in domestic companies' law, while simplifying the required formalities and procedures to set-up a business (introducing the "company on the hour" and on-line registration regimes), have enhanced Portugal's attractiveness to foreign investors.

According to a recent report ("Doing Business") of the World Bank, Portugal is amongst the restrict group of the ten countries worldwide where setting up a company is most quick and easy.

2. Authorizations and Permits

There are no requirements for foreign investors in Portugal to obtain authorizations or prior registrations with any Portuguese authorities for investing or setting-up a business.

There are no sectors barred to foreign investors. Both foreign and domestic investments are limited only in what concerns certain economic activities, such as harnessing, the treatment and distribution of water for public consumption, postal services, rail transport as a public service and the running of maritime ports. In these areas, private sector companies may only operate under a concession agreement.

Additionally, investment projects that may affect, in any way, public order, security or public health, or that involve the production of weapons, munitions or other military equipment or the exercise of public authority should be submitted to the Portuguese Investment Agency (API – Agência Portuguesa de Investimento) for an assessment of their compliance with Portuguese law.

3. Transfer of Dividends, Interests and Royalties

There are no restrictions in Portugal on the transfer of dividends, interest and royalties abroad. Moreover, there may be tax exemptions applicable on the withholding tax of dividends provided certain requirements are met.

4. Foreign exchange control

There are no exchange control restrictions applicable to investments in Portugal and there is no restriction on outward transfers of capital for the purpose of, e.g., buying shares in a foreign

company. However, the Central Bank requires the bank involved to report transfers with a value exceeding 12,500.00€ for statistical purposes.

5. Foreign Personnel

EU citizens may work in Portugal without having to obtain a prior work permit or any other visa. Conversely, non-EU citizens that intend to work in Portugal must obtain a prior work permit.

Applications for work permits should be presented prior to leaving the home country at the Consulate or Portuguese Embassy of the place of residence of the applicant.l

Sousa Machado, Ferreira da Costa & Associados
Email: mail@mailsmfcnet.com
Web: www.smfcnet.com

1. Types of Ownership

According to the Portuguese Civil Code, ownership consists in the full and exclusive right of use, enjoyment and disposal of a real estate property or personal property (commodities), including all direct advantages resulting there from (as revenues).

Portuguese law foresees other property rights such as the right to use the property ("usufruto"), the naked property ("nua propriedade"), the surface property, the timesharing, the horizontal property, and others.

The adverse possession ("usucapião") is one method of acquiring property through actual, continuous, open occupancy of the property, for a prescribed period of time, under claim of right, and in opposition to the rights of the true owner.

2. Land Register

All transactions concerning real estate property must be duly registered with the Real Estate Registry Office. In order to impose that obligation the law establishes that definitive registration constitutes legal presumption of the existence of the right and its ownership by the person who is inscribed in the registry records. This means that the land certificate ("título de registo da propriedade") confers to the owner of the property the power to exclude any alien pretension over the registered right.

The onerous acquisitions of property rights made by third parties, in bona fides, from a person who appears in the Registry records as entitled to transfer such right shall be held harmless against any property claims.

All registered records are made available so as to allow the assessment of information concerning the ownership and/or any existing encumbrances on a real estate property.

3. Transfer formalities (Public deed)

According to Portuguese Law, the constitution, transfer, acquisition or extinction of property regarding real estate assets must be made through a Public Deed. Additionally, other documents may be required, as well as the execution of legal and prior formalities, including the payment of taxes, such as:

- Occupation or construction license issued by the city hall (for urban buildings);
- Land registry title, proving the ownership of the transferor;
- Payment of the Real Estate Transfer Tax ("IMT") - between 0% and 8%, depending on the real estate value;
- Real Estate Tax Record ("caderneta predial") issued by the competent tax services.

Additionally, all real estate properties are subject to the payment of a Property Tax which ranges between 0,2% and 0,8% of the patrimonial value of the real estate.

Although not yet available in all Registrars, it recently entered into force a new project of the so-called "Casa Pronta" (House on the Spot). This regime allows purchases, encumbrances or registrations of real estate properties to be carried out immediately and by a sole entity. Thus, the public deed, the payment of the IMT and the attaining of all necessary documents (habitation license, land registry title and real estate tax record) may be all carried out simultaneously by the same authority, significantly reducing the bureaucratic procedures of the real estate transfers in Portugal.

4. Mortgages, main rights of mortgages

A Mortgage is a lien by virtue of law (security in rem) that confers to the creditor a preferential right over the other creditors, and that can be defined, in simple terms, as an ancillary guarantee aiming at assuring the fulfillment of contractual obligations.

The law provides for three different types of mortgages: voluntary, judicial and legal. The voluntary mortgage must be constituted by means of a public deed (or will) and must specify the mortgaged property. All kinds of mortgages should be registered, in order to have existence and to produce effects against third parties.

5. Pre-emption rights

- There are pre-emption rights in specific cases, such as:
- The owners of confining buildings;
- The owner of real property burdened with easement of access;
- The co-owners in the case of property transfer;
- The tenant in case the leased property is sold; and
- By the owner of the right of surface, in case of transfer.

In all these cases, the person detaining that specific condition has a pre-emption right over third parties that intend to acquire the respective property.

Portuguese law also foresees the so-called "sale secured by a lien on property" that confers to the buyer the possibility of reserving to himself the property of the land until the total fulfillment of the other party's obligations.

6. Restrictions on acquisition (e.g. by foreigners)

The Portuguese law has no restrictions to what concerns the possibility of property acquisition by foreigners.

7. Construction and use restrictions (e.g. permits, zoning)

The exercise of rights related to ownership is not absolute, considering that Portuguese Law determines the compliance with restrictions and boundaries imposed by the social and dynamic function of ownership.

Besides the general clause of "proibição do abuso de direito" (prohibition of abuse of right), the public expropriations and temporary requisition, we have to note on two different types of restrictions: "public law restrictions" and "private law restrictions".

As to public restrictions, we have to consider specific legislation linked to, e.g. town planning law (inspections and supervision of construction works) that covers areas like waters, environ-

ment, air quality protection, forests, industry, work licensing, natural parks, sanitation, noise, etc.

Concerning the private law restrictions, they are foreseen in the Portuguese Civil Code, and are numerous, as for example easements, excavations, water flowage, right of demarcation, right of dividing and joining rustic buildings, etc.

Lease formalities e.g. written, time limit for lease term and possible registration of lease interest

The urban lease agreement must be made in writing, provided its duration exceeds 6 months and the contract must include several essential elements, such as utilization's license, number of the cadastre in the tax services, etc.

Unless the parties decide to stipulate an effective term for the lease (minimum five years for habitation urban leases) the landlord can only prevent the automatic renewal of the contract by means of a notification of such intention sent to the tenant with one year in advance. Nevertheless, either party (tenant or landlord) may terminate the contract in case of breach or default by the other party.

Sousa Machado, Ferreira da Costa & Associados
Email: mail@mailsmfcnet.com
Web: www.smfcnet.com

I. General

This chapter provides a brief overview of the main aspects of Portuguese labour law, specially on the employment contracts and social security related matters.

Portuguese Labour Law is composed by two main acts: the Labour Code and the Regulation of the Labour Code, in force since December 2003 and August 2004, respectively. The Regulation provides a development and an additional regulation of some matters set forth in the Labour Code.

The Labour Code provides the regulation of the several types of employment contracts and of all the other related matters, such as holidays, absences to work, professional training, gender equality, maternity rights, termination of employment contract and health and safety at work.

Additionally, it regulates the matters concerning to collective bargaining agreements and employees' representatives, which are also developed in the Regulation.

Finally, the Labour Code also provides the regulation on the penalties applicable to the parties of the employment contract – namely to the employer – for the breach of any legal provisions or rights of the employees.

II. Employment Contracts

Under Portuguese law, there are 3 main types of employment contracts: permanent, fixed-term and uncertain term.

Additionally, we also highlight the management employment contract, due to the wider flexibility it offers to companies when hiring top employees.

II.I. Common provisions

The following aspects are common to every type of employment contracts:

- **Retribution:** besides the base salary, employees are entitled to an annual holiday allowance and Christmas allowance, which amount is equivalent to the base salary. The minimum national wage is currently 426,00€, although the applicable collective agreement usually provide higher minimum amounts per each professional category.

  Employees may also be paid other allowances, depending on the terms under

which the work is performed, such as the nightshift allowance or the shift allowance. Generally, some of these allowances - such as the shift allowance or the meal allowance - are provided in the applicable collective bargaining agreement, as its payment is not mandatory by law.

- **Working hours:** as a general rule, employees may be committed to a maximum working schedule of 8 hours per day and 40 hours per week. The parties may also agree on a part-time working schedule.

  The work performed beyond these limits (and also on resting days) is considered as overtime work, which, itself, is limited to a certain number of hours per day and per year. The performance of overtime work entitles the employee to a special allowance per each hour of overtime work rendered.

  Depending on the type of functions, the employer and the employee may agree on a working hours exemption schedule, case where said daily and weekly limits shall not apply. Being the case, the employee is entitled to a monthly allowance, which amount is approximately equivalent to 20%/25% of the base salary, save if provided otherwise in the applicable collective agreement.

- **Holidays and days-off:** employees are entitled to a paid annual holidays period of 22 working days. This period may be increased up to 3 working days, depending on the assiduity of the employee.

  In the year of admission, employees are entitled, after 6 months of execution of the contract, to 2 working days of holidays per each month of duration of the contract.

  Employees are also entitled to a mandatory rest day (usually, on Sundays) and to a complementary rest day (usually, Saturdays). Additionally, there are 13 paid public holidays and 2 non-mandatory public holidays (local holiday and Mardi Gras).

- **Maternity and paternity leave**

  As a general rule, female employees are entitled to a maternity leave of 120 or 150 days after the birth and male employees to 5 days of paternity leave.

  During said periods, these employees are entitled to a subsidy paid by the social security, as the salary is not due by the employer.

  There are also other leaves supported by the social security, for purposes of assistance to family. The employer and the employee may, at any time, agree on an unpaid leave.

- **Sickness and injury**

  Absences to work due to illness or injury are deemed as justified absences. In these cases, the salary is not due by the employer as employees are entitled to a subsidy paid by the social security.

In case of labour accidents, the insurance company shall be responsible for the payment of the salary and other compensation for any damages suffered by the employee as a result of the accident. To such extent, under the law, the employer has to enter into an insurance, otherwise it shall be liable for every costs and compensation due to the employee. Moreover, the non-compliance with this obligation constitutes a serious infringement, subject to a fine applied by the Labour Authorities.

- **Termination:** as a general rule and save in the cases of termination with cause for disciplinary reasons, the employer is absolutely prevented from unilaterally terminate the employment contract.

  However, during the trial period, either party may unilaterally terminate the employment contract with immediate effects and no compensation is due, save if agreed otherwise. Should the trial period exceeds 60 days, the termination of the contract by the employer has to be communicated to the employee with 7 days prior notice.

  The employee may terminate the employment contract at any time by means of a prior written communication, which varies according to the type of contract (see below).

  The employee may also terminate the employment contract with cause, if the employer has breached any legal or contractual rights, case where it shall be liable for the payment of a compensation, to be settled by the court, ranging from 15 to 45 days of base salary per each of seniority, with a minimum equivalent to 3 months of base salary.

Termination with cause

The termination with cause requires a previous internal written proceeding, where the employee may file a reply and require the hearing of witnesses and other means of proof. This internal proceeding is detailed in the law and should the company fail to comply with certain formalities the dismissal is deemed as wrongful. In the course of this proceeding, the workers' committee (if existing) and the trade union (if the employee is an union representative) have also to be consulted. Additionally, in the case of pregnant and breast feeding employees, the dismissal requires a favourable opinion from a governmental body committed to gender equality and maternity protection.

The law defines cause for termination as a serious and intentional conduct of the employee, which determines the immediate impossibility of maintenance of the employment relation, i.e., the breach of legal and contractual duties.

The employee may judicially dispute the dismissal within the year subsequent to the dismissal. The burden of proof of the existence of cause for termination relies on the employer.

Should the dismissal be ruled wrongful, the employee may opt to be reinstated in the company or to be paid a compensation, to be settled by the court, ranging from 15 to 45 days of base salary per each of seniority, with a minimum equivalent to 3 months of base salary. In the case

of small companies (less than 10 employees) or management employees, the company may oppose to the reinstatement, case where the compensation shall vary from 30 to 60 days of base salary per each year of seniority.

Additionally, the company has also to pay to the employee a compensation for any moral or patrimonial damages resultant from the dismissal and also the unpaid salaries due since the date of the dismissal until the date of the court's ruling. In the case of term employment contracts, the amount of this compensation cannot be lesser than the unpaid salaries due since the date of the dismissal until the term of the contract (or until the date of the court's ruling, should it occur before the term of the contract).

Individual redundancy and collective dismissal

Besides termination with cause, the employer may only terminate the employment contract grounded on objective reasons, specifically market, financial or technological reasons. The burden of proof of the existence of these grounds for termination relies on the employer.

If, within a 3 months period, the employer intends to terminate, at least, 2 or 5 employees (whether the company has up to 50 employees or more than 50 employees, respectively) the collective dismissal shall apply, otherwise the individual redundancy procedure shall be the applicable one.

In order to terminate the employment contract, either by redundancy or in the extent of a collective dismissal, the employer has to enact a procedure, which involves the affected employee(s), the workers committee and the Ministry of Labour.

In short, the procedure comprises 3 stages: (i) initial written communication to the affected employee(s), (ii) information and consultation with the employees and their representatives and (iii) decision of the procedure, which has to be communicated with 60 days prior notice. This procedure will take, at least, 70 to 80 days.

The compliance with the several legal requirements foreseen for the initial communication and for the decision is most relevant, otherwise the termination shall be deemed as wrongful.

The termination by redundancy or by collective dismissal entitles the employee to a compensation equivalent to one month of base salary per each year of seniority, in a minimum equivalent to 3 months of base salary.

If the court rules the termination as wrongful, the terms referred above in respect to termination with cause shall apply.

Termination by agreement

The employer and the employee may, at any time, agree in written on the termination of the employment contract. The law does not provide any minimum or maximum limits for the compensation to be paid (in fact, the payment of a compensation is not mandatory).

The employee may revoke the termination agreement within the 7 days subsequent to the date of its signature, save if it is entered into before a public notary, where it shall produce

its effects irrevocably as of the date of signature.

II.2 Permanent employment contracts

This is the standard type of employment contracts, as term employment contracts may only be entered into under specific conditions (see below).

The contract does not have to be executed in written, although under the law, the employer has to render to the employee information on the basic terms of the agreed employment.

The trial period for these contracts varies according to the functions to be performed: (i) 90 days for standard employees, (ii) 180 days for employees holding a trust position or committed to functions requiring high technical skills and (iii) 240 days for management and senior employees.

However, the parties may agree on the reduction or exclusion of the trial period.

Save in the cases of termination during the trial period, termination with cause, individual redundancy or collective dismissal, the employer is absolutely prevented from unilaterally terminating the employment contract.

The employee may terminate the contract at any time by means of a written communication addressed to the employer with 30 or 60 days of prior notice, whether he/she has up to 2 years or more than 2 years of seniority, respectively.

II.3 Term employment contracts

This type of employment contracts may only be entered into to face a temporary need of workforce and for the period of time strictly necessary. Although the law provides an open clause to define said "temporary need of workforce", it also foresees some situations which generally enable the employer to hire term employees, from which we highlight the following: (i) replacement of employees temporarily prevented from rendering their activity, (ii) exceptional increase of the company's activity, (iii) execution of a determined work or project (e.g., a services agreement entered into by the company), (iv) start-up of a new company or activity and (v) hiring of first-job seekers or long term unemployed persons.

Failure to comply with these requirements determines that the contract shall be deemed as a permanent one.

There are fixed-term employment contracts and uncertain term employment contracts, where the first are the most common.

Fixed term employment contract may be entered for a maximum of 3 years and within such period be subject to 2 renewals. The parties may agree on a third renewal for a minimum of one year and a maximum of 3 years, thus, fixed-term contracts may be in course for a maximum of 6 years.

The employee may terminate the fixed-term contract at any time, by means of a written communication addressed to the employer with 15 or 30 days prior notice, whether the contract has been entered into for less than 6 months or for 6 or more months, respectively.

The fixed term contract terminates in the end of the agreed term (or of its renewals). To such effect, the employer has to communicate the termination to the employee by means of a written communication with 15 days notice before the said term, otherwise the contract shall be automatically renewed or converted into a permanent employment contract (if it cannot be renewed again or if it has reached its maximum duration).

The employee may also terminate the contract in these terms, by means of a written communication addressed to the employee with 8 days prior notice.

The termination of the contract by the employer entitles the employee to a compensation equivalent to 2 or 3 days of base salary per each month of duration of the contract, whether the contract has been in force for more than 6 months or up to 6 months, respectively.

Termination by the employee does not entitle him/her to be paid any compensation.

II.4 Management employment contracts

These contracts are less common in Portugal but represent more flexibility to the employer as it may terminate it at any time.

Management employment contracts are limited to the admission of employees committed to managing (or equivalent) functions directly dependent from the board of directors, as well as to the admission of personal secretaries of employees holding such management positions.

The main aspects of these contracts are the following:

- 180 days trial period (may be reduced or suppressed by agreement of the parties);
- Either party may terminate the contract by means of a written communication addressed to the other party with 30 or 60 days of prior notice, whether the employee has up to 2 years or more than 2 years of seniority, respectively (the parties may agree on the extension of the notice period);
- Termination by the employer entitles the employee to a compensation equivalent to one month of base salary per each year of seniority (the parties may agree on the increase of the compensation).

III. Social Security

Contributions

The employer and the employee have to pay contributions to social security, which are calculated over the regular salaries paid to the employee, through a 34,75% rate, where 23,75%

is supported by the employer and 11% is supported by the employe under a PAYE system.

In respect to members of the board, the social security rate is 31,25%, where 21,25% relies on the company and 10% on the director. In this case, the rate is applied over a conventional salary, varying from 407,41€ to 4.888,92€ (figures for 2008). The director may opt to pay contributions over the real salary, as long as he has less than 55 years old and the company authorizes it.

Unemployment subsidy

The termination of an employment contract shall entitle the employee to the unemployment subsidy whenever the unemployment has not resulted from a decision of the employee (save in the cases where the employees terminates the contract with cause).

The unemployment subsidy is granted by the social security services. Its amount is calculated in accordance with the salary of the beneficiary in the 14 months preceding the unemployment, with a maximum limit equivalent to 3 times the minimum national wage (currently, 1.278,00€ = 426,00 €* 3).

This subsidy is granted for a period which duration varies in accordance with the age and the contributive record of the beneficiary, from a minimum of 270 days to a maximum of 900 days.

The beneficiary is prevented from cumulate the unemployment subsidy with other income resultant from a professional activity.

Retirement

The statutory age for retirement is 65 years old, with a minimum of 15 years of registered and paid contributions to social security.

However, employees may require the retirement with, at least, 55 years old, but the amount of the retirement pension shall be reduced per each month of anticipation.

As a general rule, the beneficiary may cumulate the retirement pension with income resultant from the performance of a professional activity.