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Framework

The most relevant legislation to companies in Portugal is:

- ▶ Law of June 28, 1888 - the Commercial Code ("Código Comercial");
- ▶ Decree law no. 262/86 dated September 2 - the Companies Code ("Código das Sociedades Comerciais"), as amended by Decree law no. 76-A/2006, of March 29 that updates and simplifies the corporate governance models and measures and eliminates several notary and procedural acts;
- ▶ Decree law no. 5/2005 dated January 4, that establishes the European Companies Regime ("Regime das Sociedades Anónimas Europeias");
- ▶ Decree law no. 486/99 dated November 13 - the Securities Code ("Código dos Valores Mobiliários");
- ▶ Decree law no. 129/98 dated May 13 - that rules the National Registry of Corporate Entities ("Registo Nacional de Pessoas Colectivas") ("RNPC");
- ▶ Decree law no. 207/95 dated August 14 - the Notary Code ("Código do Notariado");
- ▶ Decree law no. 403/86 dated December 3 - the Commercial Registry Code ("Código do Registo Comercial");

Corporate structures available

There are four types of corporate entities available in Portugal are: 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 they have their registered office in Portugal or if they are participated by companies governed by Portuguese company law.

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

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

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 shall operate as a different legal entity;
- ▶ The branch does not require a share capital (though 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 comprises mostly the submission of a resolution from the head-office and other documents evidencing the legal existence of the foreign company.

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 paid up in cash contributions up to 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 to 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 limited liability 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 relevant certificate, whilst nominative shares are transferred by endorsement statement signed by the transferor on behalf of the transferee.

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 be of a different nominal value each provided never less than € 100,00. 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 its 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. As so, and further to the General Meeting of Shareholders, SAs management and supervision 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. For SAs with a capital not exceeding may have only one rector

instead of a Board of Directors.

The corporate bodies of a Lda. are the General Meeting of Shareholders and the Management body (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.

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 association, merger, spin-off, transformation or dissolution.	Majority of votes cast or 2/3 for matters comprising the changing of Articles of association, 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 Articles of association, merger, spin-off, transformation or dissolution.

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

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 board of directors.

Managing corporate bodies of SAs and Lda.s have very broad authority to bind the company. Although restrictions may be contained in the Articles of association, 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 articles of association 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 term of offices 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 6 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.

Upon approval of the accounts by the general meeting, the documents must be submitted to registration at the commercial registry office within a period of 3 months.

Incorporation of a company

A recent change of the Portuguese Companies Code reduced substantially the bureaucracy in corporate procedures.

Under the current legal framework, the procedures for 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 firm – “empresa na hora”), with or without acquiring or possessing a trade mark. This process is carried out before any Commercial Registry Office or in any Company Formalities Centre (CFE).

On the other hand, it is now possible to launch and set up a company, performing all the required steps throughout digital means – the so-called “online company registration”, established by the Decree law No. 125/2006, of June 29.

Listed companies

Listed companies also have to comply with the Securities Code (“Código dos Valores Mobiliários”). This regime 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 (“Comissão do Mercado de Valores Mobiliários”).

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.

The new Labour Code – which came into force on 1 December 2003 – brought about the legal unification in a single “body” of the rules until then applicable, which were not only scattered among some fifty separate pieces of legislation but that also inconveniently reflected greatly differing social and economic contexts.

The Labour Code is divided into two books (Book I and Book II). Book I contains the “Generalities” (Sources, Employment Contract and Collective Law) and Book II focuses on the criminal and administrative liability arising from labour law violations.

Generally speaking, aside from showing concern for the protection of workers’ personality rights, the Labour Code is characterised by adapting rules and regulations to modern times (new technologies, telework, groups of companies) and by creating a new regime applicable to current issues.

Where termination of employment contracts is concerned, reference is made to aspects relating to:

- ▶ the applicability of collective dismissal rules to the lapsing of employment contracts as a result of the closing down or bankruptcy of a company;
- ▶ the possibility of employers starting a new disciplinary procedure (once only), in the event of the wrongfulness of the dismissal having been decreed for formal reasons and the worker having opted for reinstatement;
- ▶ the creation of a framework for the determination, by the court, of the indemnity amount payable in the case of wrongful dismissal, without prejudice to personal damage compensation;
- ▶ the possibility of employers opposing workers’ reinstatement on duly substantiated grounds, this decision, however, being made exclusively by the court.

As for collective bargaining, the Labour Code establishes the requirement of collective agreements regulating their temporal scope and providing for a complementary regime applicable to survival and repudiation.

The Labour Code is also applicable to domestic, homeworking, on board ship, rail, dock and professional sport employment contracts. The regulation of the Labour Code, in the areas it did not cover, was made by way of Law 35/2004.

Specific notes

Employment Contracts

Can be open-ended, fixed-term and non-fixed term.

Workers are entitled to: compensation (for property and personal damage); reinstatement (or

alternatively, should they so choose, compensation for each full year of seniority or fraction thereof) and the pay they did not receive between the date of dismissal and that on which the court decision becomes final. These rules are applicable to fixed and non-fixed term employment contracts, albeit subject to isolated specificities.

The special regime applicable to Directors and Managers exists for the purposes of establishing their exemption from fixed working hours, their daily rest period and the length of their compulsory weekly rest period.

Workers’ representatives and union representation

Workers may create works councils and sub-councils or join trade union organisations.

Works councils members are entitled to a monthly time-credit of 25 hours.

Works council members are entitled to information, to consultation (which is compulsory in certain cases), to meet with the company’s management body (at least once a month), to participate in company restructuring procedures and to hold mass meetings with the workers.

Companies may have union delegates, as well as union and multi-union committees, either of these committees being (exclusively) entitled to convene workers’ meetings at the places of work (inside or outside working hours).

Union delegates are entitled to a monthly time-credit of 8 or 5 hours, depending on whether or not they are members of the multi-union committee. The law lays down the maximum number of union delegates entitled to this time-credit, this number depending on the company’s size.

Collective bargaining

Collective labour regulation instruments may be either negotiated or non-negotiated, the former (whose negotiation on behalf of the workers is conducted by trade union organisations) including the collective agreement (association agreements, multi-employer agreements and company-level agreements), the adoption agreement and the voluntary arbitration award.

Collective labour regulation instruments (which cannot go against the provisions of mandatory law or regulate economic activities) supersede employment contracts in all that is less favourable to workers and are either directly (to workers who are members of the signatory trade unions and to affiliate companies of the signatory employers’ associations) or indirectly (by extension regulation to be issued by the Labour Ministry) applicable.

Workers’ pay and others forms of compensation

From a legal standpoint, pay may be fixed, variable or mixed (i.e. may be composed of a fixed part and a variable part). The Labour Code does not, however, allow that a full-time worker receive a monthly pay of less than the minimum monthly guaranteed pay.

It is customary for collective agreements to provide, in addition to the minimum pay for the work performed by the worker, for length of service payments, seniority premiums and, in industry, for effort or hardship benefits and shift supplements.

As regards social security, the normal procedure under collective agreements is for employers to pay the difference between the statutory sick pay and the worker's monthly net pay, although in most cases, for a limited period of time.

To be mentioned is that legally workers are paid a holiday bonus (13 th month) and a Christmas bonus (14 th month).

Payment in cash is the most frequent in Portugal , although for executives benefits take the form of using a company car and cell phone.

- ▶ The minimum monthly pay for 20076 is € 385,90 403,00.

Overtime, the annual duration of which depends on the company's size (micro, small, medium and large companies), entitles workers to compensatory paid rest periods and is paid differently, depending on whether the overtime is worked on a regular working day, or on a weekly (compulsory or additional) rest day or a public holiday.

In the first case (regular working day), the first hour is paid with a 50% increase and the following hour(s) with a 75% increase each.

In the second case (rest day or public holiday), the increase is of 100% per hour.

Applicable labour laws

- ▶ The Labour Code
- ▶ Law 35/2004 of 29 July (Regulation of the Labour Code)
- ▶ Decree-Law 235352/92 of 24 October (domestic work)
- ▶ Law 28/98 of 26 June (sports professional)
- ▶ Decree-Law 440/91 (homeworking)
- ▶ Law 15/97 of 31 May (work on board fishing boats)
- ▶ Decree-Law 381/72 of 9 October (rail work)
- ▶ Decree-Law 280/93 of 13 August (dock work)
- ▶ Decree-Law 3189/99 of 30 September (volunteer work)
- ▶ Decree-Law 358/89 of 17 October and Law 146/99 of 1 September (temporary work).

Social security

Pay sheets are delivered through the Internet.

23.75% are paid by the employer and 11% by workers under an employment contract, the employer being responsible for deducting the workers' percentage from their gross pay (the same applying to their Income Tax).

Reference should be made to the fact that in order to fight excessive fixed-term employment contracts, the Labour Code admits the possibility of the percentage for which the employer is responsible being increased (by 0.6% for the 4 th and 5 th years of the contract term and by 1% for the 6 th year), when the percentage of fixed-term employment contracts having a term of more than 3 years attains or exceeds 15% of all the workers holding a fixed-term employment contract, irrespective of the term of the latter.

There are two regimes for directors, managers, etc., depending on whether they are entitled to all Social Security benefits. In the first case, the income base is the actual pay and the percentages payable by the company and the worker are the same as for workers under an employment contract. In the second case, should the real pay be higher than 12 times the minimum monthly pay, the income base will be limited to this sum and the percentage payable by the company will be of 21.25% and by the director (or manager) of 10%.

Overtime is subject to the same contributions and deductions as regular working hours.

From a legal standpoint, payments in kind are a taxable income in terms of Social Security contributions. However, this is seldom put into practice.

Health and safety at work

In this respect the Labour Code is extremely strict and it is therefore impossible to list, even succinctly, companies' obligations and duties, in terms of internal, external and inter-company services.

Nevertheless, to be mentioned with respect to health, is that its supervision is entrusted to a Works Doctor and that medical tests and examinations are mandatorily made when workers are admitted and when they have been away for more than 30 days due to illness or an accident. Minors and workers over the age of 50 must take medical tests and examinations once a year, and all other workers once every two years.

As for safety, it is ensured by technicians certified by the State Body, in a number adjusted to the company's size.

Lastly, to be pointed out is that workers are entitled to have representatives elected for this purpose, in the areas of both health and safety.

The applicable laws in these areas are those deriving from the Labour Code (Articles 272 to 279) and Law 35/2004 (Articles 212 to 289).

However, there is a specific law for building sites (Decree-Law 155/95 of 1 July).

Contracting and outsourcing

Broadly speaking, the loaning of labour (for which the Labour Code imposes that a number of requirements be cumulatively met) is permitted, without prejudice to the mechanisms deriving from specific laws governing temporary work and, although collaterally or indirectly, without prejudice to the secondment regime.

No limitations are imposed on the provision of services.

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Types of ownership

According to the portuguese Civil Code, ownership consists in the full and exclusive rights of use, enjoyment and disposal over a certain thing that, in general terms, can be classified as “real property” (real assets) or “personal property” (commodities). One can say that the faculties of use, enjoyment and disposal that concern the “thing” object of the ownership, include, respectively, the gaining of the direct advantages and the fruits – civil (e.g ., revenues) and natural – produced by the thing; as well as the ability to alter the thing’s substance (in extremis , destroying it) or simply to change the legal status of the owned thing throughout alienation, limitation or abandonment acts – beneficial ownership.

Ownership can belong to a single person (natural or legal) or a collection of individuals such as a co-operative or co-ownership, where each individual owns a portion of the whole (e.g. 1/2, €, 1/3) with no direct right over any specific part. In this former case, the co-owners are able to exercise, collectively, all the powers that are conferred to the individual owner, as long as they don’t harm the use of the common thing by the others co-owners. In general terms, we can say that co-owners enjoy the same status as the individual owner, but the respective faculties are limited, in a quantitative way, by the share or portion of the common thing detained by each of them.

Title to real property can be either “full” (propriedade plena), or divided into separate rights:

1.1. The more frequent separation in the ownership leads to the creation of two rights: a limited right, to the use and proceeds of the property (usufruto , from the latin “ usus et fructus ”) and the basic (or “stripped”) ownership (nua propriedade) corresponding to the ownership without the right to the use and proceeds of the property. The usufruto , according to the portuguese legal definition, is the right of temporary and full enjoyment of one alien right or thing, without altering its form or substance. This means that the owner (proprietário de raiz) of certain thing is not the same individual that enjoys (usufrutuário) the thing’s utilities and fruits.

1.2. The right of surface consists in the ability to construct or maintain (ius ad aedificandum), perpetually or temporarily, a work in another’s property, as well as the power to make or maintain plantations (ius ad plantandum). This way, the surficiary will acquire the autonomous right in rem over the work or plantation, distinct from the soil/land’s property. This kind of spe-

cial ownership is very used for gas stations.

1.3. Time-sharing is configured to assigne a temporary right to use and inhabit certain unity integrated in hotels-apartments or tourism-related projects, usually for spending holidays. This right is limited to a time period each year of seven days minimum and thirty days maximum, in a continuous way.

1.4. Reference has to be made to horizontal property or “floor property”. According to article 1414 Civil Code, the fractions that compose a building can be owned by different persons, if those fractions are able to constitute independent unities. Horizontal property – also called condominium – is a mixture between single ownership and co-ownership: each owner has the exclusive property over one autonomous fraction of a building and shares, with the other co-owners, the property over the common spaces, such as the soil where the building is implanted, the roof and the common parts, such as elevators, stairs, etc.. This type of property emerged from the urban centers where vertical construction arises and relies on the premise that the fractions have no structural autonomy, rather than functional autonomy, gained through the use of the common parts of the building.

Land Register

The portuguese Register of Deeds is, in a general way, very reliable, and one can trust in the full faith and credit of the registered facts. The land certificate (título de registo da propriedade) confers to its owner the power to exclude any alien pretension over the registered right, in as much as the law stipulates that definitive register constitutes legal presumption of the existence of the right and his titularity by the registree, wich means that the registered facts cannot be judicially questioned without the simultaneous request of register cancelling.

In what concerns real estate transactions, the law statutes that are submitted to obligatory register all the facts that determine the acquisition or modification of the various types of ownership. Unntil the owner promotes his right’s register, he might not be able to transmit the right.

Transfer formalities (e.g. notary deed)

Notarial acts are part of the solemn form that property constitution, transfer, acquisition or extinction implies, as to regarding real estate assets. Notarial conveyance preceeds the register burden, and is destined to give legal form and certificate the authenticity of the transaction by way of wich the property is constituted or modified. The notary performs an instrumental function regarding the will of the parties that come forward him. Very often, it is required the presentation of certain documents or the practice of legal and prior formalities, such as the payment of taxes. One must consider property taxes that include the “IMI” – real property municipal tax – and the so-called “IMT” – real estate transfers municipal tax. To operate a property transfer it is also necessary to exhibit a) the habitation or construction license issued by the city

hall (for urban buildings); b) the land registry title, that proves the ownership of the transferor; c) and the the real estate notebook (caderneta predial), issued by the competent finances government office.

Mortgages, main rights of mortgages

Mortgage receivable (crédito hipotecário) is a lien by operation of law (real security) that confers to the creditor a preferential right over the other creditors.

The mortgage bond (obrigação hipotecária) can be defined, in simple terms, as the ancillary guarantee, attached to the principle obligation, destined to assure that the credit is duly collected; in other words, it fulfils the role of carrying on priority assigned to the mortgagee, conceived as a preferential/lien creditor (covenantee).

The law provides for three different types of mortgages: voluntary, judicial and legal. The voluntary mortgage is submitted to notarial deed or will and must specify the mortgaged things. All kinds of mortgages should be registered, in order to have existence and to produce effects against third parties. A very frequent transaction, both in business and social plan, related to house credit (with special incidence over young buyers), consists in mortgage loan, i.e ., the financial institution that offers the capital will secure its credit through the mortgage established over the building ("mortgagee in possession"), sometimes with recourse of adjustable-rate mortgage.

Preemption rights

There are preemption 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 the case the leased property is sold, and, finally, in the right of surface. In all these cases, the person detaining that specific condition has a preemption right regarding alien parties that intend to acquire the respective property.

Special legal protections for parties e.g . seller or buyer's right to cancel

Both seller and buyer may petition the Court to contest the validity of a purchase if the consent to the transaction has been tainted by " erro " (an error as to the fundamental characteristics of the property), " dolo " (misrepresentation: one part tricks the other into the purchase) or " coacção " (physical or mental violence). The buyer may also petition for voidance of the sale, or for a reduction in the price, where a "defect" results in the property being improper for the use for which it was meant or restricts its use to such an extent that the buyer would not have purchased the property or would have offered a lower price had he been aware of the defect (" venda de bens defeituosos ").

Besides the possibility of judicial recourse in normal circumstances, the portuguese law stipulates

the possessory law suits e.g. action of trespass (acção de esbulho e acção de reivindicação de propriedade), interplea (embargos de terceiro) or petitory action.

The portuguese law also foresees the so-called "sale secured by a lien on property" (article 409 Civil Code), that confers to the buyer the possibility of reserving to himself the property of the thing until the total fulfilment of the other party's obligations.

The adverse possession (usucapião) is one way of acquiring the property through the peaceful, sustained and public possession during the period fixed in the law.

Restrictions on acquisition e.g. by foreigners

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

Construction and use restrictions e.g. permits, zoning

The enjoyment and exercise (use) of rights related to ownership, though full, is not, however, absolute, considering that the law determines, in article 1305 Civil Code, the compliance with restrictions and boundaries imposed by the social and dynamic function of ownership, regarded as one of the pillar of modern legal systems.

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

As to public restrictions, we have to consider detached and specific legislation linked to, e.g . town planning law (inspections and supervision of construction works), that covers areas like waters, environment, air quality protection, forests, industry, work licensing, natural parks, sanitation, noise, etc.

The private law restrictions are stipulated in the portuguese civil code and there are numerous ones e.g . 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

With the entry into force of the Law n.º 672006, of 27.02 (NRAU – Novo Regime do Arrendamento Urbano), the urban lease legal regime suffered substantial changes, the Portuguese government assuming the vital need to, amongst other objectives, review the rent updating system, thus restoring the long last balance between the interests of the landlord – entitled to be paid a fair value for renting their property – and the legitimate expectancies of the

tenant – who is entitled to a stable home and worthy living conditions. Besides, the profound changes operated in the urban lease contract also aim to achieve several goals, contributing to the development of the Portuguese housing market, by facilitating the mobility of citizens and creating attractive private investment conditions in the real estate sector, restoring the confidence of economy agents and promoting urban rehabilitation.

The urban lease ceases to be governed by a separate law, as it was until now, and is again included in the Civil Code. The main issue addressed in the NRAU is, therefore, the updating of old rents, through a system based on tax transparency and the real value of the property subject to lease. The landlord will have to request to the authorities the evaluation of the leased properties, being such evaluation (and its results) essential for the purposes of updating the rent, that must be duly communicated to the tenant. As a general rule, the rent will be updated in a gradual and phased manner, over a period of time that can go up to ten years.

The parol urban lease agreement must be made in writing, provided its duration exceeds 6 months (article 1069 of the Civil Code). is not valid, because the law determines the need of written contract (Urban Lease Law) in what concerns Besides that, the contract must include several fundamental elements, such as utilization's license, number of the finances's inscription (inscrição na matriz predial).

Unless the parties decide to stipulate an effective term for the lease – the so-called “limited duration fixed-term contract” – where, for instance, regarding habitation urban leases, the time period validity is, at least, five years (article 1095 of the Civil Code)– article 98.º Urban Lease Law, the landlord can prevent the automatic renewal of the contract only if he notifies the tenant of such intention, within one year in advance. Nevertheless, each party (tenant or landlord) may terminate the contract in case of breach or default by the other party. will not have, in principle, the In this light, contrary to the previous regime, the new article 1083 of the Civil Code allows that the landlord terminates the lease contract upon existence of a “breach which, due to its seriousness or consequences, renders the lease non-demandable”.

The financial lease is subject to registration in the Registrar authorities.

Certain kinds of lease are submitted to registration e.g. leases for six years or plus.

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.

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.

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.

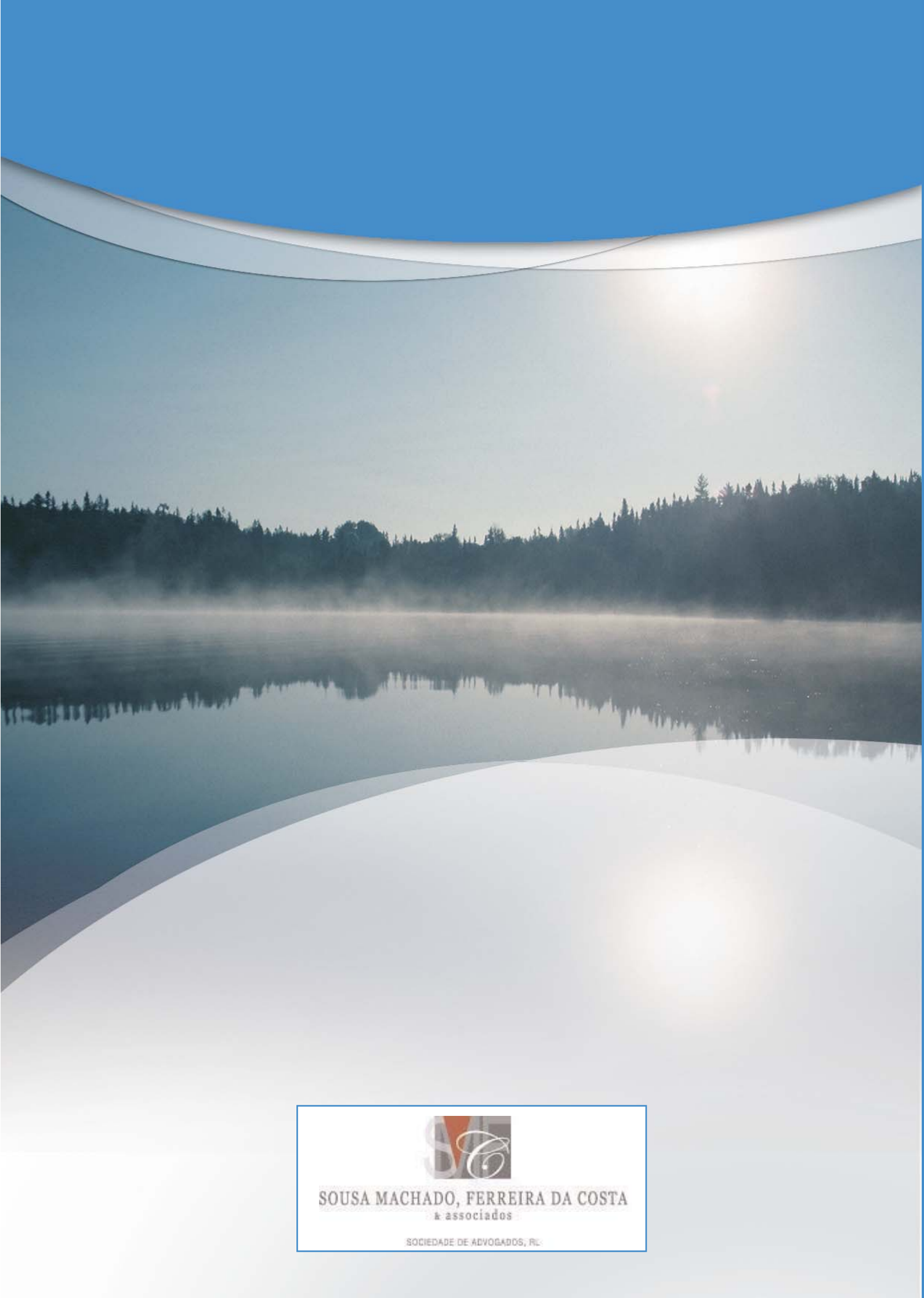
Foreign exchange control

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.

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.



SOUSA MACHADO, FERREIRA DA COSTA
& associados

SOCIEDADE DE ADVOGADOS, RL