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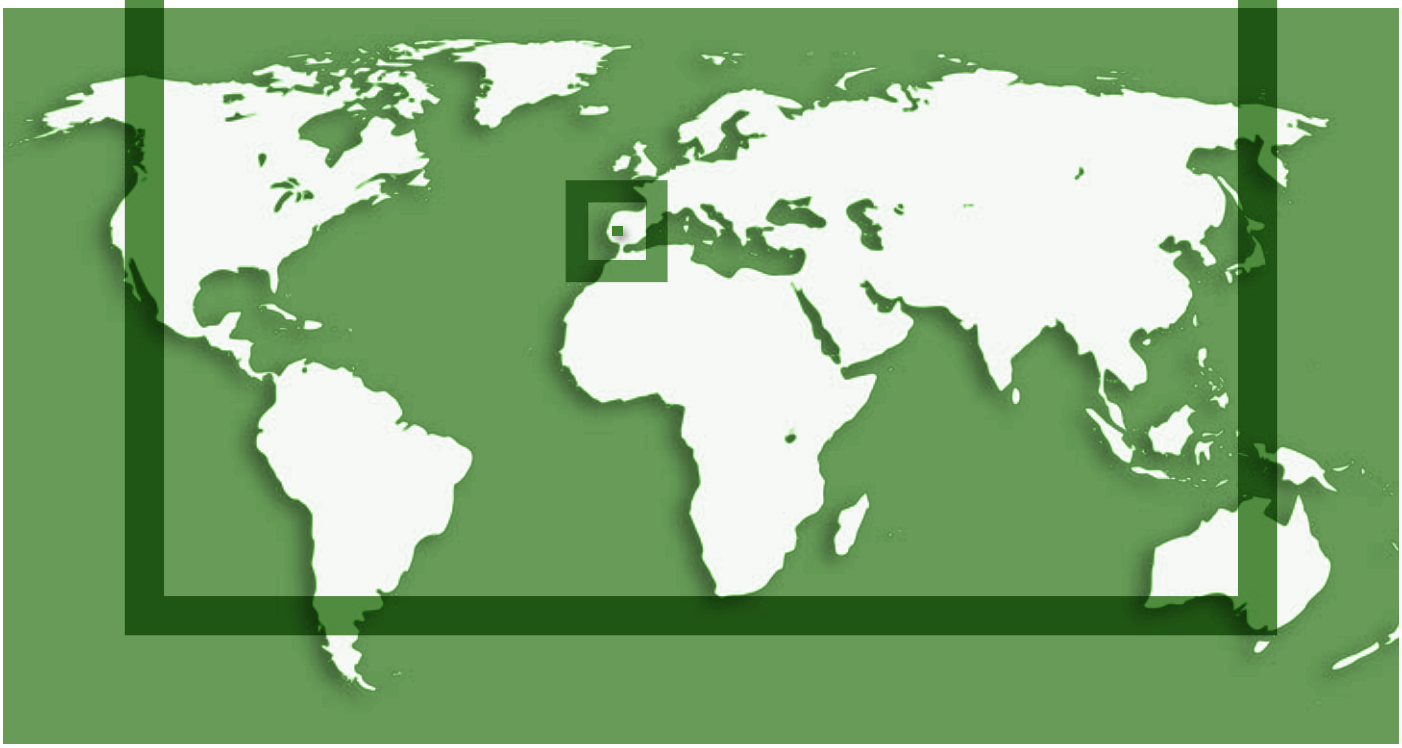
PORTUGAL INVESTMENT GUIDE

葡萄牙-投资指南

2014



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I. 介绍

PLMJ在40年的业务经营当中，已经多次参与到葡萄牙的投资项目当中。处理的案件从工业到商业、从服务业到农业以及从杠杆股权投资到复杂的项目融资合同。即密切关注国内的经济增长，也直接吸引外商投资。我们的服务范围，从为建立当地简单的分支机构提供法律咨询，到与当地的政府机关洽谈重大的投资合同，包括金融、税收和其他的项目。在所有项目中，PLMJ都始终站在客户的一边，全程为客户提供必要的支持。

此投资指南的目的就是为了分享与此相关的经验（尽管只是很少的一部分）。

你可以发现葡萄牙在吸引重大投资项目方面的竞争力已经有很大提升，体现在科技、劳动力、基础设施、物流、地理优势，法律和税务等方面。投资指南将会揭露葡萄牙外商投资模式已经发生了改变；与此同时，对我们来说也是一个巨大的挑战，且没有理由怀疑葡萄牙对外国投资者的吸引力。相反的是，过去5年里法律体系的改变，也使葡萄牙的竞争力大大提升。PLMJ律师事务所一直是法律制度改革开拓者，拥有高效且越发高效的专业团队，并致力于利用其专业的法律知识为客户提供优质的法律服务。

这本投资指南是众多已经出版的或即将出版的投资指南中的一本，覆盖了PLMJ业务所遍布的市场 — 葡萄牙、安哥拉、莫桑比克、巴西、中国澳门和中国大陆。制定此投资指南的目的和往常一样，都是为了服务客户和支持葡萄牙企业的跨国发展，提供专业且能够为其带来增值的法律服务。

I. Introduction

Over its 40-year history, PLMJ has been involved in countless investment projects in Portugal. The firm has handled projects from industry to commerce, services to agriculture and leveraged equity processes to complex project finance investment contracts. With a focus on both the internal growth of the national business framework and on directly attracting foreign investment, we have advised on everything from setting up a simple local branch to negotiating huge investment contracts with the relevant authorities, involving financial, tax and other incentives. In all these projects, PLMJ has been at its clients' side providing the support necessary at every step of the way.

The purpose of this Investment Guide is to share a part – albeit a very small part – of that experience.

You will see from this guide that Portugal has increasingly competitive conditions – technological, labour, infrastructure, logistics, geographical, legal and tax – to continue to attract large investment projects. As the guide will reveal, the shift in foreign investment patterns is very real but, at the same time, a challenge to us all and there is no reason to assume that Portugal is inevitably less attractive to foreign investors. On the contrary, a relevant part of the legislative changes introduced over the last 5 years have contributed to increased competitiveness. Above all, you will see that PLMJ is and will always be a pioneering, effective and increasingly specialised law firm that takes its professional responsibilities as a partner par excellence for its clients very seriously.

This Guide is part of a series of Investment Guides, already published or in the course of publication, that cover the main markets in which PLMJ operates – Portugal, Angola, Mozambique and Brazil, Macao and China. Our intention in creating these guides is the same as ever – to serve our clients and support the international expansion of Portuguese businesses, providing distinctive legal services with high added value.

II. 在葡萄牙投资

投资激励政策

1. 国家战略参考框架

通过国家战略参考框架下的欧盟结构化基金项目（2007-2013），在葡萄牙投资和葡萄牙经济的国际化，都获得很多的政策支持。以上提到的QREN".
是葡萄牙语首字母的缩写。

根据不同的运营项目，在结构化基金和凝聚基金的支持下，通过建立三个重点关注人性潜力、经济竞争力和土地利用发展的主题议程，已经开始为实现此目标而付诸行动。

同期所获得的奖励与已付之股利相对应（根据法律的规定是非常合适的），根据项目的特性，合格的费用分类也是不断变化的。

大体上，这种奖励机制被转换成一系列可补偿的奖励机制（定期的无利息贷款）。奖励条款是被写进与葡萄牙政府签订的投资协议里面的，是为了能够实现协议里所达成的多种目标。一般来说，获得这些投资需要经过提供候选人的程序，且是建立在具有竞争力的基础之上的。在一些项目当中，如果战略相似（包括投资的规模），竞争机制就会被免除。

在QREN的激励体制下，奖励的项目范围包括：1 公司的研发活动 2 生产创新 3 中小企业的动力竞争因素的发展。QREN 制度涵盖对葡萄牙经济和特定地区有战略利益的投资项目，如被葡萄牙政府评为具有出色表现的投资项目。

所获得的财政支持须依据激励特许协议，在使用的时候也须受到监督和控制，及遵循投资计划和现行的法律。

激励机制的本质应该依照专单行条例，有以下几种类型; 1 无偿的激励机制 2 有偿的激励机制 3 利率补贴。根据以下的不同因素，项目会运用不同的标准：1 对葡萄牙经济竞争力的贡献 2 对当地经济竞争力和经济凝聚力的贡献 3 项目额度对实施公司的竞争力的贡献。

实际上，对欧盟基金共同资助的公司的直接激励，是促进葡萄牙商业投资的重要因素。这也被QREN2007-2013年的评估报告所确认。2013年末，QREN的执行率达到了预计在2015年实施的总留本基金的72.6%。在数量上相当于€155亿经过验证的支出。经过批准的总欧盟留本基金的执行率达到69.3%。

目前预计在2014-2020年这段期间，将会巩固这项政策，且会越来越重点支持与适合市场的产品和服务有关的生产活动。同时，为了增强公司的竞争力，尤其是中小企业、国家和区域专业化信息策略中重要部分的竞争力，也会着重支持与创新、创造力、国际化和基础技能培训方面有关的商业项目。

II. Investing in Portugal

INVESTMENT INCENTIVES

1. QREN -NATIONAL STRATEGIC REFERENCE FRAMEWORK

Investment in Portugal and the internationalisation of the Portuguese economy had a range of support instruments available to them under the EU structural funds programme (2007-2013) through the National Strategic Reference Framework (Quadro de Referência Estratégico Nacional) referred to here by its Portuguese initials "QREN".

The pursuit of this goal was put into practice, on the level of the different Operational Programmes and with the support of the Structural Funds and the Cohesion Fund, by creating three **Thematic Operational Agendas** focusing on three crucial areas of intervention: Human Potential, Competitiveness of the Economy and Land Use Development.

The incentives granted in the period referred to above corresponded to the percentages of investment actually made (considered eligible under the terms of the law), and the classification of the expenses as eligible was variable according to the nature of the project.

In general, these incentive mechanisms translated into the granting of a set of reimbursable incentives (loans without interest for a fixed term). The incentives were established in investment agreements to be made with the Portuguese State in return for making the investments and achieving certain objectives laid down in the agreements. Obtaining these investments was, in general, subject to a process that involved presenting candidacies on a competitive basis. In certain projects, because of their strategic relevance (including the size of the investment), the use of the competitive mechanism was dispensed with.

Under the QREN system of incentives, support was available for investment projects involving (i) **R&D activities in companies**, (ii) **productive innovation**, and (iii) **development of dynamic competitiveness factors in SMEs**. The QREN system also covered investments deemed to be of strategic interest to the Portuguese economy or a specific region, as recognised on an exceptional basis by the Government.

The financial support granted was subject to an incentive concession agreement and also subject to monitoring and control in terms of its use, in compliance with the investment project and the applicable law.

The **nature of the incentives** to be granted was subject to specific regulation and they may be (i) non-reimbursable incentives, (ii) reimbursable incentives, or (ii) interest rate subsidies. The projects were analysed using various criteria, considering the following factors: (i) contribution to the competitiveness of the Portuguese economy; (ii) contribution to regional competitiveness and to territorial economic cohesion; and (iii) the value of the projects to the competitiveness of the company carrying it out.

Direct incentives to companies co-financed by the EU funds have, in fact been an important factor in promoting business investment in Portugal and this is confirmed by the evaluation carried out under QREN 2007-2013. At the end of 2013, the QREN implementation rate reached 72.6% of the total endowment of the funds expected to be implemented by 2015. This corresponds to €15.5 billion in volume of validated expenditure. The implementation rate for the total endowment of the EU funds approved reached 69.3%.

It is currently expected that this tool will be strengthened in the period 2014-2020, with an increased focus on support for activities involving the production of marketable products and services. The focus is also expected to be on supporting business projects involving investment in innovation, creativity, internationalisation and training in fundamental skills to increase the competitiveness of companies, in particular SMEs and in the priorities defined in national and regional intelligence specialisation strategies.

在此背景下，葡萄牙向欧盟提出了名为“葡萄牙2020”的合伙协议，可能会在2014年的下半年获得批准。此协议定义了2014-2020年期间的战略优势，并规定了经济、社会、环境和国土开发等方面的政策，在未来几年，不仅会刺激经济增长，也会创造更多的就业机会。

合伙协议同也定义了活动、投资和融资方面的优先权，对于推动未来国家的发展具有最大意义。在下个QREN生效之前，没有任何的激励公司发展的国家架构文件实施。这也就意味着，预计在2014年下半年，都将会依据此文件的激励政策进行竞争。

无论如何，按照如上所述，向欧盟委员会提交的葡萄牙提案使一直生效到2013年末的激励制度能够继续和延长。

2. 关乎国家利益的项目

目前，葡萄牙针对某些项目，出台了一些有助于和刺激企业投资的政策，这些项目由于规模大，对葡萄牙的经济有重大的影响。此类项目被称作关乎国家利益的项目，按照葡语的首字母简写为“”PIN。

此政策的目的是鼓励项目招商，确保密切协助，克服行政阻碍，以及保证能够得到及时的回应和能够与激励政策中的机制相互呼应。

发起人所实施的项目，如果满足以下的要求，就会被认定为PINS:　1有利于创新或者维持直接雇员的数量 2 能够证明经济的可行性 3 有利于环境和区域的可持续发展 4 能够对具体的领域产生积极正面的影响 5 总投资额达到或超过2500万欧元 6 创造了至少50个就业岗位 7 发起人要具有很高的知名度和信用度。

在总投资额少于2500万欧元或者创造的就业机会不足50个，只要能够满足以下的要求，也可以被定义为PINS：　1 公司内部的研发活动费用至少达到了其营业额的10%　2 强大的创新应用组件，被应用到非常重要且有公司发明专利的生产活动当中 3 明确保护环境利益 4 重视出口，即至少50%的营业额来之国际市场 5 主营适合市场的产品和服务。

针对这些能够给葡萄牙经济带来活力的投资项目，最近，葡萄牙出台了一系列相应的制度，包括PIN项目。

In this context, the partnership agreement known as Portugal 2020 was recently proposed by Portugal to the European Commission and is awaiting its approval, which should occur in the second half of 2014. This agreement defines the strategic priorities for the 2014-2020 cycle and lays down the policy for economic, social, environmental and territorial development that will stimulate growth and create employment over the coming years.

The partnership agreement also defines the actions, investments and financing priorities deemed necessary to move the country forward over the next few years. Until the new QREN comes into force, no national framework for incentives to companies is established. This means that it is to be expected that competitions will be opened on the basis of incentive schemes of this nature in the second half of 2014.

In any event, and as mentioned above, the Portuguese proposal submitted to the European Commission provides for the continuation and possible expansion of the incentive system that was in force until the end of 2013, as identified above.

2. PROJECTS OF NATIONAL INTEREST (PIN).

Portugal currently has a mechanism to support and boost business investment for certain projects, which because of the size, are of greater relevance to the Portuguese economy. Such projects are classified as Projects of National Interest (Projectos de Interesse Nacional) referred to here by their Portuguese initials "PIN".

The aim of this mechanism is to encourage investment projects, ensuring close support in order to overcome administrative obstacles, to guarantee a faster response and to ensure integration with the mechanisms to attribute incentives.

Upon application by the promoter, projects may be recognised as PINs if they meet all the following requirements: (i) they contribute to the creation or maintenance of the number of direct employees; (ii) they have proven economic viability; (iii) they are capable of adequate environmental and territorial sustainability; (iv) they create a positive impact in specific areas; (v) they represent a total investment of €25 million or more; (vi) they create at least 50 jobs; and (vii) they are presented by promoters with recognised reputation and credibility.

Investment projects with a total value of less than €25 million or which create fewer than 50 jobs and may, exceptionally, be recognised as PIN projects as long as they meet two of following requirements: (i) Internal research and development (R&D) activity with a value of at least 10% of the company's turnover; (ii) a strong applied innovation component, which translates into a significant part of its activity anchored in a patent developed by the company; (iii) clear environmental interest; (iv) a strong location for exports, which translates into a minimum of 50% of its turnover directed to the international market; or (v) relevant production of marketable products and services.

A system to accompany investment projects which, because of their characteristics, may take on relevant importance in bringing dynamism to the Portuguese economy, including the said PIN projects, was implemented recently.

3. 黄金签证

2012年新出台了一项通过在葡萄牙投资获取居留证的特殊制度，即“黄金居留”。在过去一年了，吸引了大量的投资，是一次非常成功的尝试。

对于欧盟和欧洲经济区以外国家的居民进入和留在葡萄牙来说，这是一项非常简单的机制，只要他们满足几点要求就可以，须与投资有关，购置房产或者创造就业。

只要满足以下几点要求中的一个，就有资格获得黄金居留签证：1 向葡萄牙投资或者存入100万欧元 2 创造至少10个工作岗位 3 购置总额不低于50万欧元的房产。

获取黄金居留证以后，投资者可以：1 进入葡萄牙就不再需要办理签证 2 可以在葡萄牙生活和工作，同时保留自己的国籍。 3 可以自由进入申根国家 4 可以实现家庭团聚 5 有权利获取永久居留（5年以后）6 可以取得葡萄牙国籍（6年以后）

首次获取黄金居留证的时间是至少5年。在这段期间，必须要一直满足获取黄金居留证的条件，且在黄金居留证有效期间，持卡者就须每年在葡萄牙居住一段时间。只要仍然满足获取黄金居留证的要求，就可以在两年内进行一次更新。

3. GOLDEN VISAS

The implementation in 2012 of a new special system for residence permits for investment activity in Portugal, known as "Golden Visas", provided a great boost to investment in Portugal over the last year and was a notable success.

This is a simplified mechanism for citizens of countries outside the European Union and European Economic Area to enter and stay in Portugal if they meet certain requirements, essentially related to the investment, acquisition of real property and/or job creation.

Citizens who meet to one of three conditions are deemed eligible to obtain a "Golden Visa": (i) investment/ transfer of capital of at least €1 million, within certain conditions; (ii) creation and maintenance of at least 10 jobs; or (iii) acquisition of real property with a minimum value of €500,000.

Under this permit foreign investors may: (i) enter Portugal without the need for a residence dessert; (ii) live and work in Portugal and they may maintain another residence in another country; (iii) move freely within the Schengen area without the need for a visa; (iv) benefit from family reunification; (v) have access to permanent residence (after five years); and (vi) have access to Portuguese nationality (after six years).

The resident permit is granted for the initial minimum period of five years. During this period the requirements for granting of the permit must continue to be met and there are also minimum periods during which the permit holder must stay in Portugal while the permit remains in force. The permit may be renewed for periods of two years as long as the requirements for it to be granted are still met.

III. 在葡萄牙成立企业

为了方便控制自己的投资，外国投资者通常会选择在葡萄牙成立自己的企业，如建立有限责任公司或其他类型的代理机构。

在葡萄牙法律，尤指葡萄牙公司法典中，所规定的多种公司类型，最相关的就是配额公司（Limitada）和股份（S.A.”）。外国投资者选择公司类型，会根据以下的因素：结构及工作的简易程度、投资总额和与股本所有权相关的保密问题。

应该认识到公司法典应该依据6-A/2006　法令所规定的大量的修正案。这些改变简化了在葡萄牙建立公司的流程。

这意味着在葡萄牙设立公司快速又简单。

成立公司

成立一个配额公司或股份公司，需要办理以下手续：

公司名称和公司治理目标的批准-公司名称和公司治理目标要获得国家公司注册处的批准。

股本额须存入银行-根据规定，股本额应该存入葡萄牙的银行，然后银行会出文件证明股本额已存入。股东在公司成立时作出的把存款存入银行的声明，也起着同样的作用。在公司成立以后，存入的股本额是可以取出来的。

公司的成立-一般来说，通过股东签订私密文件才可以成立公司，且签字必须经过公证处或者律师正式的认证，除非在办理股东带入公司的资产转让的时候，还需要另外的正式文件，在这种情况下，必须要执行公司契约。

公司章程的采用和公司成员的任命都规定在了公司文件和公证书当中。

公司章程必须涵盖；发起股东的全名、公司治理目标、注册办公地、股本额、与公司功能相关的必要信息、公司治理结构以及其他一些股东认为有关的问题。除了公司法典规定的义务性条款和限制性条款，一般原则就是合同双方自由原则。

登记和官方刊登-公司必须在成立60日内在相关的商业登记处登记。一登记，就要签发含有公司详细信息的商业登记证明。

现在可以在商业登记处进行双语登记，任何相关方可以在世界各地以英语查询所登记信息。

III. Setting up a Business in Portugal

It is very common for foreign investors to choose to set up their own business structures in Portugal, such as limited liability companies and other forms of representation, in order to have direct control over their investment.

Among the various types of company provided for in Portuguese law and, in particular, in the Portuguese Companies Code, the most relevant are quota companies (*"Limitada"*) and share companies (*"S.A."*). The choice of one of these structures by the foreign investor depends on various factors, including the degree of simplicity of structure and operation, the amounts of capital to be invested and issues of confidentiality as regards the ownership of the share capital.

It should be noted that the Companies Code was subject to considerable amendments made by Decree-Law 76-A/2006 of 29 March. These changes sought among other things to simplify the process of setting up companies in Portugal.

This means that setting up a company in Portugal is now a quick and simple process.

INCORPORATING A COMPANY

Incorporating a quota or a share company involves the following main formalities:

Approval of the company name and corporate object - The name and the corporate object of the company must be approved by the National Registry of Companies ("RNPC").

Deposit of the share capital – As a rule, the share capital must be deposited in a bank in Portugal which then issues a document confirming that the deposit was made. This document may be replaced by a statement of the shareholders made upon incorporation to the effect that they have deposited the share capital. The deposited share capital may be withdrawn after the company has been incorporated.

Incorporation of the company – Generally speaking, a company is incorporated by means of a private document signed by the shareholders, whose signatures must be duly certified by a notary or lawyer, unless a more formal instrument is required to transfer the assets that are brought into the company by the shareholders, in which case a deed of incorporation must be executed.

The adoption of the articles of association and the appointment of the members of the corporate bodies are dealt with in the incorporation document/notarial deed.

The articles of association of the company must contain, among other things, the full names of the founding shareholders, the corporate object of the company, the registered office and share capital, the information essential to the functioning of the corporate bodies, their structure and other matters that the shareholders may deem relevant. Apart from the compulsory provisions and limitations set out in the Companies Code, the general rule is the contractual freedom of the parties.

Registration and official publication - The company must be registered at the relevant Commercial Registry Office within 60 days of the date of incorporation. Once registered, a commercial registration certificate with the main details of the company will be issued.

The Commercial Registry Office now has a bilingual commercial registry, allowing any interested party electronic access to the information contained in the certificate in English from any part in the world.

在公司登记以后，商业登记处就会把登记信息公布在其官方网站：www.mj.gog.pt/publicacoes.。

后续手续-公司和公司成员也必须在葡萄牙税务局和社会安全保障局登记。根据公司所经营的业务，可能还需要进行其它登记。

股份公司

公司法典第271条到464条都是关于设立股份公司的条款，且股份公司所依据的法律法规远比配额公司的复杂。

以下是股份公司的特点：

股东人数-股份公司至少有5个国内或国外的股东（个人或者公司），但是，公司法典允许外国公司作为唯一股东成立一个股份公司。

股本-股份公司的最低股本为50000欧元，分割成相同的面值且每份不得低于一分。70%的股本最多可以在5年内以现金支付。

股份公司可以发行证券，在每一次发行中都授予了平等的债权，也被称作债券。每次发行都受双倍公司资本金的限制，还需要考虑不予兑换的债券的价格总额。

资本的流动性-股份的转让不受制于任何具体的合同形式，要依靠公司发行股票的类型。注册的无记名股票的转让，仅仅只要把股票证明交给买方或者买方指定的受托公司。注册的记名股票转让需要在股票证明上背书。需告知公司登记的目的。记账式股票的转让需要在买方的注册账户注册。

公司章程规定，股权转让应事先经过公司同意，且股东具有优先购买权。

责任-在股份公司里，相对于第三方，股东的责任受到各自股份的限制。

内部结构-董事会具有管理公司的权力，且具有代表公司的专有权力。公司章程规定了董事会的人数。股本额没有超过200000欧元的股份公司可以任命一个执行董事代替董事会。董事可以不是股东，但必须是完全行为能力人。如果公司任命一个董事，就必须任命一个人代表其履行义务。

After the company is registered, the Commercial Registry Office will then publish the registration information on its official site www.mj.gog.pt/publicacoes.

Subsequent formalities – The company and the members of its corporate bodies must also be registered with the Portuguese Tax Authority and Social Security Office. Other formalities may be required, depending on the business activity the company intends to carry on.

SHARE COMPANIES

The share companies are governed by Articles 271 to 464 of the Companies Code and are subject to a more complex regime than the quota companies.

The main features of the share companies are the following:

Number of shareholders – The share companies must have at least five national or foreign shareholders (individuals or companies). However, the Companies Code allows the incorporation of a share company by a foreign company which will be the sole owner of the shares representing the entire share capital.

Share capital – The minimum share capital required for a share company is €50,000, divided into shares (bearer or nominative, book-entry or represented by certificates) of the same nominal value, which may not be less than one cent each. It is possible to defer the payment of 70% of the share capital in cash for a maximum period of five years.

Share companies may issue securities that in a single issue confer equal credit rights, which are called bonds. Any such issue is limited to an amount corresponding to the double the company's equity capital, taking into account the sum of the price of all non-redeemed issued bonds.

Flexibility of capital - The transfer of shares is not subject to any specific contractual form and depends on the type of shares issued by the company. Registered bearer shares that are not part of the centralised system are transferred by the simple delivery of the share certificates to the purchaser or to any depositary indicated by the purchaser. Registered nominative shares that are not part of the centralised system are transferred by endorsing a declaration of transfer in favour of the purchaser on the share certificate. The company must be informed for registration purposes. The transfer of book-entry shares is carried out by registration in the purchaser's registration account.

As regards share transfer, the company's articles of association may establish pre-emption rights in favour of the shareholders as well as require the prior consent of the company for the transfer.

Liability – The liability of shareholders in a share company vis-à-vis third parties is limited to the amount of their shareholdings.

Internal structure – The board of directors is entrusted with the management of the company and has exclusive powers to represent the same. The number of members of the board of directors is established in the articles of association of the company. A share company whose share capital does not exceed €200,000 may appoint a sole director instead of a board of directors. The directors may not be shareholders but must be individuals of full legal capacity. If a company is appointed as a director, it must appoint an individual to carry out the respective duties on its behalf.

公司董事会必须决定于公司管理相关的所有问题，包括（1）指派董事，（2）年度报告和年度报表，（3）并购、处置和管理不动产，（4）建立或结束公司或其中重要的一部分，（5）公司业务扩展或减少，（6）改变注册地点和依据公司章程的规定增加注册资本，（7）董事要求的需要董事会作出决定的其它一切相关问题。

股份公司有三种管理和监督模式：

- 传统模式-董事会和监事会（或董事和一个监事）。这是传统的葡萄牙的公司模式和所有的股份公司都是一样的。
- 安格鲁撒克逊式-董事会，审计委员会和会计师。
- 德国模式-执行董事会、理事会、监事会和会计师。

使用传统模式的公司的监事会是（1）唯一的监事-会计师或者特许会计事务所-监事会，或（2）监事会和不属于前者成员的会计师或特许会计事务所。在证券交易所上市的公司和不完全由另一家公司控股且在连续两年内超过了以下三个门槛中的两个的公司都必须使用第二种模式，三个门槛分别是（1）总资产负债：100,000,000欧元；（2）净销售额和其他利润150,000,000欧元；和（3）员工平均人数：150人。

监事或监事会须对以下事情负责：（1）监督公司的管理，（2）监督公司遵守法律和严格按照公司执行，（3）验证账簿、会计记录和辅助文档的准确性，（4）验证会计文件的准确性，和（5）按照法律和公司章程规定，履行其他义务。

股东大会-会计年度结束之后的3个月内或当需要提交合并报表的5个月内就要召开股东大会；或利用权益法解决以下问题的时候，需要召开股东大会：（1）决定年度报告和财务报表，（2）决定公司成果的分配比例，（3）评估公司的管理监事制度，（4）处理其职责范围内的任命。

除非法律或公司章程另有规定，股东大会的决议只要获得出席会议的成员的简单多数票即为通过。

一份股权只值一票，除非章程另有规定，如（1）规定一票需要一些股权，如果公司发行的股票都包含在内，一票至少需要1000股，或（2）规定如果由一个股东代表自己或代表他人参加投票，就不会考虑超过一定数量的选票。

法律规定的特定多数适用于以下情况：对公司章程的修订，股本增加、合并、分解、改革、停止清理和清算等。

会计账簿的公开-即使必须利用公司简化信息系统（IES）把会计账簿挂在网上，但这并不是强制性的。

The board of directors must resolve on any matters concerning the management of the company, including (i) co-opting of directors, (ii) annual reports and accounts, (iii) acquisition, disposition and charging of real estate, (iv) opening or closing establishments or significant parts of the same, (v) significant expansion or reduction in the company's activity, (vi) change of the registered office and capital increases under the terms set out in the articles of association and (vii) any other matter that requires a resolution of the board at the request of a director.

There are three types of management and supervision models for share companies:

- Traditional – Board of directors and a supervisory board (or director and sole supervisor). This structure is traditionally used in Portugal and is common to almost all the share companies;
- Anglo-Saxon – Board of directors, with an audit committee and a chartered accountant; and
- German – Board of executive directors, general board, supervisory board and chartered accountant.

The supervision of companies using the traditional model is carried out by (i) a sole supervisor - either a chartered accountant or a chartered accountancy firm - or a supervisory board, or (ii) a supervisory board and a chartered accountant or a chartered accountancy firm that is not a member of the former. This latter type is compulsory for companies quoted on the stock exchange and for companies not wholly owned by another company using this model that exceed two of the three following thresholds for two years in a row,: (i) total balance sheet: €100,000,000; (ii) net sales and other profits €150,000,000; and/or (iii) average number of employees: 150.

The sole supervisor or the supervisory board are responsible for (i) supervising the management of the company, (ii) monitoring compliance with the law and with the company articles of association, (iii) verifying the accuracy of the books, accounting records and supporting documentation, (iv) verifying the accuracy of the accounting documents and (v) fulfilling any other duties under the law or the company articles of association.

General Meetings – The shareholders' general meeting must convene within three months of the date of the closure of the financial year or within five months of the same date whenever the company must file consolidated accounts or use the equity method in order to (i) resolve on the annual report and financial statements, (ii) resolve on the proposed allocation of the company results, (iii) appraise the management and supervision of the company in general and (iv) make any appointments which fall within its competence.

As a rule, the resolutions of the general meeting are passed by a simple majority of the shareholder votes present at the meeting, unless otherwise stipulated by law or in the company articles of association.

Each share carries one vote unless provided otherwise in the company articles of association, which may (i) stipulate that one vote is equivalent to a certain number of shares, provided that all the shares issued by the company are included and that one vote amounts to at least €1,000 of capital or (ii) stipulate that votes of over and above a certain number are not taken into account when cast by a single shareholder on his own behalf or also as proxy for another shareholder.

As regards the qualified majorities required by law, these include resolutions on the amendment of the company articles of association, including but not limited to share capital increases, mergers, demergers, transformation or winding up and liquidation.

Publication of Accounts – The publication of the accounts is not mandatory although they must be filed online by using the Simplified Company Information system ("IES").

利润分配-除非章程规定或者有75%多数的股权同意，股份公司必须分配年度可分配利润的50%。

如果公司章程同意，由董事按照法律和财政需求分配利润。

最重要的法律要求之一是从年利润中预留5%的法律准备金，直到法律准备金达到了股本的20%，才不用预留。章程也可以规定更高比例的法律准备金。

配额公司

葡萄牙公司法典197条到290条规定配额公司的相关法条，主要有以下特征：

合伙人数-至少有两名合伙人，才能成立配额公司。然而，在最长期限为一年的　配额公司，只能有一名合伙人。也可以由一个控制公司整个股权的个体（个人或者公司），成立一家公司。这种类型的公司叫做《一人有限公司》，且字样必须体现着公司的名称当中。

责任-合伙人不对公司的债权人负责，仅仅对公司负责：每个合伙人对自己的出资负责，同时也对其他合伙人的出资承担连带责任。

然而，公司章程可以规定，合伙人不仅对公司负责，还要在限额内对公司的债权人负责。按照公司章程，可以单独地承担责任，也可以与公司承担连带责任。除非章程另有规定，合伙人偿还了公司的债务，有权利要求公司偿还，但没有权利要求其它合伙人偿还。

股本-配额公司的最小注册资本是2.00欧元，首次出资可以在公司第一个会计年度结束之后以现金记录。

股本被分成配额，可能是或不是相同面额的（但不得少于1.00欧元）。这种配额总是被记名的，在某种意义上来说，持有者的名字必须被记录在公司章程和后续的所有协议和决议当中，通过这种方式进行转让和股本增值，同时也应记录在公司商业注册证书里。

资金的流动性-配额转让的时候，必须由在相关商业登记处登记的书面协议。公司章程可以规定配额转让的限制条件和其他合伙人或者公司本身的优先权。除非发生在配偶、亲戚（长辈继承晚辈或晚辈继承长辈）或合伙人之间，配额转让都要经过公司的同意，才能对公司产生效力。

Generally, unless otherwise authorised by the tax authorities, the financial year corresponds to the calendar year, that is to say, from 1 January to 31 December.

Distribution of profits - Unless stipulated otherwise in the company articles of association or approved by a 75% majority of the share capital, the share company must distribute at least 50% of the annual distributable profits.

Profits may be distributed by the directors subject to certain legal and financial requirements, provided that this is permitted by the company articles of association.

One of the most important legal requirements is the setting up of a legal reserve of 5% of the annual profits until the same reaches an amount equivalent to 20% of the share capital. The company articles of association may set a higher minimum for the legal reserve.

QUOTA COMPANIES

Quota companies are governed by Articles 197 to 270-G of the Portuguese Companies Code and their main features are as follows:

Number of partners - As a rule, the quota company must be incorporated with at least two partners. However, it may have only one partner for a maximum period of one year. It is also possible to incorporate a company with a sole partner, either an individual or a company, that will hold the entire share capital. This type of company is called «*Sociedade Unipessoal*» and this term must be included in the company name.

Liability – The partners are not liable to the creditors of the company, only to the company itself: each partner is liable for the payment of their own contributions and, on a subsidiary basis, is jointly liable with the others for the payment of the contributions of the other partners.

However, the Companies Code allows the articles of association to stipulated that one or more of the partners will be liable not only to the company, as described above, but also to the creditors of the company up to a given amount. This liability may be jointly with the company or severally, as defined in the articles of association. Once a partner has settled any company's debts, he will have a right of return against the company, but not against the other partners, for the full amount paid, unless provided otherwise in the articles of association.

Share capital - The minimum share capital for a quota company is €2.00. The initial capital entries in cash may be deferred up to the end of the first financial year of the company.

The share capital is divided into «quotas», which may or not be of equal value (but may not be less than €1.00 each). These quotas are always nominative in the sense that the names of those who hold them must be stated in the articles of association as well as in any subsequent agreement or resolution by means of which they are transferred or the share capital is increased and also stated in the company's commercial registration certificate.

Flexibility of capital - The quotas must be transferred by means of a written agreement which is then duly registered with the relevant commercial registry. The company articles of association may set limits or conditions on the transfer of quotas or pre-emption rights for the other partners or for the company itself. The transfer of quotas will not take effect against the company until it gives its consent, with the exception of transfers between spouses, relatives in the ascending or descending lines or between partners.

公开账目-在财政年度结束的3个月内，股东大会须批准年度财务报表。即使必须利用公司简化信息系统（IES）把会计账簿挂在网上，但这并不是强制性的。

一般来说，除非税务机构批准，财政年度应与公历年一致，即从1月1日到12月31日。

内部结构-配额公司必须聘请一个或多个经理，且不属于公司合伙人。这些经理必须尊重合伙人的决议，实施一切必要的措施和适当的行为去实现公司的目标。

公司章程规定了，所有合伙人由管理公司的权利，但这并不适用与后来的合伙人。除非辞职或者被解聘，经理一直有管理公司的权利，即使公司文件或聘用决议里可能规定着任期。

公司章程可能会要求公司有监事会，与股份公司的监事会适用同样的条款。当连续两年超过了以下三个门槛中的两个，就要聘请一个会计师：（1）公司资产总额：1500000欧元；（2）净利润和其他利润3000000欧元；和（3）员工平均数：50。

股东大会-股东大会必须通过以下几个问题：（1）摊销的配额、收购、处置公司配额、配额定价、公司分立和配额转让；（2）合伙人的退出；（3）解聘经理或和监事会成员；（4）管理报告、年度会计报表、利润分配和损失分摊；（5）公司章程的修订。

除非法律或公司章程另有规定，股东大会的决议只要获得出席会议的成员的简单多数票即为通过。

法律规定的特定多数适用于以下情况：对公司章程的修订，股本增加、合并、分解、改革、停止清理和清算等。

利润分配-除非章程规定或者有75%多数的股权同意，股份公司必须分配年度可分配利润的50%。

如果公司章程同意，由董事按照法律和财政需求分配利润。

重要的法律要求之一是从年利润中预留5%的法律准备金，直到法律准备金达到了股本的20%，才不用预留（任何情况下，配额公司的最小额度都不能低于2500欧元）。章程也可以规定更高比例的法律准备金。

Publication of accounts – The general meeting must approve the annual accounts within three months of the end of the financial year to which they refer. The publication of the accounts is not mandatory but they must be filed online by using the Simplified Company Information ("IES") system.

Generally, unless otherwise authorised by the tax authorities, the financial year corresponds to the calendar year, that is to say, from 1 January to 31 December.

Internal structure – The quota company must appoint one or more managers that may not be partners. These managers must carry out all necessary or appropriate acts to achieve the corporate object of the company, respecting partners' resolutions.

When the articles of association provide that the management of the company is entrusted to all the partners, this will not apply to those who become partners at a later date. The duties of the managers continue until terminated by removal or resignation, although the deed/document of incorporation or the appointment resolution may stipulate a certain term of office.

The company articles of association may require the company to have a supervisory board, which is governed by the provisions that apply to the share companies. A chartered accountant must be appointed to supervise the accounts whenever two of the following three thresholds are exceeded for two years in a row: (i) total balance sheet: €1,500,000; (ii) net sales and other profits €3,000,000; and (iii) average number of employees: 50.

General Meetings – Certain matters must be passed by resolution of the general meeting, including (i) the amortisation of quotas, the acquisition, disposition and charging of company quotas, and consent for the division or transfer of quotas, (ii) the exclusion of partners, (iii) the dismissal of managers and supervisory board members, (iv) the approval of the management report and annual accounts, allocation of profits and apportionment of losses and (v) amendment of the articles of association.

As a general rule, the resolutions are passed at the general meeting by a simple majority of the votes cast by the attending partners, unless otherwise provided by law or in the company articles of association.

As regards the qualified majorities required by law, these include resolutions on the amendment of the company articles of association, including but not limited to share capital increases, mergers, demergers, transformation or winding up and liquidation.

Distribution of profits - Unless provided otherwise in the company articles of association or approved by a 75% majority of the share capital, the quota company must distribute at least 50% of the annual distributable profits.

Profits may be distributed by the managers subject to certain legal and financial requirements, provided that this is permitted by the company articles of association.

As mentioned above in respect of share companies, one of the most important legal requirements is the setting up of a legal reserve of 5% of the annual profits until this reaches an amount equivalent to 20% of the share capital (in any case, the minimum amount for the quota company may never be less than €2,500). The company articles of association may set a higher minimum for the legal reserve.

当地代理机构类型

在葡萄牙建立代理代理机构，还是公司，是由设立的费用决定的，例如建立分支机构和成立公司的费用差不多。

公司法典没有适用于此类代理机构的具体的条款，且没有适用于公司业务结构、管理和公司责任的法律法规。

葡萄牙判例法和法律原理对于作为非自主法人的分支机构，有一致的分类，且认为是母公司的延伸。因此，母公司应对分支机构签订的协议所产生的义务负责，并对其行为承担完全和无限责任。

分支机构没有自己的机构和代表机制，且通常由母公司委托授权的律师对他们进行管理。

TYPES OF LOCAL REPRESENTATION

The choice between setting up a permanent form of representation or a company in Portugal is determined essentially by commercial reasons since the costs of opening, for example, a branch are broadly similar to those for incorporating a company.

The Companies Code has no specific provisions applicable to this type of representation and there are no regulations governing its operational structure, bodies and liabilities.

With regard to branches, these are unanimously classified by Portuguese case law and legal doctrine as non-autonomous legal entities, and are considered an extension of the parent company. Consequently, the parent company is liable for the obligations arising from the agreements entered into by the branch and takes on full and unlimited liability for its activities.

Branches have no bodies or representation mechanisms of their own and their management is usually entrusted to an attorney whose powers are conferred by a power of attorney executed by the parent company.

IV. 合资企业和企业并购

是成立合资企业、兼并或收购—可作为直接建立公司的替代方式-取决于最初的商业目的。

在选择商业模式之前，应该首先被投资者接受，最方便的办法就是先进行尽职调查，评估一下商业风险，同时调查一下当地的相关法律、所涉及的税收和规章法则，后面的问题应该与各自的业务范围相关。

合资企业

合资企业的目的是建立公司或取得公司的控股权，通常是配额公司或股份公司。

在设立合资企业之前，通常投资者都会在备忘录里记录与计划业务情况相关的一般术语和他们的兴趣，包括代表、保证、责任、赔偿、非竞争和保密问题。

不管备忘录的签名，双方可能会在公司章程里规定合资企业的结构和运营方面的问题。在很多情况下，股东协议里会规定一系列基本的公司问题，包括限制股票转让和留置、明确优购买权、认沽期权和看涨期权、公司机构的组成、公司业务的管理和监管、多个重大问题的通过规则和基于公司运营产生的争议的解决机制。

兼并与收购

兼并和收购通常需要组织利益相关方开一次初步谈判会议，讨论设想交易的相关问题。这种情况下，通常也会使用备忘录。

尽职调查

考虑到业务的范围、价值和风险，通常都会进行尽职调查，去评估风险、相关的法律法规等方面的问题。

尽职调查的主要目的就是让投资者对目标有全面的了解和评价，同时也对风险有一定认知。尽职调查的结果增加了投资者谈判的筹码，尤其是涉及到合同价格和确定机构类型和特约条款。

IV. Joint-Ventures, Mergers and Acquisitions

The choice between a joint-venture, merger or acquisition operations - as alternatives to the direct incorporation of a company in Portugal - is primordially determined by business reasons.

Prior to the selection of the business form that shall become adopted by investors, it is considered convenient to perform a local due diligence in view of the assessment of the risks associated to the business, as well as of the relevant legal issues, particularly concerning tax, labour and regulatory matters, in this latter case according to the scope of the respective activity.

JOINT-VENTURES

The aim of a joint-venture is generally the incorporation or acquisition of a holding in a company, usually a quota or share company.

Prior to setting up the joint venture, it is common for the participants to record the general terms and their interests regarding the conditions of the projected business, including any representations and warranties, liabilities, indemnity, non-competition and confidentiality issues, in a written document commonly referred to as a memorandum of understanding.

Regardless of the signature of a Memorandum of Understanding, parties may regulate the structural and operational aspects in the articles of association of the joint venture vehicle and, in many cases, in shareholders' agreements which seek to define and provide for a range of basic corporate matters, including placing limits on the free transfer and encumbrance of shares, defining pre-emption rights and put and call options, the composition of the company bodies, the management and supervision of the company business, the rules that apply to passing resolutions on more substantial issues and resolution mechanisms for disputes arising from the operation of the joint venture.

MERGERS AND ACQUISITIONS

Merging or acquiring a business company usually entails the holding of preliminary negotiations between the interested parties with regard to the terms and conditions of the envisaged transaction. It is also common in such cases to execute a memorandum of understanding.

DUE DILIGENCE

Considering the extent, value and risks associated with the operation, it is common to hold a due diligence to assess the risks and the various relevant legal and regulatory aspects.

The main purpose of a due diligence is to afford a better viewpoint, knowledge and assessment of the target, as well as any associated risks. The results of this exercise provide the investor with relevant arguments for the negotiations, particularly as regards contract price and defining representations and warranties.

尽职调查的目的：

- 概述和确定目标；
- 认识、理解和量化风险；
- 发现障碍和可能影响成功交易的问题；
- 确定合同包含的机构类型和特约条款；
- 作出最后的投资决定；

尽职调查的范围和期限取决于业务环境和所调查问题的本质。律师进行的法律尽职调查通常和财务审计一起。

收购

一旦完成法律、金融尽职调查和做出投资的决定，就会通过签订合同的方式进行运作，一般签订股权购买协议。

一般通过涉及双方签订的书面配额转让协议，购买部分或全部配额公司的配额；协议规定了支付价款和日期、代理机构、特约条款、保密和非竞争承诺及后续的程序。

当公司章程对配额转让进行限制-如需要获得公司的同意-就必须事先获得同意才能转让。转让后需在相关商业登记处登记，并通知相关规制机关。

一般来说，股份公司的股票可以自由进行转让。公司章程不会限制股票的转让，且葡萄牙公司法典也没有要求转让要以书面方式进行（与配额公司转让配额不同）。

尽管如此，通常都会签订股票购买协议，规定转让条款和条件，也会写入投资者通过尽职调查所确定的合同条款。

与配额公司所适用的条款不同，股票转让无需再商业登记处登记，但需要向当地税务部门提交转让声明。

The due diligence essentially intends to:

- Outline and determine the target;
- Identify, understand and quantify risks;
- Outline any obstacles or conditions that may affect a successful conclusion of the transaction;
- Define the representations and warranties to be included in the contract; and
- Make a final decision as to the investment.

The scope and duration of a due diligence essentially depends on the particular circumstances of each business and the nature of the matters examined. A legal due diligence conducted by Lawyers is usually made simultaneously with financial audits.

ACQUISITIONS

Once the legal and/or financial due diligence has been concluded and the investment decision made, the operation is executed by means of the most appropriate contract, which is generally a share purchase agreement.

The purchase of all or part of a quota company is generally executed by means of a written quota transfer agreement by the parties involved, which usually sets down the payment price and dates, any representations and warranties as well as any confidentiality or non-competition undertakings and subsequent formalities.

In cases where limits are placed on the transfer by the company articles of association – such as requiring the consent of the company – these must be complied with prior to the transfer. The transfer must then be registered with the relevant commercial registry office and notice given to any regulatory entities, if applicable.

As regards share companies, the general rule is the free transfer of shares. The articles of association of the company may not place any general restrictions on a transfer of shares and the Portuguese Companies Code does not require any such transfer to be made in written (unlike the transfer of quotas for the quota companies).

Nevertheless, it is the usual practice to enter into a written share purchase agreement so as to set down, in writing, the terms and conditions of the transaction as well as the contractual clauses defined as a result of the due diligence conclusions that are usually conducted by the investors.

Unlike the provisions that apply to the quota companies, the transfer of shares is not registered with the commercial registry office, although a transfer declaration must be filed with the local tax office.

兼并

虽不像建立公司或直接控制现有公司那么频繁，但通过兼并进入葡萄牙市场或在葡萄牙开展经营活动也是可能的。

葡萄牙法律制度允许跨国兼并，即葡萄牙公司和国外公司可以进行兼并，有两种模式-新设兼并（利用参与公司的资产建立新的公司）和吸收合并（其中一个公司全部并入到另外一个公司）。6-A/2006法令对葡萄牙公司法典的修订，不论是在公司内部方面，还是在注册、兼并文件公开等方面，都大大地简化了兼并的流程。

竞争法

一般条款。

从1983年开始，葡萄牙开始有竞争方面的立法。　但直到2003年-18/2003法律（竞争法）生效-才对公司经济生活产生重大影响。2012年新修订的竞争法开始生效（19/2012法律）。竞争法是依据欧盟的模式，保证市场公平有序的竞争，以确保客户可以选择种类多样的物品和服务。

葡萄牙竞争局是负责竞争条款适用的主要机构，具有很大的司法权力，范围覆盖经营领域的各个方面。

葡萄牙竞争局的职责范围

竞争法主要规制四个领域,分别是：a)反竞争协议；b)滥用主导地位；c)公司新设兼并；d)国家资助。

反竞争协议-法律明确禁止，公司之间的协议、公司章程的决议和公司之间的协同行为，是为了歪曲或限制以合理方式在整个或部分国内市场进行竞争。禁止范围涵盖一系列违法行为，如固定价格协议、 针对股票市场的协议和在订立合同时以附加与合同标的没有关系的义务为条件。

滥用主导地位-根据竞争法，对某种具体商品或服务拥有市场主导地位的公司，不能在国内市场或部分重要市场，滥用其主导地位。

MERGERS

Though less frequent than incorporating a company or acquiring direct holdings in existing companies, entering the Portuguese market and/or pursuing a business activity in Portugal may also be carried out by means of a merger.

The Portuguese legal system allows cross-border mergers, in other words, mergers between Portuguese and foreign companies, of two types – the merger-concentration (where a new company is incorporated with the assets of the participant companies) and the merger-incorporation (where one of the parties is wholly incorporated into the other). The amendments made to the Portuguese Companies Code by Decree-Law 76-A/2006, of 29 March, substantially simplified the merger process both in terms of the internal company level and in terms of registration and publication of merger documents.

COMPETITION LAW

GENERAL PROVISIONS

There has been Portuguese legislation on competition since 1983. However, it was only in 2003 - when Law 18/2003 of 11 June (the Competition Law) came into force - that competition took on particular significance for the economic lives of companies. A new version of the Competition Law came into force in 2012 (Law 19/2012 of 8 May). In general terms, the Competition Law follows the EU model and seeks to safeguard effective competition in the market so as to ensure that consumers have a diverse selection of goods and services.

The Portuguese Competition Authority (PCA) is the principal body responsible for ensuring that competition provisions are enforced and to this end has wide jurisdiction, which covers all sectors of business activity.

SCOPE OF ACTION OF THE PCA

There are essentially four areas that the Competition Act seeks to regulate and where, therefore, the PCA exercises its supervision, namely: a) anti-competitive agreements; b) abuse of a dominant position; c) concentrations of companies; and d) state aid.

Anti-competitive agreements – There is a prohibition on agreements between companies, decisions by associations of companies and concerted practices between companies, regardless of their form, whose object or effect is to prevent, distort or restrict competition in an appreciable way in all or part of the national market. This prohibition covers a range of unlawful behaviour such as price-fixing agreements, agreements to share markets, and subjecting the conclusion of contracts to acceptance of additional obligations which are not connected with the subject-matter.

Abuse of a dominant position - Similarly, under the Competition Law, a company that holds a dominant position with regard to a particular product or service must avoid any abusive exploitation of its dominant position in the national market or in a substantial part of it.

公司新设兼并-如果有以下几种情况，公司新设合并应提前通知葡萄牙竞争局；i)如果新设兼并会就一种具体的产品或服务的国内市场占有率超过50%，或ii)如果在上一个财政年度，参加新设兼并所有公司的总营业额超过了1亿欧元（缴纳相关税费后的净额），且在前一个财政年度，至少其中的两家公司在葡萄牙的营业额要超过5000万欧元，或iii)　在前一个财政年度，至少其中的两家公司在葡萄牙的营业额要超过5000万欧元，且就一种具体的产品或服务的国内市场占有率在30%到50%之间。法律明确禁止，公司新设合并使其占有市场主体地位，成为葡萄牙市场或大部分市场有效竞争的阻碍。

国家资助-国家或国际机构给予的任何补助都会限制或影响国内市场或其重要部分的竞争。葡萄牙竞争局会建议葡萄牙政府取消影响市场有序竞争的资助。

罚款

为了实现其目的，PCA具有很大的权力，能够对以上所描述的反竞争法行为实行制裁。PCA可以征收总计为公司年营业额10%的罚款（每个公司的10%），且在某些案例中，如果迟延交付罚款，会征收平均日营业额的5%。若公司章程侵权，公司成员应对强制罚款承担连带责任。

依照竞争法，如果公司董事会和相当的机构成员，及侵权业务领域的管理者和监督者，知道或者应当知道侵权，但是却没有采取合理措施立即停止侵权，个人可能会被处以其年收入的10%的罚款，除非适用了处罚更为严重的法律条款。

Concentrations of companies - A concentration of companies must be notified in advance to the PCA i) if such a concentration would create or increase a market share of more than 50% of the national market for a particular product or service and/or ii) if the turnover of the group of companies taking part in the concentration operation exceeded €100 million in the previous financial year (net of directly-related taxes), provided that the individual turnover in Portugal of at least two of these companies was in excess of €5 million in the preceding financial year and/or iii) if it creates or increases a share above 30% and below 50% in the national market for a particular product or service provided that the individual turnover in Portugal of at least two of these companies was in excess of €5 million in the preceding financial year. Concentrations of companies which create or increase a dominant position that may result in significant barriers to effective competition in the Portuguese market or a substantial part of this market are prohibited.

State aid - Any aid granted to companies by the State or any state entity must not significantly restrict or affect competition in all or part of the national market and the PCA may make any recommendations it sees fit to the Portuguese Government to eliminate the negative effects on competition resulting from such aid.

PENALTIES

In order to enforce its objectives, the PCA has broad powers to investigate and to impose sanctions in cases of the anti-competitive practices described above. The PCA may impose fines amounting to 10% of the aggregate annual turnover of the companies (turnover of the respective group), as well as compulsory fines in certain cases up to 5% of the average daily turnover, for each day of delay. In cases of infringements by associations of companies, their members are jointly liable for the compulsory fines.

Under the Competition Law, the members of the boards of companies and equivalent entities, as well as those responsible for the management or supervision of areas of activity in which any infringement is committed may also be personally liable for the payment of fine of up to 10% of their annual pay, if they knew or should have known of the infringement but failed to take the appropriate measures to bring it to an immediate end, unless a heavier penalty is applicable under another legal provision.

V. 经济代理机构的类型

和其它经销协议如特许协议和特许代理协议一样，代理协议也被广泛应用于葡萄牙市场当中。代理协议的特点是，投资费用低，且可以多种方式进入葡萄牙发行市场，另外投资者可以控制自己的业务水平，选择物流和市场准入结构。

与欧洲内部市场的一体化，给葡萄牙带来了很多利益，也使与分销有关的商业惯例得到了快速发展。

代理

法律规定

代理协议是唯一被规定在葡萄牙法律当中的分销协议，且对商业代理公司适用欧盟指令。用类推的方法，用于代理机构的法律规定，可以适用于葡萄牙市场中的其他分销协议，尤其是关于终止此类协议的规定。

依据代理协议，代理人代理委托人独立地承担促进合同执行的义务，且可能是在某个领域或针对某一类消费者，并获得委托人支付的报酬。

代理协议和分销协议都没有特定的格式。 但很多情况下在签订的代理协议和分销协议的时候，代理人或委托人会要求另一方采用书面的形式。

在某些情况下，如代理人的专有权、代理委托人的权力、在合同终止后不能参与同业竞争的义务（两年之内）和保证遵守与代理人谈判达成的协议相关的第三方义务等都必须明确规定在协议当中。

根据代理协议执行的年数，1年、2年或2年以上，任意一方都可以根据执行协议的年限，提前1月、2月或3月通知另一方，终止没有固定期限的代理协议。

依据代理人所获得新的客户数量或大大增加现有客户的营业额，给委托人业务所带来的发展，在协议最后的时候，会给予代理人相应的商誉报酬作为奖励。报酬也会同时考虑在协议终止后，此类客户给委托人所带来的的收入。

终止协议会严重或反复违反合同义务（这种情况下就不会获得商誉奖励）或必须满足某种不可能的情形或考虑到合同的目的，终止协议不能维持协议的完整性。此种情况下，应在提前一个月通知另一方终止的时间和深层原因。

V. Types of Economic Representation

Agency agreements, like other distribution agreements such as concession and franchising agreements, are widely used in Portugal. These agreements allow a variety of ways to access to the Portuguese distribution market with low investment costs and the investor is able to define the level of control of the business, logistics features and the market access structure.

Portugal already benefits from its integration in the European internal market and this has enables swift modernisation of the commercial practices relating to distribution.

AGENCY

LEGAL RULES

The agency agreement is the only distribution agreement established in the Portuguese law, which implements the EU directive on commercial agents. The legal rules on agency apply by analogy to the other distribution agreements used in the Portuguese market, particularly the rules on termination of this type of agreement.

Under the agency agreement the agent, working independently and on a stable basis, and receiving remuneration, undertakes to promote the execution of contracts on behalf of the principal, and may be allocated a certain area or circle of customers.

Agency/distribution agreements require no special form. Nonetheless, the agent or the principal may request the other party to have the conditions set down in writing, as is the case with most agency/distribution agreements.

Certain special conditions, such as the agent's exclusivity, power to represent the principal, obligation not to compete after the agreement is terminated (limited to two years) and guarantee of compliance with third party obligations related to the agreements negotiated by the agent, must be expressly provided for in the agreements.

Either of the parties may terminate an agreement which has no fixed term, at any time, subject to a prior notice period of one, two or three months, according to whether the agreement has run for less than one, two or more years.

The award to the agent of goodwill compensation at the end of the agreement as compensation for furthering the business of the principal depends on the agent having gained new customers or achieved a substantial increase in the turnover of the existing customers. This compensation will also depend on the benefit that these customers will bring to the principal after termination of the agreement.

Termination of the agreement requires a significant or repeated breach of the contractual obligations (in which case no goodwill compensation will be awarded) or a situation in which it is impossible or would cause serious prejudice to maintain the agreement taking into account the object of the agreement. In such cases, the other party must be informed of the termination and the underlying reasons within one month of becoming aware of them.

在葡萄牙履行的协议都必须适用现行的代理法，除非双方选择优先适用外国的法律。然而，这种强制性的适用，并不意味着在遇到案件的时候，葡萄牙法院就要适用葡萄牙法律。双方可以在事前约定，对于因合同问题产生的争议，可以在外国法院裁判或选择国外仲裁机构。

最终，由于中央机构规则在竞争法领域的减弱，越来越倾向于把代理协议与分销协议相提并论。使用欧盟法规330/2010的目的是免除一些纵向协议和协同行为，鉴于代理人在委托人的这条锁链当中，具有高度垂直一体化的水平，且代理人的风险也越来越小，所以代理协议不再被认为是限制竞争的原因。

然而，包含在12月27号的166/2013法令里的，关于葡萄牙贸易管制领域个人行为的立法（“PIRC”），禁止：i)相同地位的经营者之间使用歧视性的贸易规定；ii)倾销；iii)拒绝供应；iv)当条件满足的时候，放大不公平的贸易条件。法令要求使用价目表和明确了滥用贸易条件的情形。公司侵犯PIRC的罚款能达到2500500欧元。

需要指出的是，双方不同意放弃追究由某种责任机制的强制性使履行协议所产生的任何责任，如商誉报酬条款。，

代理协议适于保证供应商能获得最好的财务业绩、加强市场营销和预算控制、控制定价和对委托人直接联系的客户进行配置。无论怎样，这种协议是对供应商进入市场能力的强有力检验。

配送

特许权

葡萄牙法律制度中规定了多种关于配送货物和服务的法律形式，其中特许经营权合同时最值得一提的。即使法律当中没有特别的规定，此类型的合同常被应用到汽车领域及名优产品当中。

与代理合同不同，在特许经营权合同当中，受让人以自己名义行进行经营活动，且自己承担经营风险，但在供应商的链条中占据着更有利的地位，即通过此类合同可以确保其货物得到配送，同时不会失去配送控制权。

把商誉报酬制度运用到特许经营权合同当中，须经受与代理制度一样的艰难测验。

适用于特许经营权合同的竞争规则，尤其是具体的葡萄牙规则,如滥用经济独立性的规定，就如同适用于纵向协议的集体豁免条例的规定。

The application of the agency law applies is mandatory in the case of agreements which are predominantly performed in Portugal unless the foreign jurisdiction chosen by the parties is more favourable to the agent. However, this mandatory application does not mean that it will be Portuguese courts applying Portuguese law, when this is the case. The parties can confer jurisdiction over disputes arising from the contract to foreign courts or to arbitration, under any agreements they make in this respect.

Finally, the tendency to equate distribution agreements because of the centralised agency rules is attenuated in the area of competition law. For the purposes of the application of EU Regulation 330/2010 on the exemption of categories of certain vertical agreements and concerted practices, agency agreements are not considered to restrict competition, given the agent's high vertically integrated level in the principal's chain and the minor business risks run by the agent.

However, Portuguese legislation on individual practices in restraint of trade ("PIRC"), contained in Decree Law 166/2013 of 27 December, prohibits, among others, i) the practice of discriminatory trade conditions between equivalent operators; ii) dumping; iii) refusal to supply and iv) manifestly unfair trade conditions, whenever certain conditions are fulfilled. The Decree Law also imposes price lists and defines abusive trade conditions. It should be noted that the fines for companies for infringement of the PIRC may be as much as €2 500 500.

It should be noted that parties may not agree to waive any liabilities arising from the performance of the agreement due to the mandatory nature of certain liability regimes, such as goodwill compensation provisions.

Agency agreements are particularly suited to guarantee the supplier has the best financial results, tighter marketing and budget control, as well as control over price setting and customer allocation, with whom the principal remains in direct contact. Nevertheless, this type of contract presents a more rigorous test of the supplier's capacity to enter the market.

DISTRIBUTION

CONCESSION

The Portuguese legal system contains a myriad of legal forms used in the distribution of goods and services, among which the concession contract is worthy of mention. This type of contract, although not specifically provided for in the law, is often used in the motor vehicle sector and in the distribution of brand and high quality products.

Unlike the agency agreement, in the concession contract, the concessionaire acts in its own name and bears the risks of the business itself, while benefiting from a favourable position within the chain of the supplier, which by means of such a contract ensures that its goods are distributed but without losing distribution control.

The application of the goodwill compensation rules to concession contracts is subject to a difficult test of analogy with the agency regime.

Competition rules, particularly the specific Portuguese rules, such as abuse of economic dependency, apply to concession contracts, as do the provisions of the block exemption regulation on vertical agreements.

当起草分销协议的时候，需要考虑竞争法的规定，尤其是与非竞争条款（不能超过5年）、竞争对手敏感性商业数据有关的报告义务、价格管制或限定最低的重售价格（应被最高或建议价格取代）、禁止被动销售和不成比例的最低购买义务等相关的问题。

占有市场40%份额的供应商就更需关注限制性竞争条例的问题，如歧视性条例和被认为是滥用市场主体地位拒绝供应问题。

汽车行业

在汽车领域，主要的特点在于把欧盟委员会的461/2010法规适用于纵向协议的集体豁免，去购买或销售心得汽车，及他们的售后（维修和服务）。

例如，关于非竞争义务，我们突出法规所规定的限制性条款（超过分销商商品购进总额30%的购买义务）和禁止为相互竞争的供应商提供售后服务的限制性条款。

选择分销和独家分销

在葡萄牙，仍然可以常常看到在选择分销和独家分销体制下，为了重售而购买产品的贸易商。

尽管纵向合并的等级比特许经营低很多，选择分销制度仍然对分销商提供的服务有更高的控制能力，这是专有体制所不能带来的好处且可能需从制造商或另一个选择分销商处购买产品。

当供应商的市场份额没有超过30%，没有强加任何竞争限制性条款的独家分销协议被从集体豁免条例中免除。在葡萄牙，这种分销制度允许供应商授权其产品和服务的分销给一位有经验的进口商和经过实践检验的服务网络。

授权分销

对于更低等级的纵向合并，在葡萄牙更常用授权分销协议。依照此种协议，分销商会和其他分销商竞争，且也不禁止制造商向未授权的代理商出售产品。

与代理协议不同，此类分销协议，会鼓励供应商在扩展到新市场的时候选择低风险的方式，并且以作为刺激经销商业务的手段而经营。更大的税收优惠是与更高的分销商独立性相关的。

When drafting of distribution agreements care must be taken with competition law issues, particularly with regard to matters such as non-competition clauses (they may not exceed 5 years), reporting obligations regarding sensitive commercial data of competitors, price-fixing or imposing minimum resale prices (should be replaced by maximum or recommended prices), prohibiting passive sales and disproportionate minimum purchase levels obligations.

Suppliers with more than 40% of the market share must be doubly careful with regard to restrictive competition practices such as discriminatory practices and refusals to supply, among others, which may be deemed an abuse of a dominant position.

MOTOR VEHICLE SECTOR

In the automobile sector, the main point of interest is the applicability of EU Regulation 461/2010 of the European Commission on the block exemption of vertical agreements to the purchase and sale of new motor vehicles and their after sales services (repairs and servicing).

We highlight, for example, the restrictions imposed by the Regulation in respect of non-competition obligations (purchase obligations in excess of 30% of the distributor's total purchases) and the restrictions regarding prohibition on providing after-sales services to competing suppliers.

SELECTIVE AND EXCLUSIVE DISTRIBUTION

In Portugal, it is still common to see independent traders who purchase for resale purposes in selective distribution systems and exclusive distribution systems.

Despite the fact that the level of vertical integration is lower than that of the concessionaire, selective distribution systems still afford a high level of quality control of the services provided by the distributors, which may not benefit from an exclusivity regime and may have to purchase the goods from the manufacturer or another selected distributor.

When the supplier's share of the market is not greater than 30%, exclusive distribution agreements which impose no significant competition restrictions are exempt from the Block Exemption Regulation. This distribution system allows the supplier to delegate the distribution of its products and services in Portugal to an experienced importer and a tried-and-tested network.

AUTHORISED DISTRIBUTION

For lower levels of vertical integration, it is common to use authorised distribution agreements in Portugal. Under these agreements the distributor may compete with other distributors and the manufacturer is not prohibited from selling to unauthorised resellers.

These distribution agreements, unlike agency agreements, encourage the suppliers to take on lower risks as regards expansion into new markets and operate as a means of motivating the distributors for the business. Greater tax benefits are also usually associated with greater distributor independence.

特许经营权

特许经营权对于纵向合并的独立公司来说，是最好的方式。依据这种在葡萄牙根深蒂固的方式，特许经营权人通常会设立遵守他们自己规则的自愿组织。

对授予特许经营权人的商标和其它独特标记的强制性使用被一般干扰所平衡，但在特许经营权人的业务中也帮助了后者，且由于经过验证的商业成功降低了运营风险。

葡萄牙法律没有具体规定特许经营权，但是许多用于国际市场的特许经营权合同是被承认的，如主专营权、服务和分销特许经营权和产品或工业特许经营权。

知识产权的授权许可必须以书面形式作出

依据竞争法，大体上，此类协议中的非竞争义务不限制在5年期间，但不应该超过协议的期限。

此外，当供应商的市场份额低于或等于30%的时候，就购买和销售货物和服务，特许经营权协议从规定在欧盟330/2010　法规中的集体豁免条例中受益。如果协议中没有强加纵向限制竞争行为，垂直特许经营权协议中的知识产权的经营许可（不包括工业特许经营）也会被豁免。

另外，依据以上提及的欧盟330/2010法规，大体上，强加于特许经经营权人的如下义务都自动从竞争法的范围中被免除：不进行类似活动、不成为争公司的绝对控股股东、不泄露专业技术和没有获取授予特许经营权人的同意的，不准转让权利。

根据一般的合同条款，源于欧盟的法律的产品责任法、担保和消费者法，都适用于分销合同。

FRANCHISING

Franchising is the best method for vertically integrating independent companies. Under this concept, which has deep roots in Portugal, It is common for franchisees to set up voluntary organisations subject to their own codes of ethics.

The compulsory use of the trademark and the franchisor's other distinctive trade signs is balanced by a general interference but also assistance of the latter in the business of the franchisee, which runs fewer risks due to the tried-and-tested success of the business.

Franchising is not specifically addressed in Portuguese law and, as a result, many of the franchising contracts used on the international market are recognised, such as master franchising, services and distribution franchising and production or industrial franchising.

Industrial property rights operation licences must be made in writing.

In terms of competition law, the non-competition obligation in such agreements is not, in principle, limited to the five year period, but it should not exceed the term of the agreement.

Furthermore, when the supplier's share of the market is 30% or lower, franchising agreements may benefit from the block exemption regime set out in the EU Regulation 330/2010 on the purchase and sale of goods and services. Intellectual property rights operation licences in vertical franchising agreements (not including industrial franchising) are also exempt, provided that the agreements do not impose significant vertical restrictions.

Moreover, the obligations that are imposed on the franchisee not to carry on similar activities, not to acquire majority shareholdings in competing companies, not to disclose know-how and not to assign rights without the consent of the franchisor are, in principle, automatically exempt from the scope of competition law under the above-mentioned EU Regulation 330/2010.

Under the General Contract Clauses rules, the product liability and warranties and consumer law provisions, all of which originated in EU directives, also apply to distribution contracts.

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