

A close-up, macro photograph of a pink flower petal, showing intricate vein patterns and a soft, velvety texture. The petal is the central focus, with its edges slightly blurred, creating a sense of depth. The color is a vibrant, slightly muted pink.

Why Portugal – The Case for Investing in Portugal 2014 Report



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Sociedade de Advogados, RL

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If you are a client of Macedo Vitorino & Associados and wish to discuss any of the matters covered in this briefing please contact:

Tel.: (351) 213 241 900 – Fax: (351) 213 241 929

Email: mva@macedovitorino.com

Contents

1. Foreword.....	1
2. Opportunities and challenges.....	2
3. Starting a business.....	4
3.1. How does Portugal compare with other countries	4
3.2. The investment vehicle.....	4
3.3. Incorporating a company.....	6
3.4. The simplified information system.....	7
4. Taxation.....	7
4.1. How does Portugal compare with other countries	7
4.2. Taxation on income	8
4.3. Value added tax	10
4.4. Stamp duty.....	10
4.5. Taxation of real estate	11
4.6. Social security contributions.....	12
5. Hiring employees	12
5.1. How does Portugal compare with other countries	12
5.2. Employment rules.....	12
5.3. Duration of contracts	13
5.4. Probationary period	13
5.5. Working hours	14
5.6. Remuneration.....	14
5.7. Vacation and time off days.....	15
5.8. Transfer of business.....	16
5.9. Dismissal of employees.....	17
5.10. Unemployment benefits	22
6. Investment incentives.....	22
6.1. Contractual Incentives	22
6.2. Incentives granted under specific programs	23
6.3. <i>Ad hoc</i> incentives	25

Portugal has been implementing a harsh economic program with little social unrest and successfully bringing down its chronic trade deficit.

Portugal offers several advantages for investors looking for a place to invest in Europe.

1. Foreword

Portugal has been in the news over the past year many times for many wrong reasons: the pressure of the Government debt, its high unemployment and the difficulties in bringing the budget deficit to 3% as agreed in the Memorandum of Understanding (**MoU**) between Portugal and the International Monetary Fund (**IMF**), the European Union (**EU**) and the European Central Bank (**ECB**).

Still Portugal has been implementing a harsh economic program with little social unrest and successfully bringing down its chronic trade deficit. Portugal offers several advantages for international investors looking for a place to invest in Europe, of which many are not aware.

Portugal is an ideal location for nearshoring industrial and services facilities because of its access to Europe's 500 million consumers' market and to the Portuguese-speaking world, which spreads across five continents: Europe, America, Africa, Asia and Oceania.

Here are seven reasons for international investors searching for the best location to access these markets to invest in Portugal:

- 1st Starting a business takes only a few days.** According to the World Bank's report "Doing Business 2014" (**DB2014 Report**), Portugal ranks in the top 5 EU27 countries where it is easier to set up a business;
- 2nd Portugal has one of the most favourable business environments in the world.** The DB2014 Report ranks Portugal in the top 31 of the world's most attractive locations to do business and in 12th place out of EU27 countries;
- 3rd Trading across Portugal's borders is easy.** Portugal ranks in the top 25 countries in the world easier to trade with, according to the DB2014 Report. It takes 13 days to comply with import formalities and 15 for export formalities;
- 4th Portugal has one of the lowest levels of employment disputes in Europe.** According to European Industrial Relations Observatory (**EIRO**) and Eurostat the number of working days lost through industrial action per 1,000 employees (annual average 2005–2009) was 11.3 days in Portugal against an estimated 43.6 days in the EU15 countries;
- 5th The population educational level has improved substantially over time.** According to the "Global Competitiveness Report 2013–2014" of the World Economic Forum (**WEF Report**), Portugal's population education ranks in 26th place as a result of the improvement over time of Portugal's education system. The Information Technology and Innovation Foundation (**ITIF**) ranks Portugal in 13th place on Higher Education R&D Performance as a Share of GDP in 2008;
- 6th Portugal has state-of-the-art telecommunications networks and transport infrastructure.** The WEF Report ranks Portugal's

Portugal can offer access to Europe's 500 million consumers' market and to the Portuguese-speaking world, which spreads across five continents.

infrastructure in 11th place in the world. According to the OECD statistics, Portugal has the 4th fastest broadband speed in the world and offers the 12th most competitive prices. Broadband Internet using fibre optic networks is spreading rapidly across the country. Portugal is now ranked in the top 20 countries in the world with more use of fibre optic technologies; and

7th Portugal has a proven track record of successful foreign investments across a wide range of sectors. Well-structured investments in the country pay off. For instance, according to a study published by Grant Thornton Autoeuropa, the Volkswagen Portuguese autoplant, ranks in the top 5 best Volkswagen plants around the world. Autoeuropa is now Portugal's second largest exporter, with sales to outside of Europe now representing 32% from 19% in 2011. Nokia Siemens Networks chose Portugal to install its new Global Networks Solutions Center.

This paper provides an overview of the opportunities and challenges of doing business in Portugal and reviews the main aspects to be considered by foreign investors considering Portugal as a place to invest as regards the setting up of a business, hiring employees, taxation and government incentives.

2. Opportunities and challenges

Investors that are considering Portugal as a place to invest want to know the hard facts about the country.

The Portuguese are, on occasions, portrayed as nice to deal with, open to foreign cultures and resourceful but falling short in meeting deadlines and having a tendency for bending the rules. The Portuguese Mediterranean climate and good food is associated with lower productivity and looser rules of engagement. However, reality often defeats conventional wisdom.

Investors that are considering Portugal as a place to invest want to know the hard facts about the country and not the stereotypes associated with the country and its people.

Here are five key factors that are critical for investors:

- (a) **How long does it take to start a business and obtaining the permits I need to carry out a business activity? Is the process for obtaining licenses and permits transparent?** Opening a branch office or incorporating a company in Portugal can take only one day. According to the DB2014 Report new business rankings, the number of working days needed to start a business is 2.5 days in Portugal against an average of 11.1 days in the OECD countries. Most administrative permits that are required to start a business activity can be submitted online. Procedures vary according to the sector that will be carried but, generally, the process is transparent and can be achieved in a reasonable timeframe. The OECD also gives Portugal the best mark on its Regulatory and Administrative Opacity index, which ranks how clear and transparent are

- regulations and administrative procedures. The WEF gives Portugal a mark of 5.2 in its Irregular Payments and Bribes index, the same as the EU average and ahead of the United States with 4.9.
- (b) **Will my Portuguese operations match the efficiency and productivity levels of other locations?** International statistics show low efficiency and productivity levels in Portugal when compared with the best international standards. The WEF Report ranks the Portuguese economy's competitiveness in 51th place out of 148 countries in the Global Competitiveness Index (**GCI**) which puts Portugal in the 19th place within the EU27 countries, below the EU27 GCI average. This is a poor result when compared with the European benchmark countries. In contrast, the productivity levels of foreign multinationals operating in Portugal are considerably higher. Volkswagen, Nokia Solutions and Networks, Cisco, Microsoft and Ikea are some well-known companies which have highly productive subsidiaries in Portugal.
- (c) **Will I be able to enforce contracts?** The DB2014 Report ranks Portugal in 24th place worldwide and in the top 11 EU27 countries in enforcing contracts. Time to enforce a contract is estimated to be around 547 days, which puts Portugal in 17th place in the EU27 countries according to the DB2014 Report. Clearly there is a long way to go to reach the benchmark countries, where it takes less than one year to enforce a contract. However, Portugal ranks better than many when compared with other European countries.
- (d) **Will I be allowed to compete in the domestic market with the local players?** Traditionally the Portuguese economy welcomes foreign investors and is open to foreign competition across all sectors. Portugal has no restrictions to foreign ownership of banks and companies in regulated sectors such as telecommunications and energy. The WEF ranks Portugal in 27th place in the world with fewer barriers to competition. However, practice shows that it is hard to break monopolies and oligopolies in many sectors, hence Portugal's poor ranking in the WEF market dominance index with a 3.5 mark, still below European standards. This is due to the excess concentration of businesses around few players which gives excessive power to a few leading corporations. There are, however, examples of successful investments directed to the domestic market alone, such as Vodafone, which was able to compete head-to-head with incumbent player Portugal Telecom for the leadership in the mobile market and Banco Santander, which now owns the fourth largest local bank. In more open sectors with fewer barriers to entry, such as retail and consumer products, many international companies have a strong foothold in Portugal and took a fair share of the market in direct competition with local players.

- (e) **Is it easy to hire and dismiss employees in Portugal?** Portuguese employment regulations are generally perceived as rigid, although Portugal has gone a long way and has adopted legislation that is broadly in line with other continental European countries.

The following chapters provide more details on the answers to these questions and describe some practical aspects of how to set up a business in Portugal.

3. Starting a business

3.1. How does Portugal compare with other countries

According to the DB2014 Report Portugal ranks in the top 5 EU27 countries where it is easier to set up a business and in 31th place worldwide. Over time Portugal has been able to reduce the average time for incorporating a company from several months to 2.5 days. The process can take just one day by using shell companies. Portugal is also pioneering in the use of online platforms for the incorporation of companies and making available company records and accounts.

The DB2014 Report Portugal ranks in the top 5 EU27 countries where it is easier to set up a business and in 31th place worldwide.

3.2. The investment vehicle

Opening a branch office and incorporating a subsidiary company are the investment vehicles commonly chosen by national and foreign investors. In general, the main operational difference between both is that a subsidiary company shall operate as a different legal entity, while a branch represents the foreign company in Portugal.

Other business forms can be used as investment vehicles in Portugal such as representative offices or unincorporated joint ventures.

The main differences between opening a branch and incorporating a company are:

- (a) A branch has no legal personality and does not own assets. A branch operates as an extension of the parent company. Although a branch has no equity, the parent company may allocate capital to the branch for operational purposes. Companies have legal personality and for some legal forms the law requires a minimum equity;
- (b) The branch's appointed legal representative is empowered to manage the business, no corporate bodies are required, while companies are required to have a management body and a supervisory officer.

Companies may adopt one of the following legal forms:

- (a) Public limited liability companies (*Sociedade Anónima – S.A.*);
- (b) Private limited liability companies (*Sociedade por Quotas – Lda.*);
- (c) General partnership (*Sociedade em Nome Colectivo*); or
- (d) Limited partnership (*Sociedade em Comandita*).

Incorporating a company in Portugal takes a maximum of 2.5 days.

The main difference between Limited Liability Companies (*Sociedade por Quotas* and *Sociedade Anónima*) and Unlimited Liability Companies (*Sociedade em Nome Colectivo* and *Sociedade em Comandita*) is related to the shareholders' liability for the companies' debts. Other major differences concern the transfer of shares and the companies' management and supervision structure.

Most national and foreign investors choose as their investment vehicles public or private limited liability companies (*Sociedade Anónima* or *Sociedade por Quotas*) because they suit the purpose of limiting the parent company's liability and can operate in the same manner as a local company.

When deciding what legal form the subsidiary should assume, the foreign investor should take into consideration the differences between private limited liability companies (*Sociedades por Quotas*) and public limited liability companies (*Sociedades Anónimas*) that may influence their business operations in Portugal.

From a day-to-day point of view, both can be managed in broadly similar ways, although a private limited liability company can, in some cases, be less formally managed. Private limited liability companies require only one Managing Director and not a Board of Directors as public limited liability companies generally do. Public limited companies must also have a supervisory body (an Audit Board or a Certified Auditor), which is not required for private limited liability companies, provided that they do not reach two of the following three thresholds in two consecutive years: (i) balance sheet total: €1,500,000.00; (ii) total net sales and other revenues: €3,000,000.00; and (iii) number of employees: 50.

On the other hand, the shareholders of private limited liability companies retain the power to intervene and decide on management issues, while in public limited liability companies it is up to the Board of Directors to decide on any matter concerning the management of the company.

As a rule, public limited liability companies must have at least five shareholders, while private limited liability companies only need two shareholders. However, under certain conditions the law allows both types of companies to have a single shareholder. The minimum initial investment for public limited companies is €50,000, while private limited liability companies do not require a minimum share capital, although the share nominal value cannot be less than €1.

Private liability companies have a lighter management structure and, as a result, are more adequate for smaller and short-term investments while public liability companies are more appropriate for large and long-term investments.

3.3. Incorporating a company

3.3.1. "On-the-spot" companies (*Empresa na Hora*)

The "on-the-spot company" method (*Empresa na Hora*) allows founders to incorporate a company in a single act at one of the official registration offices in the country (there is at least one registration office in each main city of Portugal), using a pre-approved corporate name and standard form articles of association. In the same proceeding, the company may appoint a certified auditor or choose one from a list of certified auditors. The share capital must be deposited within five business days after the incorporation date.

The founders are not required to take any registration formalities before the commercial registration office, the social security or tax authorities. All these steps are carried out *ex officio* and automatically performed by the relevant authorities.

3.3.2. Incorporating a company online

It is also possible to incorporate a company online through the official website www.empresonline.pt by filling in a form with the following information:

- (a) The company's name, chosen from the list of pre-approved names available at www.empresonline.pt or previously obtained from the National Registry of Legal Entities (*Registo Nacional de Pessoas Colectivas*) (**RNPC**);
- (b) The articles of association, using one of the forms available online or submitting a draft articles of association for approval; and
- (c) The data specified in the form which is required to register the business with the employment, social security and tax authorities.

The incorporation will take place immediately if the parties choose one of the two pre-approved articles of association available at www.empresonline.pt or, within two business days, if the founders opt to submit their own draft articles of association. Any contributions in cash must be deposited within five business days after the incorporation date.

3.3.3. Traditional method

The traditional method for incorporating a company comprises the following steps:

- (a) Requesting the company's name certificate with the RNPC;
- (b) Depositing the minimum initial share capital in a bank institution (in case of public liability companies);
- (c) Executing the articles of association by way of public deed or private document;
- (d) Registering the company within the Commercial Registry Office;
- (e) Publishing the articles of association and the list of the members of the company corporate bodies at the website at <http://www.mj.gov.pt/publicacoes>;

- (f) Registering the company with the tax authorities, the social security and the authority for working conditions (*Autoridade para as Condições de Trabalho*) (**ACT**).

Many of those steps can be electronically performed without the need to physically go to the relevant public service offices.

3.4. The simplified information system

The simplified information system (*Informação Empresarial Simplificada*) (**IES**) allows companies to comply with the following reporting obligations in a single document:

- (a) Registering the annual accounts and tax information;
- (b) Registering the financial statements;
- (c) Submitting statistical information to the Portuguese National Statistics Institute (*Instituto Nacional de Estatística*); and
- (d) Submitting annual financial statements to the banking regulatory authority (*Banco de Portugal*) for statistical purposes.

This single statement has to be electronically submitted by the Certified Auditor each year and until the 15th day of the 7th month after the end of the relevant financial period, which for most companies will take place on 15 July of each year.

4. Taxation

4.1. How does Portugal compare with other countries

Portugal's nominal tax rates are broadly in line with EU27 countries. For investors the effective marginal tax rate, which measures the proportionate increase in the cost of capital due to the tax, is a more reliable way of determining the level of taxation in a given country.

According to the Centre for Business Taxation of the Oxford University's report "CBT Corporate Tax Ranking 2012", in 2012 the Portuguese effective marginal tax rate was 14.9% and the effective average tax rate, which measures the proportion of the present value of pre-tax profit that would be taken in tax in each country, was 25.2%, which puts Portugal in 18th and 23th place out of the 33 OCDE countries with a lower effective tax rate, respectively. This shows that Portugal is as competitive as most of its competitors in the Eurozone.

Recently, the Portuguese Government reduced the corporate income tax rate from 25% to 23% and announced the intention of reducing it to 21% in 2015 and, if budgetary constraints so allow, to 19% or 17% in 2016.

In 2012 the Portuguese effective marginal tax rate was 14.9%, which puts Portugal in 18th place out of the 33 OCDE countries with a lower effective tax rate.

The 2014 budget reduced the corporate income tax rate from 25% to 23%.

4.2. Taxation on income

4.2.1. Corporate income tax

Any company whose head office or effective place of management is located in Portugal will be deemed to be resident in Portugal and subject to corporate income tax (**CIT**). Foreign companies may also be subject to CIT if they have a permanent establishment in Portugal or earn income that is deemed to be obtained in Portugal.

A permanent establishment may exist if the foreign company carries out its activity in Portugal through a fixed place of business as well as if a person (other than an independent agent) is acting in Portuguese territory for the account of such company and has and usually exercises an authority to intermediate and conclude contracts on behalf of the company.

In 2014, CIT was reduced to 23% of the worldwide income or, in case of a foreign company with a permanent establishment in Portugal, over the income attributable to such establishment.

In general, business costs and expenses are tax deductible to the extent they are properly documented and are essential to obtain taxable income or to maintain the source of production. However, there may be limitations on the deduction of certain costs including, without limitation, interest expenses.

CIT is self-assessed and paid by companies upon the filing of their annual income tax returns, which must be submitted until 31 May of each year, if the tax year is the calendar year.

Notwithstanding, companies may be required to make up to three payments on account of the final tax payable (*pagamentos por conta*) (**PCs**). These payments are calculated based on the CIT paid in the previous tax year and, as a rule, must be made in July, September and December, if the tax year is the calendar year.

A special payment on account of the final tax payable (*pagamento especial por conta*) – (**PECs**) will also be due in March (or in two instalments due in March and October) corresponding to 1% of turnover of the previous year, with a minimum amount of €1,000 and a maximum amount of €80,000.

In general, companies will be entitled to deduct tax credits arising from international double taxation, tax benefits, as well as PCs, PECs and withholding tax and, in some cases, they may get a refund.

Although the general CIT rate is relatively low when compared with other jurisdictions, the overall tax burden could reach 31.5% if the taxable income exceeds €7.5 million and we take into account the municipal surcharge and the State surcharge. However the Government has pledged to gradually reduce the corporate tax rate to 19% over a period 5 years and to eliminate the municipal surcharge over a period 3 years.

4.2.2. Municipal surcharge

Resident companies and non-resident companies with a permanent establishment located in Portugal will also be subject to a municipal surcharge (*derrama municipal*), a local tax which will be self-assessed and paid at the same time as CIT.

The municipal surcharge will be levied on the taxable income subject to and not exempt of CIT at a rate that must be approved every year by each municipality or municipalities where the income is obtained (up to 1.5%).

4.2.3. State surcharge

Resident companies and non-resident companies with a permanent establishment located in Portugal will also be subject to a state surcharge (*derrama estadual*) provided that they earn a taxable income in excess of €1.5 million.

The State surcharge will be levied on the taxable income subject to and not exempt of CIT at the following rates:

- (a) 3%, in case of taxable income between €1.5 million and €7.5 million;
- (b) 5%, in case of taxable income in excess of €7.5 million and €35 million;
and
- (c) 7% in case of taxable income in excess of €35 million.

Like the municipal surcharge, the State surcharge will be self-assessed and paid at the same time as the CIT. However, unlike the municipal surcharge, companies will be obliged to make payments for the account of the final State surcharge which will be due in July, September and December, if the tax year is the calendar year.

4.2.4. Carry forward tax losses

Carry forward tax losses may be set-off against taxable income for CIT purposes. In 2014, the Parliament increased the period for deducting the carry forward tax losses from five to twelve years but limited the amount of the carry forward tax losses that companies are allowed to deduct in each tax year to 70% of the taxable income.

Therefore, as of 1 January 2014, at least 25% of the taxable income will be taxed at the normal CIT rate. The extended period for deducting the tax losses will apply to tax losses generated in the tax years initiated from 1 January 2014 onwards.

4.2.5. Repatriation of income: dividends, interest and royalties

Non-resident companies that do not have a permanent establishment in Portugal may also be subject to CIT if they earn income that is deemed to be obtained in Portugal and that may be taxed in Portugal under the applicable double taxation treaty (e.g. dividends, capital gains and interest).

In general, dividends, interest and royalties obtained in Portugal will be subject to withholding tax at a rate up to 23%, although this rate could be reduced under the applicable double taxation treaties.

The payment of dividends to companies resident in another Member State of the European Union which hold shares representing not less than 10% of the share capital of the Portuguese resident company, for an uninterrupted period of one year, will be exempt provided that the companies are eligible under Directive 2011/96/EU, the new parent-subsidiary directive.

With respect to interest and royalties, as of 1 July 2013, an exemption of withholding tax will be available if payment is made to an affiliated company resident in another Member State of the European Union, subject to the fulfilment of the relevant holding requirements.

4.2.6. Taxation of capital gains obtained by non-residents

As a rule, capital gains obtained by non-resident companies from the sale of real estate property located in Portuguese territory will be subject to CIT.

Capital gains arising from the sale of shares and other securities issued by Portuguese resident companies may benefit from an exemption of CIT, except in cases in which:

- (a) The seller is domiciled in a jurisdiction subject to a clearly more favourable tax regime;
- (b) The shareholder is, directly or indirectly, owned in more than 25% by resident companies or persons; or
- (c) More than 50% of the target company's assets are composed by real estate property located in the Portuguese territory or, if the target is a holding company, more than 50% of any controlled company's assets include real estate property located in the Portuguese territory.

Notwithstanding, under certain double taxation treaties it is possible to avoid CIT in these cases.

4.3. Value added tax

The Value Added Tax (**VAT**) is levied on any transfer of goods and the rendering of services.

The general VAT rate applicable in mainland Portugal is 23%. However, certain goods and services may be subject to an intermediate VAT rate of 13% or a reduced VAT rate of 6%.

In the Autonomous Region of Azores the general VAT rate is 16%. The intermediate rate is 9% and the reduced rate is 4%. In the Autonomous Region of Madeira the VAT rates are 22%, 12% and 5%, respectively.

4.4. Stamp duty

Stamp duty is levied on certain transactions that are exempted from VAT, including but not limited to:

- (a) Loans (up to 0.6%);
- (b) Guarantees (up to 0.6%);
- (c) Insurances (5%);
- (d) Transfer of businesses (5%); and
- (e) Real estate transactions (0.8%).

4.5. Taxation of real estate

4.5.1. The municipal property transfer tax

The acquisition of real estate properties will be subject to municipal property transfer tax (*Imposto Municipal sobre as Transmissões Onerosas de Imóveis*) (**IMT**). IMT will be levied on the property tax value or on the purchase price, if higher, at the following rates:

- (a) Between 0% and 6% in respect of urban property or fractions allocated to housing purposes, which are used for permanent residence of their owners;
- (b) Between 1% and 6% in respect of urban property or fractions allocated to housing purposes, which are not used for permanent residence of their owner;
- (c) 6.5% in respect of other urban property; and
- (d) 5% in respect of the acquisition of land property.

These rates will be increased to 15% if the property is acquired by a person or company resident in one of the “tax havens”.

The acquisition of real estate will also be subject to stamp duty at a rate of 0.8%.

4.5.2. The municipal property tax

Real estate properties located in Portugal are subject to Municipal Property Tax (*Imposto Municipal sobre Imóveis*) (**IMI**). IMI is levied on an annual basis on the tax value of the property at the following tax rates:

- (a) 0.8% in respect of land and attached facilities (*prédios rústicos*); and
- (b) Between 0.3% and 0.5% on the urban property evaluated in accordance with the IMI Code.

The applicable tax rates within the above ranges will be determined by the municipalities. The applicable tax rate may be increased in certain cases (e.g. if the property is owned by a person or company resident in a “tax haven” the rate will be 7.5%).

Since 2012, real estate with a tax value higher than €1 million will be subject to stamp duty, in addition to IMI, at the following rates:

- (a) 1% in case of real estate properties allocated to habitational purposes; and
- (b) 7.5% in case of real estate properties owned by persons or entities residents in “tax havens”.

4.6. Social security contributions

Companies that hire employees in Portugal are required to pay social security contributions. The general rate applicable is 34.75%, of which 23.75% will be borne by the employer and 11.00% by the employee.

As of 1 January 2014, the employer's contribution is expected to be adjusted to the type of employment agreement: in the case of unfixed term employment agreements it will be reduced to 22.75% and in case of fixed term employment agreement it will be increased to 26.75%. The contribution of the employees will remain unchanged (11%). These changes are subject to the publication of the relevant legislation and regulations.

5. Hiring employees

5.1. How does Portugal compare with other countries

According to the DB2014 Report, the Portuguese employment legislation alongside that of many continental Europe countries is generally considered more rigid than that of the benchmark countries. For the year 2011, Portugal's mark was 43 against an EU average of 33.6. Despite the controversy regarding the criteria used by the World Bank for evaluating the level of rigidity of legislation in the preparation of its "Doing Business" reports, one cannot but note that there is a marked gap in Portugal between the rights of the more recently employed workers and those benefitting from longer tenures. For instance, recently enacted legislation reduces the severance pay from 30 days to 20 and more recently from 20 days to 12 days, but it establishes several safeguards for older contracts. Other aspects of the legislation have been revised since the adoption of a new Labour Code in 2009, which adopted more employer-friendly legislation as regards the organisation of its workforce. As an example, working schedules may now be managed in a more flexible way.

5.2. Employment rules

Hiring in Portugal is subject to a set of mandatory rules. Consequently, there is no need to set out all the rights and obligations of the parties in the employment contracts.

The duration of contract, working hours, remuneration, leave entitlement and absences and termination of contracts are the most important matters to be agreed by the parties, albeit subject to mandatory rules set out in the Portuguese Labour Code.

In general, employment contracts do not need to be in writing. Only for some types of contracts does the Portuguese Labour Code require a written document, such as promissory contracts, fixed term contracts, part-time contracts, secondment contracts and contracts with foreign employees.

The Portuguese employment legislation alongside that of many continental Europe countries is generally considered more rigid than that of the benchmark countries.

For the year 2011, the DB2014 Report's mark for Portugal was 43 against an EU average of 33.6 and 42 for Germany.

The employer has the duty to inform employees on the relevant aspects of the employment relationship, including among others:

- (a) Place of work;
- (b) Employee's job position;
- (c) Brief description of employee's tasks;
- (d) Effective date of the employment contract;
- (e) Prior termination notice; and
- (f) Collective bargaining agreements, if any.

The information above must be provided in writing by the employer and delivered to the employee within 60 days following the effective date of the employment contract, unless they are specified in the contract.

The terms of the employment relationship are also subject to collective bargaining agreements, if and when applicable, and to the practices between the parties.

5.3. Duration of contracts

Depending on the needs of the employer and on the duration of the employee's tasks, the employer may enter into the following types of employment contracts:

- (a) Fixed term contracts that are in force for a pre-established period set according to employer's temporary needs, which must be specified in the contract, and that expire at the end of the agreed term, unless they are renewed; fixed term contracts cannot be renewed for more than 3 times and have a maximum duration of three years;
- (b) Unfixed term contracts which are not subject to a pre-established period, but expire after the completion of the employer's project or when the reason for which the employee was hired ceases to exist; unfixed term contracts have a maximum duration of six years; and
- (c) Open-ended contracts which are entered into for an undetermined period of time and may only be terminated by the employer in the circumstances set out by law.

5.4. Probationary period

The probationary period, that is the period during which either party may unilaterally terminate the contract without prior notice and without cause, varies depending on the type of contracts. The maximum probationary period is as follows:

- (a) For open-ended contracts: (i) 240 days for employees with management or senior positions, (ii) 180 days for employees with job positions of technical complexity, high degree of responsibility or which require

- special qualifications, and for employees who perform duties of confidence¹ and (iii) 90 days for other employees;
- (b) For fixed and unfixed term contracts: (i) 30 days for contracts with a duration equal to or higher than six months and (ii) 15 days for contracts with a duration of less than six months.

In case of termination of the employment contract during the probationary period employees are not entitled to any compensation, unless otherwise agreed in writing by the parties.

5.5. Working hours

The maximum regular working period is forty hours per week, eight hours per day.

Employees are entitled to a minimum rest period of eleven consecutive hours between two successive daily work periods, as well as to one day of rest per week. An additional half or full day of rest (in all or in certain weeks of the year) may also be given in addition to the rest day required by law.

Insofar as the statutory rules above are not contravened, collective bargaining agreements may provide alternative working time regimes.

Work exceeding the limits above is deemed overtime. Overtime gives the employee the right to additional pay and, in certain circumstances, to an additional rest period. Employees' overtime is subject to certain limits imposed by the Portuguese Labour Code.

5.6. Remuneration

Employees are entitled to a minimum monthly salary set by law each year.² The remuneration must be paid on a regular and permanent basis and may be fixed, variable or mixed (comprising fixed and variable components).

In each year, employees are entitled to receive twelve monthly remunerations. In addition, employees are also entitled to receive:

¹ For secondment agreements (*contratos em comissão de serviço*), the maximum probationary period is of 180 days. Secondment agreements are only subject to a probationary period if the parties so agree.

² In 2012, the minimum monthly remuneration was set at €485. Collective bargaining agreements may also determine a minimum remuneration for different jobs and professions, provided that it is not less than the minimum monthly remuneration set by the Portuguese Government.

- (a) A Christmas bonus equal to one month remuneration payable until 15 December of each year; and
- (b) A holiday bonus equal to one month remuneration payable before the holiday period.³

5.7. Vacation and time off days

5.7.1. Vacation

Employees are entitled to twenty two business days of paid holiday per year. Employees are also entitled to nine national public holidays: 1 January, Good Friday, Easter Sunday, 25 April, 1 May, 10 June, 15 August, 8 December and 25 December.

Under the collective bargaining agreements employers may be obliged to grant two optional public holidays: Carnival/Shrove Tuesday and the local municipal holiday.

5.7.2. Time off for illness or injury

Employees are entitled to time off from work due to illness or injury. In cases of illness or injury, employees are entitled to receive sick pay from the Social Security. For this purpose, employees have to file a specific form and submit a statement from a hospital, health centre or doctor giving evidence of their illness or injury to the Social Security.

Sick pay is calculated based on the employee's reference remuneration under the social security criteria and could range between 55% and 75% of the employee's remuneration depending on the length of the illness or injury.

Employees are also entitled to time off in case of illness of a child or dependent or to provide care for family members. In some cases, absences entail a loss of remuneration for the employee.

In case of absences not foreseeable, the employee must inform the employer of the time off as soon as possible. If absences are foreseeable, the employee must notify the employer 5 days in advance stating the reasons for the absence.

Collective bargaining agreements may also establish specific rules on employee's time off days.

³ The amount of both Christmas and holiday bonuses is proportional to the time of service rendered by the employee in that calendar year (i) in the year of hiring of the employee, (ii) in the year of termination of the contract of employment and (iii) in the event of suspension of the contract of employment, unless the suspension is due and determined by employer's reasons.

5.7.3. Parental leave

Employees are entitled to a parental leave for a child's birth, which may be shared between both parents after the child's birth. In case of share of the parental leave, the parents are entitled to a total of 150 or 180 consecutive days, which are paid by the Social Security, as follows:

- (a) For 150 days off: 100% of the employee's reference pay; and
- (b) For 180 days off: 83% of the employee's reference pay.⁴

In case of share of parental leave, employees must also inform their employers of the start and end dates of each of their leave periods, by way of a joint written statement, up to seven days after the child's birth.

If the leave is enjoyed exclusively by one of the parents, the mother or father can choose to enjoy either 120 or 150 consecutive days, which are also paid by the Social Security, as follows:

- (a) For 120 days off: 100% of the employee's reference pay; and
- (b) For 150 days off: 80% of the employee's reference pay.

Notwithstanding the rules above, female employees are always entitled to: (i) an initial exclusive parental leave of 30 days, which can be enjoyed before the child's birth, and (ii) six weeks of leave after the child's birth, which may not be waived by the employee.

Male employees are entitled to ten business days (consecutive days or not) within the thirty days after the child's birth, of which five days must be enjoyed after the child's birth. Fathers are also entitled to an additional and optional period of ten business days (consecutive days or not), provided that this leave period is enjoyed at the same time of the mother's leave period.

5.8. Transfer of business

In the event of a transfer of business all of the employer's rights and obligations under the employment contracts are automatically transferred to the new employer. During one year following the transfer, the former employer will remain liable, jointly and severally with the new employer, for all the obligations that became due before the date of the transfer of business.

The transfer of an undertaking cannot itself be a reason for the dismissal of employees. If employees are to be made redundant, general rules on dismissal should apply.

⁴ In cases of multiple births, the leave period will be increased by 30 days for each born child beyond the first child.

5.9. Dismissal of employees

5.9.1. Forms of termination

The employer is entitled to terminate the employment contract on the following grounds:

- (a) Expiration of the agreement's term;
- (b) Unilateral termination during the probationary period;
- (c) Collective dismissal;
- (d) Redundancy;
- (e) Ineptitude; and
- (f) Just cause (following a disciplinary action).

Employers and employees are also free to terminate the employment contract by mutual agreement at any time.

The termination agreement must be executed in writing and the parties are free to decide whether compensation will be granted to the employee and how such compensation is calculated. Nevertheless, the employee will be always entitled to receive the outstanding credits, as detailed in Section 5.9.7 below.

5.9.2. Expiration of term employment contracts

In general, term employment contracts expire at the end of their initial term or the renewal term. For the expiration to be effective, the employer must serve a termination notice to the employee as follows:

- (a) In fixed-term contracts, 15 days prior to the term or renewal term of the contract; and
- (b) In unfixed-term contracts, 7, 30 or 60 days prior to the expiration date if the employment has lasted for less than 6 months, from 6 months to 2 years, or more than 2 years, respectively.

Upon the termination of the employment contract, the employee is entitled to receive the outstanding credits, if any, and the compensation, as detailed in Section 5.9.7 below.

5.9.3. Collective dismissal

If the employer intends to dismiss 2 or more employees (if the company has less than 50 employees), or 5 or more employees (if the company has 50 or more employees), within a 3 month's period, it may carry out a collective dismissal. The collective dismissal must be based on the following grounds:

- (a) Market structure reasons (*e.g.* the reduction of the company's business activity arising from a predictable decrease on the demand of goods or services);
- (b) Organization-related and economic reasons (*e.g.* the existence of economic and/or financial operational deficits, (ii) changes to the activity or (iii) restructuring of the company's productive organization); and/or
- (c) Technological reasons.

A collective dismissal procedure does not necessarily imply the full and permanent closing of a department or a division of a company and may only involve a reduction of the work force allocated to specific areas.

The collective dismissal procedure must follow the following steps:

- (a) Serving of an initial notice of dismissal to the employee council, if any, or to each of the employees;
- (b) Appointment of an employee committee by the employees within 5 business days after initial notice is served (optional);
- (c) Consultation meeting between the employer and the relevant employees (or the employees' committee, if any) with the purpose of reaching of an agreement on the proposed collective dismissal and to decide whether or not any measures should be applied to minimise the dismissal effects; a representative of the Ministry of Economy and Labour will also attend the consultation meetings;
- (d) Serving of a notice, in writing, to each employee of the final decision of dismissal, once the parties reach an agreement or 15 days after the delivery of the initial notice of dismissal.

Upon the termination of the employment, the employee is entitled to receive the outstanding credits and a compensation, as detailed in Section 5.9.7 below.

5.9.4. Redundancy

In case the number of employees involved does not allow the employer to carry out a collective dismissal, termination on the ground of redundancy could be an alternative option.

Redundancy must be justified on the same reasons as collective dismissal and it must meet the following requirements:

- (a) The economic, structural or technological reasons for the termination of the employment agreement do not relate to an intentional behaviour of the employee or the employer; and
- (b) The tasks included in the position to be extinct are not being executed by employees hired by the employer under a term employment agreement.

If more than one employee has the same redundant position, the employer must comply with specific criteria in the following order:

- (a) Lower seniority in the position;
- (b) Lower seniority in the professional group;
- (c) Lower ranking professional group; and
- (d) Lower seniority in the company.

The dismissal on the ground of redundancy must follow the following steps:

- (a) The employer must notify, in writing, the relevant employees (and the employee council, if applicable) of the dismissal grounds;

- (b) The employee and the employee council may challenge the grounds within 10 business days;
- (c) Within 3 business days as from the reception of the termination notice, the employee may request the intervention of the Ministry for Economy and Labour, for the purposes of verifying the compliance with the statutory requirements; and
- (d) Within 5 days as of the period to challenge the dismissal, the employer may issue a final decision of termination of the employment agreement.

Upon termination of the employment, the employee is entitled to receive the outstanding credits and the compensation, as detailed in Section 5.9.7 below.

5.9.5. Ineptitude

The employer may terminate the employment contract when one of the employees demonstrates ineptitude or inability to perform the assigned tasks. Employee ineptitude is only relevant when it occurs in the course of the performance of the employee's functions and not at the beginning of the performance of his/her activity.

Employment ineptitude may include, without limitation: (i) continuous reduction of productivity or work quality, (ii) recurring failure in the resources made available to the employee at his/her work station and (iii) health and safety risks to the employee, to other employees or third parties. Dismissal for ineptitude is seldom used by employers as its requirements are difficult to prove.

Upon termination of the employment agreement, the employee is entitled to receive the outstanding credits and the compensation, as detailed in Section 5.9.7 below.

5.9.6. Just cause

The employer may terminate the employment with just cause. The following, among others, constitute just cause for dismissal:

- (a) Failure to comply with superior's orders;
- (b) Infringement of employees' rights and guarantees;
- (c) Serious damage to the company;
- (d) Misrepresentation on absences;
- (e) Unjustified absences (five consecutive or ten intermittent days off); or
- (f) Intentional failure to comply with safety, health and hygiene labour rules.

Dismissal with just cause may only take place after a disciplinary procedure is initiated against the employee within 60 days after the employer has become

aware of the actions that, in its view, constitute a breach of the employee's duties.⁵

The employer must initiate a formal proceeding by way of a written notice specifying its reasons and informing the employee of the dismissal intention. After receiving this notice, the employee has 10 days to submit his defence and respond to the accusation note and request any probationary actions (e.g. to inquire witnesses), if necessary.

Upon completion of the procedure, the employer will receive the report of the inquirer describing the evidence gathered and suggesting the dismissal or another disciplinary sanction, if any. The employer has 30 days to issue a final decision of dismissal, which has to be notified to the employee. The employee may challenge the dismissal decision within 60 days and request suspension of the dismissal within 5 business days after receiving the dismissal decision.

In case of termination with just cause, the employee is not entitled to any compensation. Notwithstanding, the employee will be entitled to receive the outstanding credits, as detailed in Section 5.9.7 below.

5.9.7. Severance compensation and outstanding credits

Upon termination of the employment, employees are entitled to severance compensation payable by the employer. Severance compensation is calculated according to the monthly or daily base salary (as applicable), excluding all allowances, premiums or benefits in kind, even if they are paid on a regular basis. In case of fraction of a year, the reference value shall be calculated *pro rata*.

Severance compensation will vary depending on whether the employment contract was entered into before or after 1 November 2011.

For fixed-term and unfixed-term contracts entered into before 1 November 2011, the severance compensation will be calculated as follows:

- (a) For the period until 31 October 2012: severance compensation will correspond to 3 or 2 days of base salary and seniority per each month of employment, if the term of the employment is lesser or higher than 6 months, respectively;
- (b) For the period after 31 October 2012 to 30 September 2013: severance compensation will correspond to 20 days of monthly base salary and

⁵ In any case, the right to initiate disciplinary procedure will expire one year after the date of the performance of the actions, except if these are of criminal nature, in which it would be applicable the statutory limitation period provided under criminal law.

seniority per each year of employment. The amount of the monthly base salary and seniority may not be higher than 20 times the minimum monthly salary set by the Portuguese Government (currently, €9,700)⁶; and

- (c) For the period after 1 October 2013: severance compensation will correspond to 18 days of monthly base salary and seniority per each year of employment in the first 3 years of the contract, and 12 days of monthly base salary and seniority per each year of employment in the following years (the **New Rules**).

In case of open-ended employment agreements entered into before 1 November 2011, the severance compensation will be calculated as follows:

- (a) For the period until 31 October 2012: severance compensation will correspond to 1 monthly base salary and seniority (*diuturnidades*) per each year of employment;
- (b) For the period after 31 October 2012 to 30 September 2013: severance compensation will correspond to 20 days of monthly base salary per each year of employment;
- (c) For the period after 1 October 2013: severance compensation will be calculated in accordance with the New Rules; and
- (d) If the compensation calculated for the period until 31 October 2012 is equal to or higher than 12 monthly base salaries and seniority or 240 days of minimum salaries (currently, €116,400) (the **Relevant Threshold**), the period after 31 October 2012 will not be taken into account; if the compensation calculated for the period before 31 October 2012 is less than the Relevant Threshold, the total compensation may not exceed the Relevant Threshold.

For employment contracts entered into on or after 1 October 2013, the New Rules will apply and severance compensation may not exceed the Relevant Threshold. No minimum severance compensation amount is imposed by law.

Upon termination of the employment contract, for whatever reason, the employer must pay to the employee the following outstanding credits:

- (a) Any outstanding amounts for the work performed until the termination date (monthly salary, allowances, bonus, credits of professional training, etc.);
- (b) Any unpaid holiday or Christmas allowances for the previous year of employment; and
- (c) The *pro rata* share of the holiday and Christmas allowances for the year of the termination of the employment contract.

⁶ The daily salary is the result of the division of the base salary and seniority by 30.

5.10. Unemployment benefits

The termination of employment contracts by the employer (collective dismissal, redundancy, ineptitude or expiration) grants to the employee, without any costs to the employer, the right to receive unemployment benefits from the Social Security.

In case of termination by mutual agreement, the employment benefits may be granted to the employee, without any additional costs to the employer, if the following requirements are met:

- (a) The termination of the employment contract is justified by reasons that would allow the termination under a collective dismissal procedure or redundancy due to job extinction; and
- (b) The following thresholds are complied with by the company: (i) unemployment benefits were not granted to 3 or more employees, or to more than 25% of the company's labour force in each three year period, for companies with up to 250 employees; and (ii) unemployment benefits were not granted to 62 or more employees, or to more than 25% of the company's labour force, in each three year period, for companies with more than 250 employees.

In case of failure of the above criteria, the employer will be obligated to reimburse the Social Security for all the amounts paid to the employee as unemployment benefits and without prejudice to the employee's right to receive the employment benefits.

6. Investment incentives

6.1. Contractual Incentives

The Portuguese Government, through AICEP and IAPMEI, grants contractual incentives to (i) large investment projects and (ii) productive investments in general.

Projects are considered large investments when:

- (a) They have a positive impact in the Portuguese economy regardless of the sector or nationality of the investor and represent an investment of in excess of €25 million, within a maximum period of 3 years; or
- (b) They are promoted (i) by companies whose consolidated annual turnover exceeds €75 million or (ii) by other entities whose annual budget exceeds €40 million.

The contractual incentives may consist of:

- (a) Financial incentives (refundable or non-refundable);
- (b) Tax benefits; and
- (c) Co-financing.

Exceptionally, it may also include co-funding of vocational/professional training costs, among others.

Investment projects in production units, which are carried out until 31 December 2020, worth not less than €5,000,000 will be eligible if, among other conditions, they:

- (a) Are relevant to the development of national strategic sectors;
- (b) Will reduce regional asymmetries;
- (c) Will promote the creation of jobs; and
- (d) Will contribute to drive technological innovation.

These projects may benefit from the following tax incentives, on a contractual basis, during a maximum ten year term:

- (a) Income tax credit determined based on a percentage of the eligible investment expenditures; and
- (b) Reduction or exemption of IMT, IMI and stamp duty.

6.2. Incentives granted under specific programs

6.2.1. QREN

On a Community level, the Community Support Framework IV (*Quadro Comunitário de Apoio VI*, **CSF IV**) regarding the period from 2007 to 2013 was implemented in Portugal by the National Strategic Reference Framework (*Quadro de Referência Estratégica Nacional*, **QREN**), which allocated about €21.5 billion to Portuguese structural funds.

QREN finances certain operational agendas, including:

- (a) The operational agenda for human potential, for the promotion of academic and professional qualifications and the promotion of employment and social inclusion;
- (b) The operational agenda for competitiveness factors, which focuses on the qualification of production, on innovation, technological and entrepreneurship development; and
- (c) The operational agenda for territory enhancement, aiming at providing the country with attractive conditions for productive investment and improve living conditions.

The operation agendas are implemented by way of several operational programmes, with thematic and regional scopes. QREN also includes the creation of operational programmes for technical assistance and territorial cooperation.

Incentives under the QREN are granted under the following incentive schemes:

- (a) R&D Incentive Scheme (*Sistema de Incentivos à Investigação e ao Desenvolvimento Tecnológico*, **IS I&DT**);
- (b) Innovation Incentive Scheme (*Sistema de Incentivos à Inovação*, **SI Inovação**); and

- (c) Qualification and Internationalization of SMEs Incentive Scheme (*Sistema de Incentivos à Qualificação e Internacionalização de PME, IS Qualificação PME*).

In general, in order to be eligible under these incentive schemes projects must fulfil the following conditions, among others:

- (a) Business dimension: internationalisation of Portuguese private companies and priority for “start-ups”, i.e., newly established companies whose objects satisfy the needs outlined in QREN;
- (b) Innovation and technological development: development of “revolutionary” technology and of multi-sector projects with positive impact positive in less developed areas; and
- (c) Development of networking actions (the provision of equipment, Power, Environment, among others), inter-institutional partnerships and cooperation between entities.

6.2.2. Small and medium enterprises financing schemes

Small and medium enterprises (**SMEs**) may benefit from a range of financing support, promoted by several programs, including without limitation:

- (a) €1,500 million SME credit line *Investe VI*, whose purpose is to facilitate the access of SMEs to bank financing;
- (b) *Finicia* programme, which facilitates the access to financing solutions and technical assistance on enterprise creation, or companies at an early stage, which present differentiated business ideas;
- (c) *Fincesce* programme, which was designed to optimize the financing conditions of firms with certain risk profile and which pursue growth strategies of companies that obtain the status of SMEs leader; and
- (d) *PME Consolida* programme, which consists of a special support to economic activity and employment, comprising three support instruments to corporate financing: (i) the autonomous fund to support the concentration and consolidation of companies, (ii) the special real estate fund business support and (iii) venture capital support.

6.2.3. PIN projects

Projects that are recognised as Projects of National Interest (*Projectos de Potencial Interesse Nacional, PIN*) will benefit from a system that was specifically created to simplify and speed up investment projects, remove any administrative blockages and facilitate the granting of incentives.

For the operation of this system, a Commission on Assessment and Monitoring of PIN projects (**CAA-PIN**), managed by AICEP, was created.

For a project to be recognised as a PIN project it must:

- (a) Ensure the project’s environmental and territorial sustainability;
- (b) Involve a total investment worth more than € 25 million or which has a strong R&D, innovation or environmental interest; and

- (c) Have a positive impact in several areas, fostering the development of other activities, job creation and qualification and insertion into regional development strategies.

6.2.4. PIN + projects

PIN + projects, *i.e.*, projects with national strategic importance include projects of excellence that have a multiplier effect on economic growth and employment, by enterprise modernisation, also contributing to the attractiveness of other projects of excellence.

A PIN project may be eligible as a PIN + project if it:

- (a) Covers a total investment worth more than €200 million or, exceptionally, more than €60 million, in case of projects with an unquestionable nature of excellence, for its strong innovative and technological content or tourism projects which promote the differentiation of Portugal;
- (b) Promotes the use of technologies and eco-efficient practices;
- (c) Promotes an efficient use of energy;
- (d) Is technically and economically feasible; and
- (e) Has sponsors with good reputation and credibility.

6.3. *Ad hoc* incentives

The second type of incentives that investors can benefit from is designated as autonomous incentives. These are specific incentives granted based on certain situations, which they are intended to protect.

As an example, there may be incentives for job creation, such as:

- (a) Temporary exemption from the payment of social security contributions due by the employer; and
- (b) Financial support for hiring youngsters, the unemployed, former trainees, among others.