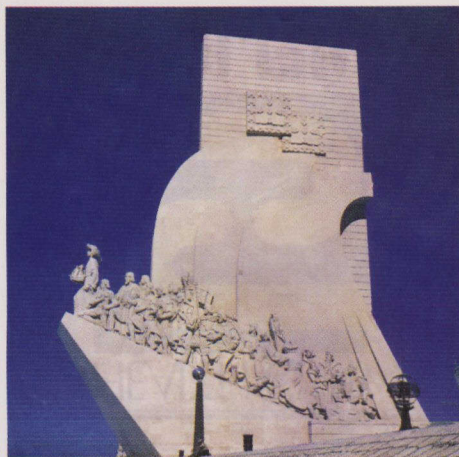


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CANADIAN EMBASSY / AMBASSADE DU CANADA

COMMERCIAL DIVISION *



DOING BUSINESS IN PORTUGAL



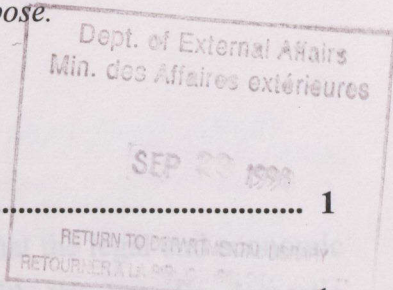
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Important warning: This work is for general information only. In no circumstances should it be considered as legal advice. Law firm should be consulted for that purpose.



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1. THE BUSINESS ENVIRONMENT

Domestic Market and European Union as a Single Market

Portugal is a member of the European Union (EU). This implies that the legal and economic environment should be understood, not only in connection with the specific domestic conditions, but also as a part of the vast territory of all the EU member states. As such it functions as a single territorial block vis-à-vis non-EU member countries in many aspects.

However, the EU is not a state nor even a federation of states. Most of the legislation that rules business is domestic even though strongly conditioned or influenced by EU regulations.

Freedom to invest in and trade with Portugal

As a result of Portugal being a member of the EU and also due to other factors of the present time related to the globalization of the economy, Portugal is an open market with no impediment for investment and trade. However, technical restrictions exist vis-à-vis non-EU members much more as a hindrance established by the EU policies than by the Portuguese government. In January 1, 1993 the Single Market was established which implies that all goods having entered the EU may freely circulate throughout all EU territory. Apart from global restrictions, there are no requirements to obtain prior consent to invest in or trade with Portugal (except in a few specific sectors such as the defence industry).

Generally, Portugal is an open economy where there are no exchange control regulations. The exception is the use of authorised financial institutions to act as intermediaries with regard to payments to and receipts from non-residents. This is much more a practical and usual way to do business than a legal stringent requirement affecting business.

2. THE LEGAL FRAMEWORK

Major implications of being a member of the European Union

The European Union is basically a block of member countries inspired by common economic purposes and goals rather than by any other nature. It is ruled by the Treaty of Rome of March 25, 1957, a number of other provisions and jurisprudence.

The four freedoms on which the EU is organized are: freedom of movement of people, freedom of movement of goods, freedom of movement of services and freedom of movement of capital. Border controls (legal and physical) between member countries have been dismantled. The Single Market means, in practical terms, that any economic event happening in a member state may have effects in other member states.

This basic concept rules the business environment in Portugal, in connection with, for example:

- relationship between parent companies and their subsidiaries within the EU;
- directives on accounting requirements;
- VAT (Value Added Tax);
- competition and anti-trust;
- intellectual property rights;
- public procurement;
- product liability and consumer protection;
- environment protection;
- transportation; etc.

where EU regulation is applied in order to make uniform legislation.

The vehicles to organise a business

The best way for Canadian companies to enter into business in Portugal and in many other countries is to have local support. This may be done either through a subsidiary or branch or a joint-venture with local entrepreneurs, or through distributorship, agent or franchising agreements.

It is very important to stress that a Canadian company wishing to establish in Portugal to perform any commercial activity for one year or more must form, under Portuguese law, at least a branch duly registered in the Companies Registrar Office.

2.1 *Subsidiary and Branch*

The major distinctions between a subsidiary and a branch concern the liability of the parent company and the payment of withholding tax on distribution of dividends.

a) Subsidiary - A subsidiary is a specific form of arrangement through which a company can be established. The subsidiary depends upon another company either on the terms of that company (called the parent company) being holder of shares in the subsidiary or in connection with any other contractual link. Despite this dependence, a true company has to be duly formed for a subsidiary to be established in Portugal. In that vein the subsidiary is a different entity from the parent company with all the implications of having a true and separate liability from the latter one. It is usually established under the format of a limited liability company of one of the two kinds:

- "**sociedade por quotas**" (normally identified in a practical language as a "Lda" or "Limitada" company); or "**sociedade anónima**".

A "**sociedade por quotas**" is a private limited liability company usually formed by two partners (individual and or companies)¹ to operate a small or medium-sized business not requiring the participation of capital from the public through the issuance of securities. It is a type of company very popular in Portugal as it does not have a heavy legal structure.

It usually requires two partners (individual and/or companies) and a minimum paid-up capital of 400,000 Portuguese escudos. Shares are not represented by share certificates as they have no material existence. The company is set up (through a necessary notarial deed) and registered (in the Companies Registrar Office of the area where it has its registered office). The shares (named "quotas") and their respective holder are those which are registered with the Companies Registrar Office. It is managed by one or more managers. The most important resolutions of the company's activities are taken either through meetings among partners or through written resolutions (if taken unanimously) with no need for a meeting to be held.

¹ The formation of companies with only one partner bearing limited liability to the amount of the capital subscribed is allowed. However such companies rarely exist in Portugal. In that case, it is mandatory to indicate in the company's name that a single partner controls the capital.

A "**sociedade anónima**", on the other hand, is a public limited company formed by, at least, five shareholders. This is a type of company more suitable for medium and large-sized business.

This type of company requires a minimum share capital of 5,000,000 escudos duly paid up. Such a company must have, in addition to the Shareholders Meeting, a Board of Directors with executive functions. It must also have a single auditor or a Supervisory Board² to review the accounts and supervise the compliance of the company regarding the requirement of tax and corporate law.

b) Branch - A branch can be defined as to being an extension of the parent company with no legal personality of its own. Consequently no forming of another company is needed in order to establish a branch. In comparison with the subsidiary, a branch which is not liable separately has the disadvantage of rendering the company responsible (as the so-called "parent company") in unlimited liability for its branch operation. But it has the advantage that no withholding tax on distribution of dividends is levied. There are no dividends to be distributed since a branch is not a company and as such does not issue dividends.

2.2 Joint Ventures

(i) The participation of foreign investors in Portugal is practically unlimited. However some exceptions may exist in the case of public companies being privatised. It has been the Government's policy to limit the participation of foreigners in the majority of companies, which have been privatised, to a minor share holding. However, this policy is about to be reviewed as the European Commission has strongly held that it violates the free competition rules.

In certain cases joint-ventures with local partners are advantageous. The most common form of joint-venture is the jointly-owned company or "**equity joint-venture**" through one of the above-mentioned commercial companies (especially the "**sociedade por quotas**" or the "**sociedade anónima**"). The joint-venture can also be in the form of a "**contractual joint venture**" typically called consortium, without the need for incorporating a company. In this case, the consortium contract which is provided for in Portuguese law can be used (see

² The Supervisory Board is usually formed by three members.

below). There are other, much more unusual, forms of **contractual joint-ventures**, mainly the "**Acordo Complementar de Empresas**" which is popular among civil construction consortia for large projects. It is ruled in detail by law.

There may be tax advantages in adopting the form of a "**contractual joint-venture**", given that there is less control exerted, in principle, by the tax authorities over this type of venture when compared to the "**equity-joint venture**". However, the "**equity joint venture**" is preferable as it is clearer vis-à-vis the tax authorities. In the case of a venture to carry out a specific project (generally a "consortium"), or when the level of involvement is not too great (e. g. only providing the know-how) , the contractual joint-venture can be the more suitable type.

(ii) The "**equity joint-venture**" requires two or more partners to participate in the share capital of a new company to be incorporated, or in a pre-existing company, or through the setting-up of local holding companies or others.

(iii) Portuguese law regulates the **consortium contract** ("**contrato de consórcio**") as one of the existing forms of "**contractual joint venture**". It must be formalized in writing and a body to supervise the activity of the consortium can be set up. There are different kinds of consortium contracts and different aspects of liability vis-à-vis outsiders. A specific name can be given to the consortium which, in any situation, has no legal personality distinct from the parties of the contract. Powers, rights, duties and liabilities are laid down in the law to be applied if the parties do not provide otherwise.

(iv) The so-called "**Acordo Complementar de Empresas**" ("**ACE**") is a contract used to associate companies without forming a new company. It is often used in large civil construction projects in lieu of a "**consortium contract**", although they have both the same contractual objective. The major legal and practical distinction is the fact that **ACE** is a legal entity different from the partners and, consequently, has a tax treatment separate from the latter. Such is not the case in a "**consortium contract**" as seen above because the consortium under Portuguese law has no legal personality. However, it is important to stress that an **ACE** is not a company. A company is set up to establish a long-lasting relationship and for this purpose a more or less complex organization is defined in detail by the law. An **ACE** has a much lighter organization which envisages a transitional relationship only and, roughly speaking, may be thought of as mid-way between a consortium and a company.

3. AGENCY, DISTRIBUTION AND FRANCHISING AGREEMENTS

3.1 Agency Agreement

In the law of commercial distribution the **agency agreement** is the only contract that is ruled specifically (Decree law no. 178/86, dated July 3, 1986). Both the distributorship agreement and franchising agreement are not specially ruled by any law and, therefore, the parties are free to establish the rules that they wish to govern the contract within the general law of contract.

There is no restriction about the definition of the contents of the **agency agreement** by the parties, but the following major points must be taken into account whenever an agreement is entered into to be performed in Portugal and provided that it is subject to Portuguese law³:

- an exclusive agent clause is only valid if established in writing by the parties. If such is not the case, the agent is not exclusive within the jurisdiction concerned;
- a non-competition clause after termination of the agreement must also be established in writing and it cannot be valid for more than two years;
- unilateral discharge of the contract is only allowed in the agreements which have no fixed duration previously established. However the other party should be advised with the following minimum advance notice:
 - * one month if the contract has lasted less than one year;
 - * two months if it has lasted for longer than one year and less than two;
 - * three months in remaining cases.
- in the case of breach of contract, termination is free without right to indemnity but must be exercised by the innocent party within one month from the moment facts for

³ The parties are free to establish in writing the law applicable to the contract. Therefore, the considerations above are only valid if Portuguese law is the applicable one. However, in one point, as it will be mentioned below, relating to the termination of contract, Portuguese law is mandatorily applicable if the agreement was performed exclusively or predominantly in Portugal.

such breach have been known by the latter. The contract termination is based on the general law of contract which allows the termination by breach;

- beyond any indemnity due under the general law of contract, a termination indemnity (goodwill indemnity) is also due to the agent, unless the termination was caused by fault attributable to the agent, or when the agent had, without prior agreement of the principal, assigned his contractual position to a third party. The termination indemnity is due if the agent has notified the principal, within one year of termination, informing him of this claim. In case of conflict action for indemnity must be exercised within the next year from the date such notice is served on the principal. The indemnity is calculated in equity terms, but it may not exceed an amount equal to one year's remuneration based on the average of the last five years;
- the termination of contract regime, including the goodwill indemnity is mandatory under Portuguese law if the agency agreement was performed exclusively or predominantly in Portugal, (unless where any further relevant foreign law is more favourable to the agent than Portuguese law).

3.2 Distribution agreement and franchising agreement

As indicated above, there are no special statute governing **distribution** and **franchising agreements**. Some legal commentators, however, have a tendency to apply the rules on termination of the agency agreement to the distributor arguing that a goodwill indemnity is also due under the same conditions applied to an agent. There are in other EU countries some case law to support this view.

4. TAXATION

4.1 Income Tax

Individuals are subject to a single income tax called **IRS** (more specifically, "Imposto sobre o Rendimento de Pessoas Individuais" i.e. Income Tax on Individuals). Companies are subject to a single income tax called **IRC** ("Imposto sobre o Rendimento de Pessoas Colectivas" i.e. Corporate Income Tax). All income, whatever the source, is taxed by one of these tax regimes:

A) IRC (Corporate Income Tax)

A foreign company rendering any kind of commercial activity in Portugal for 120 days or more (consecutive or not in any 12 months period), even if not permanently established, is regarded as if it was established for IRC purposes and thus has to pay tax on income earned in Portugal.

On the other hand, Portuguese subsidiaries of foreign companies (duly established in Portugal) have to pay IRC not only on the basis of income earned in Portugal but also on income earned abroad.

1. Tax Rates

Corporate Income Tax	(%)
. general ^{4 5}	34
. municipal surcharge ⁶	-
Withholding Tax	
. dividends (paid to nonresidents)	25
. interest (paid to nonresidents):	
- shareholders' loan	20
- debentures	20
- bank deposits	20
Royalties (paid to non-residents)	15
Fee for technical assistance (provided out of Portugal but used in Portugal or benefiting a resident entity)	15

⁴This rate is applicable both to resident companies and branches of nonresident companies.

⁵Capital gains resulting from transfer of share holding interests benefiting non-residents in Portugal are exempt from capital gains. However, if the seller of the shares is a resident company, capital gains are subject to the 34% general tax rate. Rate applicable to individuals is different and varies as per the amount of income received each year.

⁶Municipal surcharge varies from municipality to municipality. In Lisbon, for instance, municipal tax is of 10% on the IRC making a total of 37.4% (i.e. IRC tax rate of 34% plus 10% on it = 37.4%).

Revenues derived from the use of or the right to use equipment	15
Revenues derived from the provision of any services rendered to a resident entity to be used in Portugal	15
Other revenues from the application capital	20

2. Foreign Tax Relief

Foreign-source income, which means income received in Portugal while its origin is abroad, net of foreign tax, is taxable in Portugal unless a double taxation treaty applies. If a treaty applies, the foreign tax liability may be deducted from the Portuguese tax liability in accordance with the respective treaty.

There is no double taxation treaty between Portugal and Canada. Consequently the rates applicable are as follows: Dividends (25%); Interest (20%) ; Royalties (15%) .

Following are some taxes rates applicable to some countries with which Portugal has double taxation treaties:

	Dividends	Interest	Royalties
	%	%	%
France	15	12	5
Italy	15	15	12
Spain	15	15	12
Switzerland	15	10	5
United Kingdom	15	10	5
USA	15	10	10

Apart from double taxation treaties and the EU legislation (Parent / Subsidiary Directive referred below), there is domestic legislation regarding avoidance of IRC double taxation.

The general rule established in the IRC Code is that 95% of dividends received from an entity with its head office or effective management control in Portugal can be deducted and only the remaining 5% is treated as taxable profit, provided the taxpayer holds at least 25% of the share capital of that entity and has been its shareholder for two consecutive years or from the date of formation of the entity and remains a shareholder for two consecutive years.

Special provisions to eliminate or minimize double taxation in the area of the EU are in force as a consequence of the implementation of the Parent/Subsidiary Directive and the Merger Directive (respectively, the 90/435 EEC Directive and 90/434 EEC Directive both dated July 23, 1990).

The legal system in Portugal resulting from the implementation of the Parent/Subsidiary Directive provides for the application of the following rules:

- (1) a Portuguese parent company shall be taxed in Portugal for any dividends distributed by its subsidiary registered in any member state subject to a deduction of 95 percent of such dividends;
- (2) the dividends distributed by a Portuguese subsidiary to its parent company with its head-office registered in another member state are subject to withholding tax at a rate of 10 percent as from January 1, 1997 until December 31, 1999;
- (3) in order to benefit from either a deduction against from the taxable income or a reduction in tax rate, the parent company must hold at least 25 percent of the share capital of the subsidiary for two consecutive years;
- (4) in the case of a Portuguese parent company, the 25 percent holding of the share capital may be replaced by 0.25 percent holding of voting rights if provided for in a bilateral agreement;
- (5) for the purposes of the application of this legal regime the definition of "company of a member state" is that which is provided for by the law of the respective member state duly certified by the tax authorities concerned;
- (6) the provisions of the international conventions against double taxation to which Portugal is a party shall prevail.

3. Relief for Losses

Tax losses may be carried forward for 6 years. No carry back is allowed.

B) IRS (Income Tax on Individuals)

1. Tax Rates

Individual income tax (IRS) is applied to residents employed in Portugal. The rate varies in accordance with the amount of income received. The maximum tax rate is 40% and the minimum is 15%. Intermediary rates exist.

2. Resident of Portugal

Residents of Portugal are liable for tax on their worldwide income (this includes income obtained in Canada). Individuals are considered resident in Portugal if during any calendar year, they spend more than 183 days (either consecutive or not) in Portugal or if they have a house in Portugal on December 31 that appears to be their permanent residence.

3. Taxable Income

IRS is imposed on the earned income of employed individuals. Pensions, and life and temporary annuities, are also taxable.

4. Deductible Expenses (applicable to Canadians)

Deductions are allowed up to a certain amount⁷ such as: social security contributions, medical expenses, interest and charges on loans for the acquisition or improvement of a residence, rental payments made to the owner of the residence, cost of education, etc.

5. Director fees

Director fees paid to residents are taxed as earned income of employed individuals.

6. Non-Resident of Portugal

IRS on some income received in Portugal by non-resident individuals is subject to retention of service at a rate varying from 15% to 25% depending on the type of income.

⁷The amount varies often from one year to another, the reason why no mention to specific figures is made.

4.2 Value Added Tax (VAT)

A. Within Portugal and in connection with import of goods or services from non-European Union countries

1. Who is taxable?

VAT is in force in Portugal since 1986 in order, inter alia, to comply with the requirements of the European Union. It is a consumption tax and it applies to activities regarding the supply of goods or services.

The following is subject to VAT:

- an individual, a company, a collective body who independently and regularly engages in production, commerce, or in the supply of services;
- persons who engage in occasional transactions which qualify as commercial transactions according to the law (for example the purchase of a building for resale);
- any importer;
- persons who inadvertently mention VAT on invoices or on documents equivalent to invoices.

VAT is due either by the supplier or by the buyer of goods and services.

Generally, it is the supplier (whenever acting as such) who pays VAT. Basically a supplier charges a buyer the extra amount corresponding to VAT, calculated over the value of the good or service (which includes taxes priory paid by him) rendered. The supplier has the obligation of delivering the amount due, which is calculated after the VAT debtor has deducted any he has paid previously within the consumption chain, to a VAT administration office. It is not impossible that the VAT deducted is higher than the VAT due, because in that case, the debtor becomes a creditor of public administration.

The buyer, on the other hand, when performing another commercial activity of his own is going to do the same, this time acting as supplier so that he can be compensated for the VAT he was previously charged with.

Whenever the recipient/buyer imports goods into Portugal from an outside supplier, the recipient/buyer pays VAT.

No special regulation applies to transactions between a branch and its foreign head-office. They are considered to be two independent taxpayers and therefore supplies between them are subject to VAT.

The state and other public entities are taxable persons in respect of transactions inconsistent with their scope of authority.

Foreign entrepreneurs with no establishment in Portugal are subject to VAT in Portugal when they manufacture taxable supplies in Portugal. This is the case when foreign entrepreneurs import goods into Portugal. This is also the case when they perform services which are deemed to be supplied in Portugal, or when they sell in Portugal goods previously imported or purchased in Portugal by them.

Representative offices of foreign companies are not regarded as liable to VAT when they carry out only activities of a preparatory or auxiliary nature. The foreign company will be able to claim from the Portuguese VAT authorities a refund of the input VAT incurred in Portugal through its representative offices.

Foreign companies producing taxable supplies within Portugal must appoint a VAT representative who will fulfil all the administrative obligations and pay the tax on their behalf.

Foreign entrepreneurs supplying services such as royalties, advertising, consultancy, etc. do not have to account for VAT in Portugal. The tax is due by the recipient entrepreneur.

Goods brought into Portugal are subject to VAT at Customs clearance. The tax is due by the importer.

2. What is taxable?

VAT is due in Portugal on the supply of goods or services rendered for consideration within Portugal by a taxable person acting as such. VAT is also due on the importation of goods.

The supply of goods means the transfer of tangible goods. Electricity, gas, heat and refrigeration are considered tangible goods. Assembly and installation of goods in Portugal triggers a liability to VAT. The tax is due when the work is completed.

The transfer of establishments for key moneys (i.e. additional paid amounts not declared in a contract) is considered neither a supply of goods nor a supply of services if the recipient is a partly or wholly taxable person.

Supply of services means transactions carried out which do not constitute the supply or import of goods. For example, transfers of intangible assets are considered supplies of services.

The importation of goods means the entry of goods into the VAT territory of Portugal. The VAT is due at the time of Customs clearance.

3. Place of Supply

The transfer of goods is taxable, if the goods are situated in Portugal at the time of transfer. Transfers of goods still in transit are also taxable when the transfer of ownership occurs before the actual arrival into Portugal. There are some exceptions which we do not describe here as doing so would exceed the scope of this paper.

The following services are deemed to be supplied where the recipient of the service usually resides or has a fixed establishment:

- transfers and assignments of trade marks, licences, copyright, patents;
- advertising services;
- services of consultants, engineers, chartered accountants, consultancy offices;
- data processing and supply of information;
- financial, banking and insurance services;
- supply of staff;
- acceptance to refrain from carrying out an activity or exercising any rights;
- renting of movable properties (apart from the renting of means of transport).

When the supply of goods or services is made by a foreign company and the place of supply is considered to be in Portugal, VAT is due by the recipient company in Portugal unless the foreign company has appointed a representative in Portugal. In that case the representative will fulfill all the administrative obligations and pay the tax on the foreign company's behalf with the right to make the correspondent deduction of the VAT paid to a supplier in Canada.

4. Basis of Taxation

SUPPLIES WITHIN PORTUGAL: the taxable amount of supply of goods and services subject to VAT is the value of the goods/services received, or to be received, by the purchaser, net of any discount, deduction or bonus granted.

IMPORTATION OF GOODS: the taxable amount of imported goods shall be the price paid, or to be paid, by the importer, where this price is the sole goods/services and shall include the following elements when they are not already included in it:

- import duties and any other taxes due on importation, excluding the VAT to be levied;
- chargeable expenses, such as commission, packing, transport and insurance costs, incurred up to the first place of destination within the Portuguese territory, excluding transport expenses between the islands making up the Autonomous Regions of Madeira and the Azores, and between these and Continental Portugal and vice versa.

5. Tax Rates

The general VAT rate of 17% is applied to imports, transmission of goods and provision of services. A special 5% rate is applied to a restricted number of goods of basic consumption and others.

B) Intra-Community Transactions

Intra-Community transactions, i.e. the transactions made within the European Union (EU), are subject to VAT, (even though under a special regime, somewhat different between a non-EU country and a EU country).

VAT is due when goods are shipped between two member states, irrespective of the country of residence of the parties involved. This means that non-EU entrepreneurs who are involved

in an intra-Community transaction, in principle, need to register in the member state of dispatch or in the member state of arrival.

While the EU Directive which made uniform the VAT legal regime in EU remains silent on the issue, it is generally assumed that VAT regime can only apply to goods that are in free circulation within the EU, i.e. goods that have been imported. Therefore, intra-EU shipments of goods that have not yet been imported for customs purposes remain outside the scope of the special VAT regime concerning intra-Community transactions.

The purchaser registered for VAT in another member state will be able to deduct fully the VAT levied on the intra-Community acquisition in his own member state only if he uses the goods for taxable purposes.

For example: if a Portuguese company⁸ (identified for VAT in Portugal) purchases goods from an English company and the goods are shipped from England to Portugal, the Portuguese company is subject to Portuguese VAT on its intra-community acquisition ("ICA"). If a Canadian company established in Portugal purchases from an English company, then makes a taxable ICA in Portugal, it is liable in Portugal to all tax and statistical requirements, even if it has no permanent establishment in Portugal. Due to the principle that each taxable person must be identified in the member state in which he engages in taxable transactions, the Canadian firm needs to register for VAT in Portugal to account for the ICA.

Attention is drawn to possible double taxation. If the purchaser is identified in a member state other than the member state of arrival of the goods, and he uses his locally issued VAT-ID number to purchase the goods, the Directive provides that the purchaser is also subject to VAT in the member state in which he is identified for VAT. But the member state of arrival of the goods remains competent to impose VAT on the acquisition of the goods. The purchaser in that situation is allowed to reduce the taxable value of the assumed ICA in the Member State of identification by the taxable value of the assumed ICA reported in the Member State of arrival. He must, however, submit documentary evidence in that case.

As a result, it is advisable always to use a VAT-ID number of the member state of arrival to prevent cumbersome adjustment formalities.

⁸The example is valid for another EU member state in the position of Portugal in the example given above.

C) Customs duties

Canadian goods entering in Portugal or, for that matter, in any EU member country are subject to common custom tariffs. Once those goods have entered the EU, whatever the member country custom through which the entry was made, they can circulate through EU territory without any additional restrictions. The specific tariffs have to be calculated case by case depending on the quantity and nature of the goods.

5. INCENTIVES TO INVEST IN PORTUGAL

There are a vast number of incentives, financial and fiscal, in Portugal to attract national and foreign investment. A part of these incentives is supported by community funds and are administrated by the IAPMEI. Given its complexity, prior recourse to a financial consultant is essential. Some of the principal aspects of the Portuguese incentive programme are summarized below.

I. Financial Incentives

(i) **PEDIP II ("Programa Específico de Desenvolvimento da Indústria Portuguesa")** is a special programme supported by the EU that aims to develop Portuguese industry. PEDIP consists of refundable financial aid bearing no interest. If some pre-defined objectives are met, then the financial aid may not be repayable. The financial aid is for the implementation of restructuring projects, new industries, internationalization of the Portuguese economy and other relevant investments. Also non-refundable subsidies are available for special purposes. Their program (as others indicated below) is temporary.

(ii) **SIURE - Incentives for the conservative use of energy and development of new forms of energy.**

(iii) **Incentives for Agriculture.** These are usually in the form of capital subsidies.

(iv) **SIFIT - Incentives for Tourism** also exist and projects for construction or modernization considered to be of importance to the tourist industry (such as hotels, tourist

resorts, entertainment, cultural and sports facilities) can benefit from the "SIFIT" programme. These incentives can be granted through a reduction in the interest rates on direct loans from the "Fundo de Turismo" (Tourism Board), or more commonly by ordinary loans from banks at subsidized interest rates. There are also tax incentives, in the form of tax exemption limited in time, in favour of hotels, restaurants, tourism resorts, entertainment, cultural and sports facilities declared by the Government as "Utilidade Turística" (Touristic Utility). Time limits for amortization and depreciation may be reduced. Manor houses and working farm holiday projects can also benefit from EU domestic funds when they are related to activities that are of interest to tourism and the farms are located in less-favoured regions. Capital subsidies are also laid down in the SIFIT programme within certain limits.

(v) **Incentives for Employment and Vocational Training:** Investors can benefit from the European Social Fund which gives aid through non-refundable subsidies for activities contributing to social integration and professional employment of young people (under 25 years of age) and less favoured workers (disabled, etc.). This fund aims to adapt the work force to technological changes and also to reduce regional imbalances in the labour market. Financial assistance is granted to fund the eligible costs. Domestic aid is granted through technical and financial assistance established in agreements made between eligible companies and institutions.

(vi) Other non-specific incentives relate to **venture capital funds** provided by State institutions ("Sulpedip" and "Norpedip"). These incentives are available to industrial companies needing new equipment, know-how, support to acquire share holdings in strategic foreign companies, etc.

(vii) Some municipalities also have schemes for the acquisition of land for factories, opening of new roads, water, electricity and gas supply, building of factories, etc.

Note: Canadian companies established in Portugal may benefit from the above incentives if matching all requirements of each specific incentive.

II. Other tax benefits not mentioned before

Other tax benefits are laid down in "Estatuto dos Benefícios Fiscais" (Fiscal Benefits Statute) and are applicable to all companies. Due to its length and complexity, we will confine our remarks to the following items:

(i) Capital gains and losses / reinvestment of sales proceeds

Net capital gains on the disposal of fixed assets or a financial investment held by the taxpayer longer than 12 months or prior to 31 December 1988 are not subject to tax provided that the proceeds are wholly or partly reinvested within two years in fixed assets, in shares of Portuguese resident companies or Government securities that must be held for at least a two year period. This benefit does not apply to the acquisition by a company of its own shares nor to the transfer between a company and any of its members of shares or securities.

(ii) Investment Funds

Among the several kinds of investment funds existing in Portugal the most relevant are close-end and open-end funds investing in securities and funds investing in fixed assets.

The recently introduced taxation system of the funds investing in securities is:

- * the positive yearly balance of capital gains and capital losses, either realized in Portugal or not, is taxed at the special rate of 10%. Losses may be deducted within the next five years. However, capital gains on the transfer of private and public debt bonds and equity shares held for more than 12 months are tax-exempt;
- * other income of the funds (excluding capital gains) is taxed as follows: when earned abroad, a special rate of 25% applies; when earned in Portugal, tax is withheld at the rates applicable to Portuguese residents;
- * the income paid by the funds to individual residents and all non-residents is tax-exempt and no withholding tax applies;
- * the income paid by the funds to resident companies (and to individuals acting commercially if they so elect) is assessed in the annual taxable income, and the proportional part of the tax withheld or paid by the funds as referred to above is deducted.

(iii) Dividends on listed shares

Dividends on listed shares are considered as taxable only for 60% of their amount for IRC or IRS purposes.

(iv) Capital gains of non-resident companies

Capital gains on the sale of shares of Portuguese companies by non-resident companies (i.e. with no registered office, place of management or a permanent establishment in Portugal) are exempt from IRC.

(v) Benefits for larger investments

A Foreign Investment operation can be carried out by an Investment Contract which may be entered into with the Government. It may enjoy special tax benefits which can be related to IRC, "Sisa", municipality tax and Stamp Duty provided that the tax benefits may be determinant for the decision to invest in Portugal. The Investment Contract deals with the extension of the tax benefits as well as the goals of the investment phases of implementation and penalties for non-compliance by the investor of the agreed conditions.

6. VISAS, WORK PERMIT AND GETTING A RESIDENCE PERMIT

6.1 Visa requirements

Canadians in Portugal benefit from the same rights as Portuguese citizens except as regards political rights.

Canadians are allowed free access into Portuguese territory. A passport is needed, but there is no entry visa required. Stay is permitted for 60 days. If the stay is for longer than 60 days a visa then becomes necessary.

A Canadian citizen needs a visa whenever he intends:

- * to stay in Portugal for longer than the initial 60 days (**extension visa**)
- * to work temporarily or study in Portugal (**work permit**)
- * to live in Portugal (long-lasting work, leisure, retirement, etc.) (**residence permit**)

Visas are granted by the Immigration Office ("Serviço de Estrangeiros e Fronteiras").

But, Portuguese consulates in Canada are also allowed to issue such as (1) **work visa** (2) **student visa** (3) **residence visa**.

6.2 *Work permit*

A **work visa** allows entry into Portuguese territory so that the holder may work (as an employee or self-employed) in the country. It is valid for up to 90 days (renewable) but limited to a maximum of two entries in each 90 day period. Granting of the visa depends on the approval of the Portuguese Ministry of Labour. It may be refused, inter alia, whenever (1) the statement of the employer intending to employ the applicant is not true (2) the activity is not licensed (3) existence of unemployment in the sector concerned.

A Canadian employee working for a Canadian company (established or not) which is rendering services in Portugal must also get a work permit. Any foreign company rendering any kind of commercial activity in Portugal for more than one year is obliged under Portuguese law to establish at least a branch duly registered in the companies registrar office.

A **student visa** allows the entry into Portuguese territory for academic purposes only. It does not allow an individual to do work of any kind. It is valid for one year (renewable) but limited to a maximum of two entries during each one year period.

6.3 *Getting a residence permit*

A **residence visa** allows the holder to enter Portugal in view of obtaining a permanent **resident permit**. It is valid for a 90 day period (renewable) but limited to a maximum of two entries during each period.

Finally, Canadians may obtain a **residence permit** for a long-lasting stay (more than 90 days) for work reasons (as an employee or self-employed) or to permanently live in the country (own subsistence means and other conditions are required to be met).

It is advisable to apply for the residence permit in any Portuguese consulate in Canada before leaving the country. A copy of the employment agreement is needed whenever the purpose is to work in Portugal. Time usually needed to obtain a visa is between 60 and 90 days.

6.4 General

There is a limit of 10% maximum of the jobs of a Portuguese company (including a subsidiary or a branch of a non-Portuguese company) that may be taken by foreigners. This rule is applied for companies having more than 5 workers. Exception is admitted where the Ministry of Labour acknowledges the high-tech nature of the job and there are no Portuguese workers available to provide it.

A final word to say that, once a Canadian citizen has come into Portugal, he may freely leave the country and freely circulate within the countries which are members of the Schengen Agreement⁹ but it is subject to the stay limits in force in each country member.

7. SOCIAL SECURITY COVERAGE

All foreigners working in Portugal (either as employees of a company or directors or members in general of corporate bodies of a Portuguese or non-Portuguese company, branch or subsidiary) are subject to Portuguese Social Security coverage.

The payroll deductions for social contributions are: employer 24.5%, employee 11%. Both are calculated on all remunerations and allowances paid by the employer.

Foreigners, however, who are temporarily working for a branch or subsidiary in Portugal do not have to make a contribution provided they can prove that in their country of origin they are subject to obligatory social security or like payments. Nonetheless foreign workers can opt to be covered by both Social Security schemes. Canadian workers of non-established Canadian companies carrying on business in Portugal do not have to pay Social Security unless the company itself is obliged to be established as a consequence of the period of time for performing its activity (see 2.). In that case, their obligation to pay into Social Security depends on the above referred condition of paying Social Security in another country.

Canada and Portugal have an Agreement with respect to Social Security which applies to voluntary contributions, pensions, spouse allowance, survivor benefit, invalidity benefit, children benefit, death benefit, etc..

⁹These are the current countries members of the Schengen Agreement: Portugal, Spain, France (temporarily suspended the application of the Agreement), Germany, Belgium, Holland and Luxembourg.

8. PUBLIC PROCUREMENT

As a general rule, practically all construction contracts or acquisition of goods and services contracts entered into by the Government or any other public entity (governmental agencies, municipalities, etc.) must be subject to a prior tender.

A tender may be public (i.e. open to any bidder) or non-public (i.e. limited to a pre-qualified number of candidates). Depending on the amounts involved some construction or acquisition of goods or services contracts must, not only be advertised in the domestic market, but also in the EU market or even in the international market. In fact, EU legislation (mainly Directives nos. 77/62/EEC, 80/767/EEC and 88/295EEC) as well as GATT Agreement provisions require the mandatory submission of public procurements to EU members and sometimes to the international community market.

The invitation to tender is announced in the Official Gazette and in two local newspapers. Whenever it is mandatory that a tender be advertised in the community market it must be also advertised in the Official Journal of the EU.

The contracts which exceed the thresholds established by different community rules (which must be consulted case by case) require that the procurement be open to the EU market. In such cases the tender is also open to non-EU members, except where such requisite of nationals of a EU country member is expressly established as a pre-condition to tender. This exception is part of the GATT Agreement on public tenders of which the EU is a signatory party.

As far as the tendering procedures are concerned, a set of documents to be presented within the tendering period as well as a number of requisites to be met are established case by case. In general, the authorities supervising the tender are extremely stringent about the compliance of the tender conditions. Advice from a local expert is always very important. In fact, the competitors, the Government which tightly controls the procedures and, above all, the auditing authorities ("Tribunal de Contas") have an outstanding and stringent control on the accomplishment of the law and all the tendering conditions. As in many other countries, a bidder is often excluded from the tender for minor errors such as, for example, a signature in a document that is not duly notarised.

Bidders may submit a bid either individually or grouped in a consortium as an "ACE" ("Agrupamento Complementar de Empresas" i.e. a Complementary Grouping of Companies). See 2.2 of chapter 2. above.

9. INTELLECTUAL PROPERTY

Portugal is a founding member of the International Union for the Protection of Patents and Trademarks established under the 1883 Convention of Paris and has also signed all subsequent revisions, including the Stockholm Convention which instituted WIPO (World Intellectual Property Organization) based in Geneva.

The following protection is provided under Portuguese law:

- patents - 15 years;
- trademarks - renewable periods of 10 years;
- industrial drawings and models - renewable periods of 5 years;
- business names and emblems - 30 years.

Patents and trademarks registered or pending in any of the Union members have priority during 12 months and 6 months, respectively, in applying for registration in Portugal.

Portugal has also ratified the 1984 revision related to author rights.

Portugal signed the 1970 Washington Treaty of Co-operation of Patents and the 1973 EC Munich Convention on trademarks and patents and will sign the 1975 EC Luxembourg Convention on EC patents. EC regulation concerning counterfeiting has already been signed. Industrial property registration is made with "Instituto Nacional da Propriedade Industrial" (INPI) and copyrights are registered with the "Conservatória da Propriedade Literária, Artística e Científica". Protection is dealt with by "Sociedade Portuguesa de Autores" which is a private association.

Software copyright is protected by law which provides for criminal sanction to infringement of copyright, counterfeit and other illegal actions.

10. CONTRACTS

10.1 General Law of Contract

When executing a contract in Portugal it is important to determine whether such contract will be ruled by Portuguese law or by another country's law.

The Portuguese legal system is based on Civil Law. In accordance with it there are significant contractual issues for which the law itself establishes the provisions. This usually concerns matters like the form of the contract; the general rights and obligations of the parties; liability; and some points about termination, among others. This is especially true when dealing with typified agreements where there are few points to be provided for in the contract differently from the applicable statutory provisions.

There are statutory provisions which are totally mandatory and under no circumstances can be derogated or waived by the parties in a contract. Others may be dismissed and the concerned matter can be determined differently. However, in the latter case, once those provisions are not dismissed they become compulsively applicable. It is important to note that the general principle enables the parties to freely determine the contractual conditions except on matters the law provides for in a compulsive manner.

Another implication of the Civil Law nature of the Portuguese legal system concerns the technique used when drafting a contract which is substantially different from the Common Law. However, despite the differences the binding nature and efficiency of a contract under Civil Law and Common Law are similar. In any case, advice of a local lawyer is needed.

It is important to note, however that even where the Canadian law is the law chosen by the parties to rule the contract, there are always, in any jurisdiction, some matters which are subject to public policy principles and cannot be ruled by any other law other than the law of the country where the contractual provision concerned is to be applied. Even though it may not be required to demand that the local law be the one applied, local courts do not acknowledge and enforce a contractual provision that, despite lawful under the law of the contract (for instance the Canadian law), it is against some (usually very few and in some sensitive areas only) basic principles or strict mandatory rules of local law. This is, *inter alia*, the case of the Portuguese legal rules applicable to the goodwill indemnity due to the agent in the agency agreement (see section 3).

10.2 General Conditions of Contract

It is common practice in trade matters to use the so called **General Conditions of Contract**. This usually consists of a wide range of contractual provisions which are submitted to every single customer dealing with some company (whether he is an end consumer or a business consumer), generally with no alternative being presented to him except for his acceptance or his refusal. It is then easily foreseen that the consumer's freedom in determining the specific conditions of a contract may be in jeopardy in such deals.

The Consumer Protection Law however applies. The following limitation clauses, in the form of general terms and conditions, are null and void as they are considered unfair terms of contract:

- (i) Those which limit the liability for damage to a person and, where there is gross negligence or fraud, either in tort or for failure to perform, delay in performance or defective performance, and for acts by employees;
- (ii) Those which limit the retention of a lien on goods until the creditor is paid;
- (iii) Those which limit the right to refuse performance while the other party does not perform where both obligations must be accomplished simultaneously, the right to terminate the contract based on non-performance by the other party, and the statutory right to set-off, and
- (iv) those granting the party who has proposed the general terms and conditions the right to assign the contract or delegate debts to third parties and to sub-contract without prior agreement of the other party, except where the third party is identified in the contract.

The following clauses are voidable¹⁰:

- (i) Those which establish, in favour of the party who has proposed the general terms and conditions, excessive terms for the acceptance or refusal of any proposal to contract, excessive terms for timely performance, excessive liquidated damages, and assumptions of delivery or acceptance of goods based on insufficient facts, and

¹⁰Unlike a null and void clause, a voidable clause, if it is not nullified in court by the party in a certain period of time, will be valid.

(ii) Those which elect a court to settle disputes raising serious difficulties for the counterparty without justification of the interests involved or a law applicable to the contract causing serious inconvenience to the other party.

As to relations between merchants and end-users or consumers, in general, the following general terms and conditions, if in favour of those who have proposed or prepared the general terms and conditions, are null and void:

- (i) The limitation or amendment of obligations previously established in a contract;
- (ii) The grant, directly or indirectly, of an exclusive right to check and establish the quality of the goods or services supplied;
- (iii) The allowance of discrepancy between the obligations to be performed and the indications, specifications, or samples made or shown, and
- (iv) The altering of legal provisions in respect of burden of proof and risks of loss.

11. CIVIL LAW JURISDICTION. SETTLEMENT OF DISPUTES. ENFORCEMENT OF FOREIGN JUDGEMENTS AND ARBITRATION AWARDS IN PORTUGAL.

11.1 Civil Law Jurisdiction

The Portuguese legal system is based on Civil Law. The existing legal sources are the law (including, in general, all statutory provisions), uses and jurisprudence.

11.2 Settlement of disputes

The Portuguese court system is largely used to settle disputes.

Settlement of disputes by arbitration has grown significantly during the last ten years, but it is still less used than in Common Law countries.

In Commercial Law matters with an international connection it is generally advisable to submit to arbitration to be ruled by Portuguese, Canadian or other jurisdiction provisions.

There are some arbitration tribunals in Portugal to which a dispute may be submitted to be settled or just to avoid having to go to court to appoint arbitrators. The most well-known are:

- * the Arbitration Tribunal of the Centre for Commercial Arbitration of the Portuguese Commerce and Industry Chamber/Commercial Associations of Lisbon and Oporto;¹¹
- * the Arbitration Tribunal of the Centre for Arbitration of the Portuguese Bar Association.

Alternative Dispute Resolutions (ADR) usually conducted by mediation is not presently used in Portugal or in most of the Continental European countries.

11.3 Enforcement of foreign judgements and arbitration awards in Portugal

Enforcement of a judgement adjudicated by a Canadian court or an arbitration award of a Canadian arbitration tribunal can be made in Portugal. However, court judgements must be previously tested by a Portuguese court of appeal, not to look into the merits of the judgement, but exclusively to see if the judgement is against the public policy of the Portuguese legal system i.e. those fundamental principles (not necessarily statutory rules) on which the Portuguese legal system is founded.

As to arbitration awards, Portugal is (as well as Canada) a member of the 1958 New York Convention on Acknowledgement and Enforcement of Arbitration Awards. This means that the enforcement of Canadian arbitration awards in Portugal and connected matters is facilitated.

Both countries are also signatory parties to the Convention Establishing the Multilateral Investment Guarantee Agency of 1985 to settle disputes arising from foreign investment in a member country.

¹¹ Lisbon headquarter is located at Rua das Portas de Santo Antão, 89, 1194 Lisbon Codex (telephone: (351.1) 342 7179; facsimile: (351.1) 342 4304).

Oporto headquarter: Palácio da Bolsa, Rua Ferreira Borges, 4000 Porto (telephone (351.2) 320 520; facsimile (351.2) 208 4760).

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There are some cases in which a dispute may be submitted to be settled or just to a joint arbitrators. The most well-known are:

* the Arbitration Tribunal of the Center for Commercial Arbitration of the Portuguese Commerce and Industry Chamber - Commercial Associations of Lisbon and Oporto;

* the Arbitration Tribunal of the Center for Arbitration of the Portuguese Real Association;

Alternative Dispute Resolution (ADR) usually conducted by mediation is not presently used in Portugal or in most of the Commercial European countries.

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