Portugal

Abel Mesquita and Luís Sobral,
PLMJ - AM Pereira, Sáragga Leal, Oliveira Martins, Júdice & Associados

www.practicallaw.com/5-372-4993

GENERAL

1. Do the main laws that regulate the employment relationship apply to:

- **Foreign nationals working in your jurisdiction?**
- **Nationals of your jurisdiction working abroad?**

Are there any mandatory laws that apply regardless of a choice of law in the employment contract?

Laws applicable to foreign nationals

Employment law provisions that are applicable to employees working in Portugal have various sources, including:

- International sources, notably EC law.
- National law.
- Collective agreements.
- Individual agreements (for example, employment contracts).
- Established practices that are not contrary to the principle of good faith.

If a conflict arises, the provisions of higher sources that are applicable and which cannot be derogated from always take precedence over lower sources (for example, national law prevails over collective agreements, which in turn prevail over employment contracts (*see Question 5*)). A collective agreement or employment contract can supersede non-mandatory provisions if it sets out more favourable terms and conditions for an employee. The parties to an employment contract, such as foreign nationals working within Portugal, can choose the national law that governs their employment contract, except for mandatory provisions that are applicable in the absence of choice (*see below, Mandatory laws*).

The most important national statutes are:

- Law 99/2003 of 27 August (Labour Code).
- Law 35/2004 of 22 July (which regulates the Labour Code).

Laws applicable to nationals working abroad

The parties can choose the national law that governs their employment contract, subject to mandatory provisions (*see above, Laws applicable to foreign nationals*).

Mandatory laws

Portugal is a signatory to the Rome Convention on the law applicable to contractual obligations (*1980/934/EEC*). This states that the parties' choice of law cannot deny employees protection under the mandatory provisions that would apply if no choice were made. As a result, if the Labour Code's provisions are applicable in the absence of choice, they cannot be set aside even if another national law governs the employment contract.

The Labour Code's mandatory provisions govern, among others:

- Minimum pay (*see Question 6*) and payment for overtime work.
- Maximum working hours (*see Question 7*).
- Minimum rest periods.
- Minimum paid holiday leave (*see Question 8*).
- Maternity and paternity rights (*see Question 10*).
- Equal treatment and non-discrimination (*see Question 13*).
- Termination of contracts (*see Question 15*).
- Health, safety and hygiene at work (*see Question 21*).
- Protection of minors at work.
- Conditions for temporary placement agencies to hire out employees.

EMPLOYING PEOPLE

2. Are there any age or nationality restrictions on managers or company directors? If so, please give details.

Age restrictions

There are no restrictions on the age of managers or company directors.

Nationality restrictions

There are no restrictions on the nationality of managers or company directors.

3. Are any grants or incentives available for employing people? If so, please give details.

Financial aid and exemptions from, or reductions in, social security contributions are offered to encourage employers to recruit:

- Unemployed people.
- Employees with a reduced working capacity.
- Young persons looking for their first job.

4. What permits do foreign nationals require to work in your country? Please explain:

- **How these permits are obtained.**
- **How much they cost.**
- **How long the process takes.**

- **Required permits.** European Economic Area (EEA) nationals can work in Portugal without a visa or work permit, except for nationals from Bulgaria and Romania during the transitional period set out in the EU Treaty on Accession 2005 (*OJ 2005 L157/11*).

  Non-EEA nationals must obtain a work permit from the Service for Border Control and Aliens (*Serviço de Estrangeiros e Fronteiras*). Work permits are generally granted on the basis of status (employment rather than self-employment) and the nature of the work (for example, specialised work). Non-EEA nationals do not require a visa if they have a work permit.
- **Obtaining permits.** The process of obtaining a work permit is highly regulated and varies according to the country of origin and the type of permit required.
- **Cost.** The cost of obtaining a work permit is about EUR100 (about US$134).
- **Length of process.** The application process usually takes about three months.

TERMS OF EMPLOYMENT

5. What terms govern the employment relationship? In particular:

- **Is a written employment contract or statement of employment terms required?**
- **Are any terms implied by law into the employment contract (in addition to the mandatory terms referred to in *Question 1*)?**
- **Are collective agreements with trade unions common (generally or in specific industries)?**

- **Written employment contract.** Employment contracts are not required to be in any particular format, except where the law states otherwise. However, all contracts should identify the parties to the agreement and include:
  - a statement indicating that the employer agrees to employ the employee and that the employee agrees to perform services for the employer;
  - a clause defining the employee's duties and responsibilities;
  - a clause indicating the date on which the agreement becomes effective (that is, the date on which employment commences or the employee's period of continuous employment begins if employment with a previous employer is to be taken into account);
  - details of remuneration and when it will be paid.

  Employment contracts also typically define:
  - the place of work;
  - the length of holiday leave or, if it is not possible to establish its duration, the criteria to be applied for this purpose;
  - the standard daily and weekly working hours, specifying whether they have been established as averages (*see Question 7*);
  - restrictive covenants, notably relating to confidentiality, non-competition and minimum-stay obligations;
  - the circumstances and required notice for any amendment to, or modification of, the agreement;
  - the law governing interpretation and enforcement of the agreement, including the relevant collective agreement, if applicable.
- **Implied terms.** Terms and conditions of employment do not have to be expressly agreed and are implied by:
  - statute;
  - collective agreements;
  - work regulations;
  - established practices.
- **Collective agreements.** Collective agreements between trade unions and employers or employers' associations are common at national, industry-sector and company levels. The government can, in certain circumstances, make a collective agreement binding on all employers and employees who fall within its scope, even if they are not members of the participating employers' association or trade union.

  An employment contract can only supersede a collective agreement's provisions where it sets out more favourable employment conditions. However, if a collective agreement's provisions are mandatory, an employment contract cannot supersede them, even if it sets out more favourable conditions (the parties to a collective agreement can agree that a particular provision cannot be derogated from).

6. Is there a minimum wage? If so, please give details, in particular whether it applies to all employees, regardless of their age and experience?

All employees are guaranteed a minimum monthly salary, which is set annually by special laws following consultation with the Social Agreement Standing Committee (*Comissão Permanente de Concertação Social*). For 2007, the minimum monthly salary is EUR403 (about US$542). Minimum salaries can also be set by collective agreement, but must not be less than the government minimum.

7. Are there restrictions on working hours? If so, please give details.

Standard working hours must not exceed eight hours a day or 40 hours a week.

Standard working hours can be defined as an average by collective agreements, in which case these limits can be increased by up to four hours, provided that the total time worked in any week does not exceed 60 hours (excluding overtime required as a result of *force majeure*).

The average working time is calculated by reference to:

- The period set out in the applicable collective agreement, which cannot exceed 12 months.
- Periods of no more than four months, where the collective agreement does not set out a period.

This four-month reference period can be increased to six months if:

- The employees are related to their employer (that is, through an in-law, blood, marital or adoption relationship).
- The employees occupy director or management positions, or have autonomous decision-making powers.
- The employees' place of work is distant from their place of residence.
- The employees' different places of work are distant from each other.
- The employees are operational staff working in security, transport and electronic security system industries. This particularly relates to security guards and caretakers.
- The employees work in industries that are characterised by the need to guarantee service or production continuity, including the medical care and emergency services, transport and communications industries.

8. Is there a minimum holiday entitlement? If so, please give details. How many public holidays are there in a year and are they included in the minimum holiday entitlement?

Employees are entitled to at least 22 working days' holiday a year.

If employees have had 100% attendance or minimal and justified absence, this entitlement is increased:

- By three days if absence has not exceeded one full working day or two half days.
- By two days if absence has not exceeded two full working days or four half days.
- By one day if absence has not exceeded three full working days or six half days.

Employees can waive any holiday entitlement over 20 working days in return for payment in lieu and a bonus.

In addition, there are 14 national public holidays. There may also be local municipal public holidays.

9. What rights do employees have to time off in the case of illness or injury? Is that time off paid? Can an employer recover from the state sick pay granted to its employees?

Employees' absence from work for illness or injury is justified if they provide evidence of the illness or injury.

None of the employees' rights are lost or reduced if an absence is justified. However, employees only continue to be paid if they do not benefit from:

- The state social security regime that grants protection in the event of illness.
- Any allowance or insurance for injury at work.

10. What are the statutory rights of employees who are parents or carers (including those of disabled children and adult dependants)? How is employees' pay affected during periods of leave?

Maternity rights

Employees are entitled to maternity leave of 120 consecutive days, 90 of which are taken immediately after childbirth (the remaining 30 days can be taken in full or in part before or after childbirth). In cases of multiple births, the length of leave is increased by 30 days for each child born in addition to the first one.

Maternity leave does not involve the loss of any rights and, except as regards pay, is considered as continuous employment. During maternity leave, the social security system grants subsidies to employees in lieu of their regular pay.

In addition, a pregnant employee can take leave before giving birth if:

- There are clinical risks for the employee or her unborn child that, for whatever reason, may impede the performance of her duties.
- The employee is not given duties or placed in a location compatible with her condition.

In these circumstances, the pregnant employee can take leave for a period of time suggested by medical advice that may be necessary to avert the risks. This right is in addition to the entitlement to standard maternity leave.

Before dismissing pregnant employees and employees who have recently given birth or are breastfeeding, employers must obtain the prior opinion of the Equal Opportunities Authority (*Comissão para a Igualdade no Trabalho e no Emprego*). If this opinion is not in favour of the dismissal, the employer is only allowed to continue with the dismissal if the court rules that there is just cause.

Paternity rights

Fathers are entitled to paternity leave of five consecutive or non-consecutive working days, which must be taken in the first month following the birth of the child.

Paternity leave does not involve the loss of any rights and, except as regards pay, is considered as continuous employment. During paternity leave, the social security system grants subsidies to employees in lieu of their regular pay.

Parental rights

Parents are entitled to special working conditions. In particular, their standard working hours can be reduced and they can be absent from work if, among other things, a child under ten:

- Is disabled.
- Has a chronic illness.
- Is hospitalised.
- Requires urgent and essential assistance.

Adoption rights

Adoptive parents are entitled to parental rights (*see above, Parental rights*).

Carers' rights

Carers of adult dependants can be absent from work if the dependants require urgent and essential assistance.

11. Does a period of continuous employment create any benefits for employees? If individual employees are transferred to a new entity, are they deemed to retain their period of continuous employment?

Benefits

Benefits arising from continuous employment include:

- Increased holiday leave.
- An increase in salary and other rights under collective agreements.
- A higher severance payment (*see Question 15, Severance payments*).
- Greater compensation for unlawful dismissals.
- Eligibility for statutory employment benefits (for example, retirement pension).

Transfer

Employees transferred to a new entity on a transfer of an undertaking retain their continuous period of employment.

EMPLOYEE PROTECTION

12. What statutory data protection rights do employees have?

Law 67/98 of 26 October 1998 incorporates into Portuguese law Directive 95/46/EC on data protection. This aims to ensure the protection of individuals when processing personal data and the free movement of this data.

Personal data is information of any type (transmitted through any medium), which relates to an identifiable natural person (data subject). A person can be identifiable by physical, physiological, mental, economic, cultural or social attributes, or by reference to an identification number.

Disclosure of personal data is prohibited to any third party other than the data subject, the controller or processor of the data, or anyone with direct authority in cases expressly determined by law or where the data subject's permission is given.

Employers and employees must respect each other's private life (*Labour Code*). Information relating to the following is protected from disclosure:

- Family, emotional and sex life.
- Health.
- Political and religious beliefs.

Employers must not require job applicants or employees to provide information relating to (*Labour Code*):

- Their private life, unless strictly necessary and relevant to assess their ability to perform the work duties.

- Their health or pregnancy, unless necessary due to particular demands inherent in the nature of the work.

Necessary requests for such information must be made in writing.

The law also guarantees the right for all data subjects who have supplied personal information to:

- Know what information is being held about them.
- Be informed of the purpose for holding the information.
- Require the information to be corrected or updated.

13. What protection do employees have from discrimination or harassment, and on what grounds?

Discrimination

Employment law has long safeguarded employees' rights to equality and non-discrimination.

All employees are entitled to equal opportunities and treatment in applying for a job, professional training or a promotion, and in their working conditions.

The employer must not discriminate, directly or indirectly, and no employee or job candidate can be privileged, benefited, wronged, deprived of any right or exempted from any duty on the basis of, in particular:

- Ancestry.
- Age.
- Sex.
- Sexual orientation.
- Marital status.
- Family situation.
- Genetic heritage.
- Reduced work capacity.
- Physical disability.
- Chronic disease.
- Nationality.
- Ethnic origin.
- Religion.
- Political or ideological beliefs.
- Union affiliation.

Harassment

Harassment of a job candidate or employee is considered to be discrimination, and is defined as any undesirable behaviour that:

- Relates to any of the discriminatory factors (*see above, Discrimination*).
- Occurs while applying for a job or professional training, or in the workplace.
- Has the intent or result of affecting the person's dignity, or creating an environment that is intimidating, hostile, degrading, humiliating or destabilising. This relates particularly to any undesirable behaviour of a sexual nature, whether verbal, non-verbal or physical.

Job candidates or employees who experience discriminatory conduct are entitled to claim compensation for any harm suffered.

A breach of the statutory employment provisions can also give rise to liability for labour administrative offences (for example, harassment is subject to a fine of between EUR1,920 (about US$2,581) and EUR18,240 (about US$24,518)).

14. Do whistleblowers have any protection? If so, please give details.

There is no specific whistleblower protection for employees.

DISMISSALS AND REDUNDANCIES

15. What rights do employees have when their employment contract is terminated? Please provide information on:

- **Notice periods.**
- **Severance payments.**
- **Any specific categories of protected employees.**
- **Any procedural requirements for dismissal.**

- **Notice periods.** An employer may be entitled to terminate an employment contract if there is a "just cause" for dismissal. A just cause generally exists if an employee's wilful behaviour makes it impossible to continue the employment relationship. Dismissal must follow the established legal procedure (*see below, Procedural requirements*), but no notice period is applicable.

  If employees are made redundant or are dismissed for failure to adapt to their post, a minimum notice period of 60 days applies.

- **Severance payments.** If there is a just cause for dismissal, no compensation is paid to employees for terminating their employment contracts, except the legal amounts due in relation to pro-rata holiday pay and the Christmas bonus.

If employees are made redundant or are dismissed for failure to adapt to their post, they are entitled to compensation of an amount equal to one month's basic pay and any additional payments based on their length of employment for each full year of service. The amount is calculated proportionally for each fraction of a year worked.

- **Protected employees.** The following are entitled to specific protection in the case of intended dismissal:
  - pregnant employees and employees who have recently given birth or are breastfeeding (*see Question 10, Maternity rights*);
  - employees' representatives.
- **Procedural requirements.** To establish a just cause for dismissal, the employer must initiate a disciplinary procedure against the employee. The procedure starts with the employer giving a written statement of misconduct to the employee, containing a full description of the relevant facts.

  Within ten working days of receiving a statement of misconduct, the employee can present a written defence and request the relevant evidence to be examined, for example, by taking witness statements. The employer must agree to the requests made in the written defence or risk the disciplinary procedure being held invalid.

  After the disciplinary procedure has been concluded, the employer must make a final decision within 30 days.

  Dismissal on grounds of collective redundancy must also follow the established legal procedure (*see Question 17*).

  To dismiss an employee for failure to adapt to his post, the employer must give a written statement to the employee containing the reasons for the termination.

  Within ten days of receiving the written statement, the employee can oppose the dismissal and present his evidence in support. Following this, the employer must make his final decision within five days.

16. What protection do employees have against wrongful or unfair dismissal?

The employee may apply to the Labour Court for a declaration that a dismissal was unlawful. The court should make this declaration where:

- The dismissal did not follow the procedural rules (*see Question 15, Procedural rules*).
- Political, ideological or religious grounds motivated the dismissal.
- The employer gave inadequate reasons for the dismissal.

When a dismissal is declared unlawful, the employee is entitled to:

- Compensation for property and personal damage arising from the unlawful dismissal.
- Reinstatement without prejudice to his position and length of service.
- Unpaid salary from the time that he was dismissed until the time the court decision became final.

Any sums that he received because of his dismissal that he would not have otherwise received (for example, unemployment benefit) are deducted from this amount.

Instead of reinstatement, the employees may choose to receive a compensatory award. The amount of this award is set by the courts and is equivalent to between 15 and 45 days of basic pay and seniority payments for each full year or fraction of a year's service.

If the employer is an enterprise that has ten employees or less, or if the employees dismissed are directors or managers, the employer can oppose reinstatement. This is provided that the employer can show that the employee's return would seriously interfere with and prejudice the enterprise's ordinary activities. The court must assess the employer's arguments.

17. What rules apply on redundancies?

Employers proposing collective redundancy must notify the works council or, if one does not exist, the multi-union committee or union committees representing the affected employees.

If there are no such bodies, the employer must notify each affected employee in writing of his redundancy. The employees are then entitled, within five working days, to appoint from among themselves three (or five, if more than five dismissals are proposed) representatives.

The notification must include information on:

- The alleged reasons for the collective redundancy.
- The employees that may be affected.
- The criteria used to select which employees will be made redundant.
- The number of employees to be dismissed and occupational categories covered by the dismissal.
- The period of time over which the redundancies will be made.
- The method of calculating any compensation offered in addition to the minimum provided by law or a collective agreement.

Copies of the notification must be sent to the Ministry of Employment (*Ministro do Trabalho e da Solidariedade Social*).

Within ten days of notification, employers and employee representatives must consult and attempt to agree on measures to reduce the number of redundancies by, for example:

- Reducing the number of hours worked by each employee.
- Retraining employees in alternative positions.
- Offering early retirement to some employees.

Employees must approve and consent to these measures.

Representatives from the Ministry of Employment attend the negotiations. They ensure that the correct procedure is followed and promote conciliation between the parties.

Once an agreement is reached or, if no agreement has been reached after 20 days from the initial notification, employers must inform each of the affected employees about the redundancy decision. This notification must include details of:

- The reason for the decision.
- The date of termination.
- The amount of redundancy pay.
- How and when compensation will be paid.

Employees dismissed as a result of collective redundancy are entitled to redundancy pay (*see Question 15, Severance payments*). Employees who accept the redundancy pay are deemed to have accepted the redundancy.

TAXATION OF EMPLOYMENT

18. What is the basis of taxation of employment income for:

- **Foreign nationals working in your jurisdiction?**
- **Nationals of your jurisdiction working abroad?**

- **Foreign nationals.** Foreign nationals who are resident in Portugal and non-residents whose source of income is from Portugal are subject to personal income tax (*Imposto sobre o rendimento das pessoas singulares*) (IRS). Resident foreign nationals are taxed on their worldwide income. Non-residents are only taxed on their income from Portuguese sources.

  Foreign nationals are considered resident in Portugal if, during the tax year, they meet any of the following criteria (*IRS Code*):

  - they spend more than 183 days in Portugal;
  - they live in Portugal for less than 183 days, but have at their disposal, on 31 December during the tax year, a dwelling that can be considered as an intended ordinary place of residence in Portugal;
  - on 31 December, they are crew members of a ship or aircraft in the service of an employer with its domicile, head office or effective management in Portugal; or
  - they exercise public functions or commissions on behalf of the Portuguese government abroad.

- **Nationals working abroad.** Nationals working abroad who are considered resident in Portugal are taxed on income earned abroad, unless they qualify for relief from double taxation under provisions in the IRS Code or a relevant double tax treaty.

19. What is the rate of taxation on employment income? Are any other taxes or social security contributions levied on employers and/or employees? If so, please give details, including the rates.

The standard income tax rates for 2007 are as follows:

Taxable income (EUR)		(A) (%)	(B) (%)
Exceeding	**Not exceeding**		
0	4,544	10.5	10.5
EUR4,544 (about US$6,108)	6,873	13	11.3472
EUR6,873 (about US$9,239)	17,043	23.5	18.5991
EUR17,043 (about US$22,909)	39,197	34	27.3036
EUR39,197 (about US$52,689)	56,807	36.5	30.1545
EUR56,807 (about US$76,360)	61,260	40	30.8701
EUR61,260 (about US$82,346)	-	42	-

The first portion of taxable income in any income bracket (shown in the column headed "Exceeding") is taxed at the corresponding rate shown in column B. Any income in excess of this is charged at the rate in column A corresponding to the next tax bracket. For example, if an employee earns EUR20,000 (about US$26,884), the first EUR17,043 is taxed at 27.3036% and the remaining EUR2,957 (about US$3,975) is taxed at 36.5%.

Social security contributions must be made on behalf of all employees. Employees provide 11% of their income and the employer pays 23.75%.

Other social security contribution rates apply in certain situations (for example, young persons looking for their first job and persons hired following a period of long-term unemployment).

LIABILITY

20. Are there any circumstances in which:

- **An employer can be liable for the acts of its employees?**
- **A parent company can be liable for the acts of a subsidiary company's employees?**

- **Employer liability.** An employer can be held civilly liable for the acts of its employees where all the following apply:
  - the act was carried out during performance of the employment contract;
  - the act was carried out on the employer's behalf;
  - the employee can be held liable for the act.

  Liability for labour administrative offences can also arise for employees' acts in several circumstances (mostly relating to breaches of the most important statutory employment provisions).
- **Parent company liability.** A parent company can be liable for the acts of employees working for a subsidiary company in the same way as for its direct employees (*see above, Employer liability*).

21. What are an employer's obligations regarding the health and safety of its employees?

Employers must protect employees' health and safety in every aspect of their work. In general, employers must:

- Take any necessary safety measures, including preventing occupational risks and providing information and training (they must also provide the necessary organisation and means to introduce these measures).
- Adjust safety measures as is necessary to take account of changing circumstances and aim to improve existing situations.
- Implement the safety measures required on the basis of the following general principles of prevention:
  - avoiding risks;
  - evaluating the risks that cannot be avoided;
  - combating risks at source;
  - adapting the work to the individual (especially in relation to the design of workplaces, and the choice of equipment and working or production methods), with a view, in particular, to easing monotonous duties and work at a predetermined rate;
  - adapting to technical progress;
  - replacing the dangerous with the non-dangerous or the less dangerous;
  - developing a coherent overall prevention policy, which covers technology, organisation of work, working conditions, social relationships and the influence of factors related to the working environment;
  - giving collective protective measures priority over individual protective measures;
  - giving appropriate instructions to employees.

CONSULTATION AND MAJOR TRANSACTIONS

22. Are employees entitled to management representation (such as on the board of directors) or to be consulted about issues that affect them? What are the remedies that are available if an employer fails to comply with its consultation duties? Can employees take action to prevent any proposals going ahead?

Management representation

Employees are not entitled to management representation.

Consultation

Employers must consult employees or their representatives on several issues. Broadly, employees or their representatives are entitled to be informed about any restructuring processes, especially if changes in working conditions are planned. In particular, works councils can issue a written and non-binding opinion on the following matters within 15 days after the date of the employer's formal written request:

- Regulation concerning the use of electronic equipment for surveillance purposes in the workplace.
- Preparation of the company's internal regulations.
- Amendment of criteria for professional classification and promotions.
- Working time schedules applicable to all or some of the company's employees.
- The holiday chart for the company's employees.
- Relocation of the undertaking.
- Any measures that could lead to substantial modifications in the work organisation plan or employment contracts by either:
  - involving a significant decrease in the number of the company's employees;
  - adversely affecting the employees' terms and conditions of employment.

- The closure of the undertaking or production lines.
- The company's dissolution.
- An insolvency petition.

In a transfer of an undertaking, the old and new employers must provide the following information, in writing, to employees or their representatives, well in advance of the transfer:

- The reasons for the transfer.
- The date of the transfer.
- The expected legal, economic and social consequences of the transfer for employees.
- The measures that will be taken in relation to employees (for example, dismissals and employee relocation) as a result of the transfer. In this case, employees' representatives must be consulted well in advance with a view to obtaining an agreement that may minimise adverse consequences for employees.

Remedies

If an employer does not fulfil its consultation duties, it is liable for labour administrative offences. The remedies available may vary depending on the facts of a particular case.

Employee action

There is no specific legal action that the employees can take to prevent any proposals going ahead.

23. Is employee consultation or consent required for major transactions (such as acquisitions, disposals or joint ventures)?

Asset sale

When an undertaking is transferred, specific rules of notification and consultation apply (*see Question 22*).

Share sale

There are no legal regulations or formal requirements to observe, since a share transfer does not involve a change of employer and the employment relationship remains unaltered. However, it is advisable to provide written notice of the sale to employee representatives or the employees individually. Employees may have to be informed in writing of any changes to the employer's corporate alliance relationship due to a share transfer within 30 days of these changes becoming effective.

24. Is there any statutory protection of employees on a business transfer? In particular:

- **Are they automatically transferred with the business?**
- **Are they protected against dismissal (before or after the disposal)?**
- **Is it possible to harmonise their terms of employment with other (existing) employees of the buyer?**

- **Automatic transfer.** All rights and obligations under an employee's individual employment contract are automatically transferred on the transfer of an undertaking (asset sale). Employment contracts are not affected by share sales, since the employer does not change (*see Question 23, Share sale*).
- **Protection against dismissal.** There is no specific prohibition on dismissing employees before or after the transfer of an undertaking. However, the transfer of the business cannot itself be a reason for dismissal. General rules for terminating an employment contract are applicable (*see Questions 15, 16 and 17*). Since the employment relationship does not change as a result of share sales, in this case there is no specific protection against dismissal (*see Question 23, Share sale*). General provisions on dismissal therefore also apply in these circumstances.
- **Harmonisation.** Harmonisation after the transfer of an undertaking is possible and may be necessary to ensure that equal treatment and statutory provisions on discrimination are observed. Harmonisation must not adversely affect employees' terms and conditions of employment.

PENSIONS

25. Do employers and/or employees make pension contributions to the state in your jurisdiction? If so, please give details of:

- **The contributions payable.**
- **The tax treatment of those contributions.**
- **The monthly amount of the state pension.**

- **Contributions.** Social security contributions made on behalf of employees provide the support for several benefits payable by the state, including:
  - retirement and disability pensions;
  - unemployment and illness subsidies.

  For social security contribution rates, see *Question 19.*
- **Tax.** The contributions are tax deductible.
- **Monthly amount.** The monthly state retirement pension varies according to the number of years over which social security contributions have been paid and the amounts of these contributions.

26. Is it common (or compulsory) for employers to provide access, or contribute, to supplementary pension schemes for their employees? Are any tax reliefs available on contributions to such schemes (by the employer and employees)? If so, please give details.

Occupational and personal private pension schemes are common in large companies. These schemes are not mandatory and can vary substantially in form. Typically, the employer sponsors the scheme in full and all employees are entitled to join. The scheme can also be partly or fully funded by employee contributions.

Provided that the required conditions are met, employer and employee contributions to private pension schemes are tax deductible, subject to certain limits.

27. Can the following participate in a pension scheme established by a parent company in your jurisdiction:

- **Employees who are working abroad?**
- **Employees of a foreign subsidiary company?**

Are the same tax reliefs referred to in *Question 26* still available in these circumstances?

Employees who are working abroad and employees of a subsidiary company in a different jurisdiction can participate in a pension scheme established by a parent company in Portugal, if the scheme allows these employees to participate.

The same tax relief provisions apply (*see Question 26*) and employees are liable to pay Portuguese income tax.

BONUSES

28. Is it common to reward employees through contractual or discretionary bonuses? Are there restrictions or guidelines on what bonuses can be awarded? If so, please give details.

Contractual and discretionary bonuses are common in Portugal. There are no specific restrictions or guidelines governing the award of bonuses.

INTELLECTUAL PROPERTY

29. If employees create intellectual property rights in the course of their employment, do the employees or the employer own the rights?

The employment contract determines ownership of copyright resulting from an employee's work. If there is no provision in the contract, the copyright belongs to the employee. The only exception concerns copyright for computer programs, which, if the contract is silent, belongs to the employer.

Moral rights deriving from copyright belong to the employee.

If employees make inventions in the course of their employment, the right to obtain a patent belongs to the employer. In this case, if the inventive activity is not specifically compensated, the inventor has the right to claim compensation. The amount of compensation is determined according to the importance of the invention. An employee is always entitled to be named as the inventor in a patent application.

Employment contracts can set out who is entitled to register any other intellectual property rights (such as trade marks and designs).

RESTRAINT OF TRADE

30. Is it possible to restrict an employee's activities during employment and after termination? If so, in what circumstances can this be done? Must an employer pay its former employees remuneration while they are subject to post-employment restrictive covenants?

Non-compete agreements during employment are lawful and common.

Contractual clauses may restrict the freedom to work after an employment contract has been terminated are invalid, unless all the following conditions are met (*Labour Code*):

- The employees' activity is not restricted for more than two years after the contract is terminated. This period can be extended to a maximum of three years for employees whose functions involve particular reliance on or access to very sensitive information.
- The restrictive covenant is made in writing, either in the employment contract or in the termination agreement.
- The employees are compensated during the period in which their activity is restricted. This compensation can be fairly reduced if the employer has spent large amounts on the employees' professional training.

PROPOSALS FOR REFORM

31. Please summarise any official proposals for reform of employment law.

There are currently no official proposals for reform of employment law. However, the government has formed a "Commission of the Employment Relations' White Book" to study and present an opinion on the revision of the Labour Code, which is expected to take place during 2008.

Contact:

Abel Mesquita
atm@plmj.pt

Luís Sobral
ls@plmj.pt

Labour Department

The Labour Law Department is fully dedicated to providing legal counselling in Labour, Employment and Social Security areas.

The Department is coordinated by Senior Partner Abel Mesquita and has extensive experience in Labour Law, including litigation, employment counselling, collective bargaining agreements, pension funds, restructuring and downsizing.

It regularly assists a large number of international and national corporations, and represents its clients before state entities and labour courts, under the coordination of Senior Partner Abel Mesquita.

The Labour Department represents the most powerful employers' association in negotiations with trade unions on the performance and amendment of collective agreements.

The Department is also directly and actively involved in holding seminars and courses for clients and employers' associations on the changes introduced by the Labour Code, which entered into force on December 1, 2003. Our lawyers are experienced speakers at labour law conferences and Senior Partner Abel Mesquita was invited by the Portuguese Government to serve on the Commission which monitored the amendments to the labour law.

The Department has been actively involved in numerous incorporations, restructurings, downsizings, and redundancies, and winding up processes at several companies, providing legal advice on appropriate strategies and legal procedures, and negotiating out of court settlements.

Lisboa (Head Office)

Edifício Eurolex
Av. da Liberdade, 224
1250-148 Lisboa
Tel. +351 21 319 73 00
Fax. +351 21 319 74 00

Local Offices:
Porto
Algarve
Coimbra

OUR LAWYERS SHARE A COMMITMENT
TO UNDERSTAND THE SPECIFIC NEEDS OF EACH CLIENT

Independent comprehensive assistance in all fields of law and an in-depth knowledge of the business and economic environment from a domestic and international perspective are our trademarks since 1968.

Professional quality generated by a demanding work environment and the academic and professional enhancement of our lawyers have always been PLMJ's fundamental values, resulting in consistent international recognition both for PLMJ and its lawyers.

All our lawyers share a commitment to understand the specific requirements and needs of each client as an essential pre-requisite for the most efficient advice.

"Best Portuguese Tax Firm" - Tax Review Awards

"Portuguese Law Firm of the Year" - IFLR Awards 2006
Who's Who Legal Awards 2006

Award Mind Leaders Awards ™ – Human Resources Suppliers – 2007

PLMJ

A.M.PEREIRA, SÁRAGGA LEAL, OLIVEIRA MARTINS, JÚDICE E ASSOCIADOS
SOCIEDADE DE ADVOGADOS, RL

International Offices: Brazil, Angola and Macao (in joint venture with local Firms)

www.plmj.com