

Portugal

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PART A—GENERAL SECTION

(1) COURT STRUCTURE

(a) Courts in Which Commercial Litigation May Be Initiated

(i) Judicial Versus Arbitration Courts

A1.1 Portugal has a civil law system and quite a complex court organization structure which is primarily divided into jurisdictions. Judicially, courts are organized territorially, and competence is attributed to each court in compliance with the criteria prescribed by the Portuguese Procedural Civil Code: (i) subject matter, (ii) hierarchy, (iii) value and form of procedure, and (iv) territory.

A1.2 Regarding commercial litigation, parties may opt to initiate proceedings either in a First Instance Judicial Court or, alternatively, in an Arbitral Court. As a result of an exponential increase of litigation over the last years, Portuguese courts have had difficulty keeping up, and, consequently, this has led to case accumulation and reduced case resolution. Hence, and despite the improvements that have recently been made with regard to the delay, parties in a commercial suit often prefer to settle it in a Voluntary Arbitral Court. As a result, arbitration has become generally (albeit gradually) well accepted by Portuguese law and jurisprudence as a means of settlement for *any* litigation, whether commercial or not, with the exception of the so-called inalienable rights.

A1.3 Whereas Judicial Courts are integrated into the Portuguese Judiciary Organization and are regulated by both the Procedural Civil Code and the Court Organization Law (Law 62/2013 of 26 August, known as LOSJ), Arbitral Courts in contrast, as foreseen in Article 209 of the Portuguese Constitution and in the Arbitration Law (Law 63/2011 of 14 December), are private non-state courts, which are often composed of non-professional judges. Such courts can be subdivided into Necessary (or obligatory) Courts, which are, ironically, quite rare and only applied by law in very particular circumstances, and Voluntary Arbitration Courts which, in contrast, have become quite common during recent years and are, as previously mentioned, a growing practice in Portugal.

A1.4 Law 29/2013, 19 April, establishes the general principles applicable to mediation held in Portugal as well as the legal systems of civil mediation, commercial mediators, and public mediation.

A1.5 The mediation agreement has executive force, without the need for judicial homologation, when the following cumulative requirements are met: (a) that it concerns litigation that may be subject to mediation and for which the law does not require judicial homologation; (b) where the parties have the capacity to its conclusion; (c) obtained from mediation performed pursuant to the law; (d) whose content does not violate public order and who participated in a conflict mediator included in the list of mediator's conflict

organized by the ministry of justice (requirement not applicable if mediations undertaken under a public system of mediation).

A1.6 In practice, the law makes mediation a more valid and responsive recourse providing an alternative means of resolution.

A1.7 Moreover, parties may either agree to submit a dispute to an Arbitral Court when facing a particular and concrete problem or include an arbitration clause in a commercial (or non-commercial) agreement so as to settle (and subsequently avoid) future disputes. It is known that arbitration offers a handful of advantages, but despite the ‘rewards’ connected to arbitration, parties may prefer to refer their dispute to Judicial Courts. This selection may be based on the fact that in a Judicial Court an initial decision is neither finite nor binding, for parties may opt to exercise their right to appeal; whereas, in arbitration, parties often stipulate and agree to renounce to the right to appeal. Furthermore, one must take into account the fact that there are heavy costs associated with Arbitral Courts, which may not always be compensated for.

A1.8 Portuguese Judicial Courts have a specific hierarchy: at the bottom stand the First Instance Courts, which generally provide the first access to law and justice and whose decisions may, subsequently, be challenged in a Second Instance Court (*Tribunal da Relação*) and at a hypothetical later stage; at the top of the hierarchy, stands the Supreme Court of Justice.

A1.9 Furthermore, division within Portuguese Judicial Courts, as set by the Procedural Civil Code and the LOSJ, is made with regard to: (i) subject matter, (ii) hierarchy, (iii) value and form of procedure, and (iv) territory.

(b) Limits on Court Jurisdiction

(i) Lawsuit Subject Matter

A1.10 It should be noted that at a domestic level jurisdiction is primarily divided into Constitutional, Administrative/Tax, Martial, and Judicial Courts, depending on the nature of the matter being handled and discussed in a particular case.

A1.11 At the outset, a division based on subject matter occurs, which is predetermined by law, so that different classes and types of courts may operate at the same level of hierarchy. At the core of this division lies the ‘specialization principle’ whereby certain areas of law will exclusively be handled by the competent specialist court.

A1.12 This principle also operates at the Judicial First Instance Court level, and specialist courts have been created to handle specific matters such as labour, family, criminal, maritime, and commercial law. Hence, all other matters will automatically be ruled by what are known as General First Instance Courts.

(ii) Hierarchy

A1.13 Competence on the basis of hierarchy results from a task distribution throughout the various classes of courts in a vertical order, within the same type or class.

A1.14 The lowest tier of the hierarchy of the Judicial Courts is represented by the county courts or First Instance Courts.

A1.15 Immediately above these county courts are the Appellate Courts, which function as Second Instance Courts.

A1.16 At the top stands the Supreme Court of Justice which essentially acts as the last instrument for appeal (as prescribed by Article 47 of the LOSJ). It is also deemed competent to rule over jurisdiction conflicts, as well as to decide on the consistency of court rulings.

A1.17 However, it must be pointed out that even though hierarchy is imposed, neither does it provide for any power of oversight by superior court judges, nor does it bind lower court judges. Judges are deemed as independent by the Portuguese Constitution (Article 208) and by Article 4 of the LOSJ.

(iii) The Dispute's Monetary Value and Form of Procedure

A1.18 A monetary value, symbolizing the claim's economic utility, must be attributed to every claim in its initial stage. Hence, and according to Article 296 of the Procedural Civil Code, the action's monetary value plays a significant role in determining: (i) whether an appeal can, or cannot, be granted; and, in addition, (ii) which court is competent to judge a claim in its first stages.

A1.19 Therefore, we can point out two relevant monetary values when assessing the proceeding's form and competent jurisdiction: the First Instance Court's limited jurisdiction, which amounts to EUR 5,000.00, and the Court of Appeal's jurisdiction, which sums up to EUR 30,000.00.

A1.20 In order to allow the specialization of the Courts of First Instance, the LOSJ established Civil Central Courts and Civil Local Courts. Civil Central Courts judge cases with a value greater than EUR 50,000.00, and Civil Local Courts judge cases with a value equal to or less than EUR 50,000.00 (Articles 117(a) and 130 of LOSJ).

(iv) Territory

A1.21 The Portuguese judicial system is territorially organized, and each court is assigned a geographical area of competence in compliance with legal criteria, such as the defendant's domicile (the presiding rule), the asset's place, the place in which the obligation should have been primarily observed, and so on, as stipulated in the Portuguese Procedural Civil Code.

A1.22 The defendant's domicile is the default rule as imposed by the above-mentioned Procedural Code, and if, taking account of the specifics of the case, no other rule is imposed, then the competent court will be that of the defendant's professional or personal domicile.

A1.23 There is a concern for fairness and reason in the choice and legal provisions of the criteria; thus, the criterion that designates a court as competent for the case at hand must suit both parties and be aimed at the good administration of Portuguese justice (i.e., the choice must favour the court offering the greatest chance of resolution with the least effort).

(2) THE JUDICIARY

(a) Training and Background

A2.1 In Portugal, to stand as a candidate for a judicial post, it is essential to fulfil the following legal requirements: (i) Portuguese citizenship; (ii) to be in full possession of one's political and civil rights; (iii) to obtain a degree before-Bologna (five years) or a Master's

degree after-Bologna (four + one years) in Law from a Portuguese university or in a university that is recognized by the Portuguese state; and (iv) to attend the legally necessary formation courses and internships. Subsequent to the participation in an examination stage (which includes a written paper alongside an oral examination and an interview with a psychologist), the candidate will enter the Judicial Studies Center – *Centro de Estudos Judiciários* – as a justice auditor – *auditor de justiça*. The recently approved ‘apprentice’ will undergo a ten-month theoretical-phase training period in which appropriate judicial functions are finally exercised. This is followed by a twenty-two-month training period in which appropriate judicial functions are finally exercised. After the conclusion of this, full judgeship is finally achieved and granted.

A2.2 As to judicial hierarchy, Portuguese judges are divided into three categories: First Instance Court judges, Appellate Court judges, and Supreme Court judges. The judges of a First Instance Court are appointed in accordance with the grades obtained in the training stage and courses. The remaining judges are appointed not only on the basis of their special knowledge and skill (merit) but also on the basis of their seniority.

(b) Experience in Commercial Litigation

A2.3 Portuguese judges do not, in general, have experience as lawyers. However, it can happen that appointed judges of the Supreme Court may be considered highly reputable jurists if they have twenty years of professional experience exclusively, or successively, as lawyers or as academic law teachers.

A2.4 In Portugal, courts are divided according to the nature of the matter of the lawsuit. Therefore, and as previously stated, we can distinguish between Judicial and Administrative Courts. While in the Judicial Courts a judge’s career is characterized by continued rotation, Administrative Court judges do not rotate at all. Though ‘formally’, specialist judges do not exist, judges from Administrative Courts may be considered, in practice, as specialists, while judges from Civil Courts acquire a certain degree of specialization throughout their years of practice.

(3) THE LEGAL PROFESSION

(a) Structure

A3.1 Unlike the Anglo-Saxon system, the Portuguese system does not establish a difference between barristers and solicitors, meaning that lawyers may work as juridical consultants or as litigators depending on the type of services requested.

A3.2 In order to become a lawyer, a law graduate has to initiate his/her legal profession as a trainee. After proper registration in the Portuguese Bar Association, university law graduates who wish to become lawyers are obliged to work in law offices as trainees. During the period of training, or internship, the trainee can only practise certain limited acts, proper to the profession on his/her own. The training period is subdivided into two different stages. The first of these comprises classes at the Portuguese Bar Association in crucial areas, which culminate in three written papers in the areas of civil and criminal procedural law, organization law, constitutional law, as well as in the deontological values imposed upon all lawyers. In the subsequent phase, trainees are designated as *pro bono* lawyers by the Portuguese Bar Association, in simple (or simpler) civil cases in which the lawsuit value is minimal (less than EUR 5,000.00) and in criminal cases as long as the

penalty to which the defendant could be condemned is less than or equal to five years. After two years of internship, trainees sit a final oral interview and written examination which they must pass to finally acquire the status of lawyer.

A3.3 Regarding the professional units themselves, it can be said that Portugal's legal market remains relatively traditional. At the present time, a large number of small family-based units, or law offices, still operate. It is not so common to find sole practitioners since, in order to reduce costs, the latter have frequently teamed up with other lawyers. Although still very traditional, since the mid-1980s, and due to the increase in competition which has followed world market globalization, there are now many 'big' national law firms operating in Portugal and an increasing number of international ones (mainly Spanish and English).

(b) Specialization

A3.4 In Portugal, formal specialization is still a flourishing concept: the Specialized Lawyer's Statute was only recently approved by the Portuguese Bar Association (*Regulamento* n. 204/2006 OA (2.^a Série), 30 October 2006). It must be recognized that a certain degree of specialization is naturally inherent in the leading legal firms which are divided into different areas, and in which a lawyer will, over time, acquire a certain degree of expertise. At a legal and formal level, specialist lawyers are now being acknowledged only in compliance with what is prescribed by the recently approved regulation. Thus, the attribution of a specialist title relies on reasonable experience within the area, which must have been acquired over a minimum five-year period. Although the specialist title has been legally created, only a few areas of expertise have been allowed for, such as administrative law, tax law, labour law, financial law, European and competition law, intellectual property law, and constitutional law.

A3.5 In general, specialist lawyers tend to work at leading law firms in which specialist departments are a reality. In fact, for sole practitioners, the specialist title may be a risk since, in practice, it may limit their scope of action.

A3.6 For the majority of law firms, specialization is relatively uncommon. As a rule, even medium-sized law firms are not organized in specialist departments. In fact, Portuguese law firms have a limited number of partners, which evidently restricts the option to organize a specific law field structure. Thus, only the leading firms are generally organized as referred to above. The most common fields are those of corporate, tax, litigation, labour, and public law. However, some law firms also comprise specialist departments in banking and finance, capital markets, real estate, competition, and urbanism. Typically, specialization works for leading law firms as a competitive advantage, as they can be better prepared to respond to very specific and complex subjects and lawsuits, thus, providing clients with a broader and more efficient answer to all their needs.

(c) International Experience (Overseas Clients, Evidence, Witnesses)

A3.7 As far as overseas clients are concerned, they are normally associated with the leading law firms due to the fact that these are, as mentioned earlier, organized and structured into specialist departments. The services rendered by such firms tend to be more attractive to foreign clients in terms of scope and expertise.

A3.8 Overseas witnesses are generally interviewed by means of teleconference so long as the necessary technical means are available at the witness's domicile. However, if that should not be the case, then the witnesses will be interviewed by means of letters rogatory.

(d) Professional Fees

A3.9 The payment of professional fees is traditionally viewed as a debt of honour in Portugal; thus fees are usually called *honorários*, which is a word deriving from *honra* – 'honour'. In the past, fees were not recoverable and were spontaneously paid according to clients' possessions and the results achieved. Nowadays, professional fees are regulated by the Portuguese Bar Association's Statute and are regarded as an appropriate recompense for the services effectively rendered by a lawyer.

A3.10 The Bar Association's Statute prescribes a series of criteria which may be taken into account by the lawyer when deciding upon the fees to be charged; there is, however, no established fee scale. It must be pointed out that the legally established criteria serve as mere guidelines and are by no means binding. Thus, the only duty that is imposed upon the lawyer, for the purpose referred to above, is that of acting with prudence and temperance when settling the fees that the client is to be charged. As to the aforementioned guidelines, the lawyer is to attend to (i) the weight/importance of the services rendered, (ii) the difficulty and the urgency of the matter, (iii) the degree of intellectual creativity which is demanded by the particular case, (iv) the outcome, (v) the amount of time spent, (vi) the burdens shouldered by the lawyer, as well as (vii) professional custom. Though they are not legally fixed, other criteria are also sometimes adopted, set by members of the Bar. Thus, the lawsuit's value, lawyers' hindrances (being deprived of working on other matters or lawsuits because of the time required), and clients' assistance are also mentioned in fee notes.

A3.11 It must be further mentioned that as far as fee charges are concerned, no limits, be it minimum or maximum, are imposed upon by the Bar Association's Statutes. The only rule is, as stated in the previous paragraph, that moderation should be used when charging professional fees. We may point out that in some provincial districts it is customary to set a minimum value that must be charged. However, such tables are neither compulsory nor binding and are not recognized or enforced by the Bar Association.

A3.12 Fees may also be previously fixed and agreed upon between the clients and their lawyers. However, at the end of the day, and when accounting for the services that were effectively rendered, the agreed-upon amount may prove to have been insufficient. In such cases, additional fees may be charged.

A3.13 Contingency fees are expressly forbidden. The National Bar Association's Statutes expressly forbids parties to enter into an agreement in which fees are exclusively determined and, therefore, dependent on a favourable outcome. This prohibition is closely related to the concern for ensuring the lawyers' independence and dignity when practising the legal profession.

(e) Itemized Bills and Fee Notes

A3.14 According to the Fee Report's Regulation, bills should be presented to the client with an accurate description of all services rendered. In addition, it should be mentioned that within the bill fees must be separated from expenses and charges; subsequently, all the values must be correctly specified and dated. The bill should also mention, where

necessary, payments which have been previously received. Finally, it must be said that if the client does not offer payment in an initial phase, lawyers are expressly forbidden to change the amount previously billed. When faced with such a case, lawyers must resort to judicial means and, in turn, demand for the payment of an adequate indemnity to compensate for the interest forgone.

(f) Fee Review Procedures

A3.15 As to fee review procedures, if no amicable resolution is achieved and a client believes that he/she has been overcharged, he/she may resort to a civil action on the basis of ‘unjust enrichment’. If the client does not pay the fees, then the lawyer (if he/she is convinced that the bill has been adequately provided for, and the fees contained in it are satisfactorily and justly estimated) may sue the client in a Civil Court through the entitled *ação de honorários* or ‘fee claim’.

A3.16 If the client is the plaintiff, then the burden of proving that the lawyer has received an unjust payment is imposed upon the client. If, on the other hand, the action is presented by the lawyer, he/she will have to prove that all services were actually rendered and charged in compliance with the criteria established by the Portuguese Bar Association.

A3.17 It is also possible for the lawyer to enforce his/her rights by the means of an injunction. As a matter of fact, this simplified proceeding may be used whenever a pecuniary obligation is at stake. However, when the client has not requested legal assistance within the scope of his/her economic activity, injunction proceedings may be used only when the fees do not surpass the value of first instance jurisdiction (EUR 5,000.00).

A3.18 The client, the lawyer, or the court itself can always request for the Bar Association’s opinion on the matter (*laudo de honorários*). The necessity for the elaboration of such a fee report relies on the assumption that there is an existing conflict between parties regarding a particular fee invoice. The Fee Report’s Regulation allows for a fee report/opinion to be rendered in court as a technical opinion regarding the fees charged by lawyers as a result of their professional activity. The Bar Association, when studying and analysing the bill, will assume that the professional services allegedly rendered by the lawyer as described were effectively rendered. The National Bar Association is not competent to decide if the services were effectively rendered. This competence belongs to the courts, which will decide on the latter acting as sovereign bodies. Thus, the Bar Association will only judge the adequacy of the fees charged for the work described. It must be further mentioned that such an opinion is not binding and, thus, will be freely acknowledged by the presiding judge.

(4) JURISDICTION

A4.1 When determining the court’s international jurisdiction with regard to a foreign defendant, one must refer both to Portuguese common law and conventional law.

(a) Portuguese Common Law

A4.2 Before dwelling on the main Portuguese internal rules concerning international jurisdiction, it must be pointed out that such rules and reasons are considered to be independent of those that establish and designate the competent *law* to rule over a

particular case and its unique circumstances. The rules governing each institute (law and jurisdiction) are different and based on a distinct logic. Therefore, when deciding upon the applicable law, the general criterion will be that of the defendant's nationality, while when settling on a competent court, the main, and universal, rule by which we must abide is that of the defendant's domicile.

A4.3 It should be noted that there is a general concern regarding the certification of an existing relevant link between case and court which hovers over Portuguese law and its set of principles. Thus, the Procedural Code has laid down a certain number of rules and criteria in order to determine when, and in what circumstances, a Portuguese court may be deemed competent to rule over a foreign defendant.

A4.4 Therefore, and in compliance with what has been prescribed by the above-mentioned Code in its Articles 62 and 63, a Portuguese court will be considered as competent to exercise its jurisdiction over a foreigner in the following cases:

- (i) proceedings in which the foreigner is domiciled in Portugal, except when the main cause for action is based on rights *in rem*, over immovable property, situated in another country;
- (ii) proceedings in which the cause for action, in compliance with internal criteria, is located within Portuguese territory;
- (iii) proceedings in which the fact giving rise to the cause of action was performed within Portuguese territory; and
- (iv) all remaining cases in which it is deemed *necessary* to impose Portuguese jurisdiction as a means to avoid the right to justice and a court of law being denied. Thus, in order to strengthen the legal protection granted to every person, in the event of a negative conflict of jurisdiction (the most paradigmatic example) in which none of the states recognizes its own jurisdiction to preside over a certain case, the Portuguese court will preside over the case.

A4.5 Generally, a defendant must be sued in the courts of the state in which he/she is domiciled, not only because the plaintiff's best interests will be better served when demanding a claim in that country (seeing that the defendant's goods are most likely to be situated in the place in which he/she has organized his/her day-to-day life) but also because this is the country in which a plaintiff may most reasonably expect justice to be served and a sentence to be properly executed.

A4.6 Regarding corporations seated in Portugal, the domicile rule is also applicable, and the Portuguese courts will be deemed competent to preside over such claims as well as those referring to any branches, agencies, and delegations of the corporation operating in Portugal.

A4.7 According to Article 63 of the Portuguese Civil Procedure Code, apart from what is established in any international treaties and conventions or EU Regulation, the Portuguese courts will have exclusive jurisdiction over the following situations:

- (i) proceedings where the rights at stake are rights *in rem* over immovable property, situated in Portugal;
- (ii) special proceedings of insolvency or bankruptcy related to people domiciled in Portugal or corporations with headquarters in Portugal;
- (iii) proceedings involving the validity of the constitution act, or the dissolution act, of corporations with headquarters in Portugal as well as company resolutions;

- (iv) proceedings in which the main cause of action is related to the validity of any registered act or right that, according to Portuguese law, is subject to public register; and
- (v) execution of any goods that are situated in Portuguese territory.

A4.8 Furthermore, Portuguese law allows for the acknowledgement of the so-called jurisdiction agreements whereby parties may settle for an appointed court to rule over future claims, so long as such claims refer to disposable rights and do not fall under matters exclusively ruled over by Portuguese courts.

(b) Convention Law

A4.9 Portugal ratified the Brussels Convention on Jurisdiction and Enforcement of Judgments in Civil and Commercial Matters on 1 July 1992 as well as the subsequent conventions that modified and reviewed it.

A4.10 The Convention generally applies to the Member States *in all civil and commercial actions*; nonetheless, it must be pointed out that it does not apply in the following cases:

- (i) the status or legal capacity of natural persons, rights in property arising out of a matrimonial relationship, wills, and succession;
- (ii) bankruptcy, proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions, and analogous proceedings;
- (iii) social security; and
- (iv) arbitration.

A4.11 In compliance with what has been stated previously, the foremost rule with regard to the establishment of court jurisdiction, as decreed by the Convention, is that of the defendant's domicile, whether it is a single person or a corporation, and this rule can only be departed from in special and particular cases, as prescribed by Article 5.

A4.12 'A person domiciled in a Contracting State may, in another Contracting State, be sued:

- (i) in matters relating to a contract, in the courts of the place of performance of the obligation in question;
- (ii) in matters relating to maintenance, in the *courts of the place where the maintenance creditor is domiciled or habitually resident* or, if the matter is ancillary to proceedings concerning the status of a person, *in the court which, according to its own law, has jurisdiction to entertain those proceedings*, unless that jurisdiction is based solely on the nationality of one of the parties;
- (iii) in matters relating to tort, delict, or quasi-delict, the *courts of the place in which the harmful event occurred*;
- (iv) with regard to a civil claim for damages or restitution which is based on an act giving rise to criminal proceedings, in the *court seized of those proceedings*, to the extent that that court has jurisdiction under its own law to entertain civil proceedings;
- (v) with regard to a dispute arising out of the operations of a branch, agency, or another establishment, in the courts of the *place in which the branch, agency, or other establishment is situated*;
- (vi) in his/her capacity as settlor, trustee, or beneficiary of a trust created by the operation of a statute, or by a written instrument, or created orally and

- evidenced in writing, *in the courts of the Contracting State in which the trust is domiciled;*
- (vii) with regard to a dispute concerning the payment of remuneration claimed in respect of the salvage of a cargo or freight, *in the court under the authority of which the cargo or freight in questions is registered.*

A4.13 In addition, Article 16 defines five main areas in which exclusive jurisdiction are enforced, regardless of domicile, as stated below:

- (i) in proceedings which have as their object, *rights in rem in, or tenancies of, immovable property*, the courts of the Contracting State in which the property is situated;
- (ii) in proceedings which have as their object the *validity of the constitution, the nullity or the dissolution of companies* or other legal persons or associations of natural or legal persons, or the decision of their organs, the courts of the Contracting State in which the company, legal person, or association has its seat;
- (iii) in proceedings which have as their object the *validity of entries in public registers*, the courts of the Contracting State in which the register is kept;
- (iv) in proceedings concerned with the *registration or validity of patents, trademarks, designs, or other similar rights required to be deposited or registered*, the courts of the Contracting State in which the deposit or registration has been applied for, has taken place, or is under the terms of an international convention deemed to have taken place;
- (v) in proceedings concerned with the *enforcement of judgments*, the courts of the Contracting State in which the judgment has been or is to be enforced.'

A4.14 These are the main rules as established and provided for by the Convention. Thus, and in conformity with the Convention, Portuguese internal rules will only be applicable when the Convention is not.

(c) European Law

A4.15 In order to attain the objective of free movement of judgments in civil and commercial matters, it was necessary to govern the rules with regard to jurisdiction and the recognition and enforcement of judgments by a European legal instrument which would be binding and directly applicable to all Member States, except Denmark.

A4.16 Hence, Council Regulation (EC) No. 44/2001 of 22 December 2000, on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters was approved, and later recast by Regulation (EU) No. 1215/2012 of the European Parliament and of the Council, of 12 December 2012 ('Brussels I-bis Regulation').

A4.17 Similar to the Convention, the Brussels I-bis Regulation shall apply in civil and commercial matters whatever the nature of the court or tribunal, but it shall not apply to:

- (i) the status or legal capacity of natural persons, rights in property arising out of a matrimonial relationship or out of a relationship deemed by the law applicable to such relationship to have comparable effects to marriage;
- (ii) bankruptcy, proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions and analogous proceedings;
- (iii) social security;

- (iv) arbitration;
- (v) maintenance obligations arising from a family relationship, parentage, marriage or affinity;
- (vi) wills and succession, including maintenance obligations arising by reason of death.

A4.18 As a general rule, Brussels I-*bis* Regulation establishes that persons domiciled in a Member State shall, whatever their nationality, be sued in the courts of that Member State, unless the following special jurisdiction rules are applicable, in matters relating to:

- (i) contracts, performance of obligations, tort and other civil claims;
- (ii) insurance;
- (iii) consumer contracts;
- (iv) individual contracts of employment;
- (v) exclusive jurisdiction; and
- (vi) pacts of jurisdiction.

A4.19 Brussels I-*bis* Regulation shall apply from 10 January 2015. Insofar as it replaces the provisions of the Brussels Convention, any reference to the Convention should be understood as a reference to the Regulation.

(5) GENERAL DESCRIPTION OF PROCEDURE IN A TYPICAL COMMERCIAL CLAIM

(a) Pre-trial Definition of Issues

A5.1 Preliminarily to the description of the legal process organization, it is relevant to communicate that the plaintiff generally has a twenty-year statute of limitation within which to initiate a judicial claim, starting from the date on which a right can be enforced. However, some rights only have a statute of limitation of five years, including the rights arising from company dividends, rights in respect of interests, incomes in debt by the lessee or tenant, fixed incomes, capital amortization shares to be paid with interest, and, generally, other periodic payments related to renewable instalments. In relation to the right to compensation for damages arising from unlawful acts, the prescription period is three years starting from the date on which the party became conscious of its right. Finally, there are other rights that must be enforced within two years. These include the credits arising from commercial firms for services of student-lodging or student-lodging and subsistence as well as the credits arising from a liberal profession or from educational establishments, assistance or health treatments, relating to their services. Finally, credits from traders over consumers and from those who carry out an industrial activity are also statute limited, in this case, to two years.

A5.2 Concerning the opening stages of the proceedings, the process is organized into two main phases. The first is a written phase where pleadings are exchanged (theoretically one from each party but often the claimant is entitled to file a reply to the defendant's pleading, within certain limits, when he/she presents a counterclaim). Both parties should, in principle, present all their arguments at this stage, as well as all documentary evidence.

A5.3 Each party should introduce a power of attorney with its first intervention in the process, but the power of attorney can also be inserted later in the process. In such a case, a confirmation by the party concerning all the acts already carried out by the lawyers during

the proceedings should be included. The submission of such a document is mandatory, otherwise, the entire proceedings will be considered null and void.

A5.4 At the end of the first phase, a previous hearing is held either to decide the case (if the judge considers that all relevant information has been rendered) or to establish the themes of evidence (*temas de prova*) that enunciate the controversial situations susceptible to be discussed and proved during trial.

(b) Pleadings

A5.5 In his/her pleading, the plaintiff must specify all the issues of fact and all the issues of law on which the request for the defendant's condemnation is based, as shown below. In turn, the defendant may file an answer within thirty days. An extension of up to thirty days may be requested in particular circumstances. The plaintiff may challenge the defence by *exceptio*.

(i) Plaintiff

Form and Content Requirements of the Statement of Claim

A5.6 The initial pleading whereby the plaintiff initiates the lawsuit, in the terms prescribed by Article 552 of the Civil Procedural Code, is obliged to:

- specify the court where the lawsuit is lodged and identify the parties, their names, addresses, and, if possible, professions and places of work;
- specify the form of the lawsuit;
- specify the facts and the grounds for action;
- make a demand; and
- indicate the value of the lawsuit.

A5.7 The plaintiff may submit his/her list of witnesses at the end of the above-mentioned statement of claim, as well as request for other evidence.

A5.8 Alternative or subsidiary claims are also permitted (Articles 553 and 554 of the Civil Procedural Code).

A5.9 Before presenting the initial pleading before the court, the plaintiff must pay a judicial tax. The value of the judicial tax is established in accordance with the value of the lawsuit.

Amending/Adding Claims

A5.10 In general, the plaintiff may not amend his/her claims after filing his/her statement of claim. Although the plaintiff must expound in his/her statement of claim the facts and grounds for action, he/she may therefore always complete any possible *lacunae* of the claim at a later stage. However, if the defendant raises a defence by means of *exceptio*, then the plaintiff is entitled to a second written pleading (*réplica*) in which he/she may reply *only* to the facts and arguments of exceptional nature that were raised by the defendant in his/her opposition (Article 584 of the Civil Procedural Code).

A5.11 The claim itself, as well as the facts that constitute the grounds thereof, may be altered with, or without, the agreement of the parties (Articles 264 and 265 of the Civil Procedural Code).

A5.12 If the parties so agree, the claim and the facts that constitute the grounds thereof may be altered or extended at any time, whether in the first or second instance, unless such

alteration or extension interferes with either the collection of all relevant facts (evidence), the discussion, or the case's trial decision.

A5.13 Furthermore, the plaintiff may, at any time, reduce or extend the claim until the closure of the discussion in the first instance if it is in furtherance of, or ensues from, the original claim. However, it must be contained within the theoretical limits of the original claim.

A5.14 Both the claim and the facts which constitute grounds thereof may be altered at the same time, provided the alteration does not entail a change of the relation between the parties (Article 265, number 6 of the Civil Procedural Code).

A5.15 Alteration to the figure of the claim for indemnity based on damages, requested on the grounds of Article 569 of the Civil Code, may only take place if the process reveals that the damages incurred are higher than expected.

A5.16 The law also permits the quality of the claim to be altered; in particular, a singular claim to be changed to alternate or subsidiary claims.

(ii) Defendant

Form and Content Requirements of Response

A5.17 The defendant's opposition must include all his/her defence (Article 569 of the Civil Procedural Code), either by *exceptio* or by direct opposition. Defence by *exceptio* can be described as the introduction of new facts by the defendant to disprove the court's competence to hear the case or to prejudice the plaintiff's right to recover. Defence by direct opposition (*impugnação*) is the direct denial of the version of the facts as presented by the plaintiff in the statement of claim (Article 571 of the Civil Procedural Code).

A5.18 The defendant has the burden of 'specific impugnation' (*onus da impugnação especificada*). According to this burden, if a fact or a set of facts is not specifically refuted or contested, the court will consider the fact as proven. Therefore, the defendant is required to submit a detailed and exhaustive defence, asserting all relevant facts and legal arguments.

A5.19 In his/her opposition, the defendant is also allowed to add a counterclaim (*reconvenção*) against the plaintiff, with the express mention of the demands against the plaintiff and the indication of the counterclaim's value. In this case, the plaintiff has the right to present his/her defence as part of the second written pleading (*réplica*).

Timing of Response

A5.20 The initial pleading is served to the defendant with the summons. The general rule is that the defendant must file his/her opposition (*contestação*) within thirty days. The defendant may be granted an extension of the deadline if he/she establishes that due to the complexity and extension of the case, the extension is necessary in order to prepare an adequate defence.

Amending/Adding Defences

A5.21 In general, the initial pleading and opposition define the subject matter of the litigation. Thus, as a rule, there are no further opportunities for the defendant to amend or add to his/her defence. However, a defendant may be entitled, at a later date, to assert facts that occurred, or of which the defendant became aware, after filing his/her opposition.

Seeking Particulars of Plaintiff's Claim

A5.22 The defendant may argue in his/her opposition that the plaintiff has not pleaded his/her claims with sufficient detail. However, the defendant must also address the merit of the plaintiff's claims in his/her opposition. The court will not address the defendant's arguments regarding lack of specificity until the pleadings are closed. At that time, if the court determines that the plaintiff's pleadings are insufficiently detailed, then the court will send the pleading back to the plaintiff so that he/she may, in turn, elaborate new pleadings or 're-plead'.

(iii) New Facts That Can Be Added by Both Parties to the Process During the Discussion Stage (*Articulados Supervenientes*)

A5.23 Both parties may exceptionally, and subsequently, present a written document (*artículo superveniente*) based on the admission of new relevant facts (related to the claim or to the defence, depending on the party that wishes to bring those facts to the discussion), during the discussion stage, if (Article 588 of the Civil Procedural Code):

- those facts have occurred after the period of time when the parties were able to present all their claims and responses as mentioned above; or
- those facts were known by the parties only after the period of time when they were able to present all their claims and responses.

(c) Previous Hearings

A5.24 According to Portuguese Procedural Law, preliminary hearings are not mandatory since they can be dispensed with in cases where the simplicity of the case so dictates. If a preliminary hearing does not occur, parties are notified of the 'curative act' under which they can protest.

A5.25 The act by which the 'previous hearing' is scheduled must determine its object and goal, despite the possibility of the immediate appreciation of the main issue of the case.

A5.26 Pre-trial hearings serve the purpose of (i) initiating an attempt for the parties to reconcile their interests; (ii) allow parties to discuss both matters of fact and of law so that the final terms of the litigation proceedings are defined; (iii) eliminate existing imprecision and insufficiencies; (iv) proffer the 'curative act' where among other relevant issues, the judge organize the disputed facts by themes of evidence (*temas de prova*) that the court deems as fundamental in order to decide the case; (v) indicate all means of evidence; (vi) if possible, designate a date for trial; and (vi) request that the final trial should be recorded, or alternatively, that the trial should be conducted by a panel of judges.

A5.27 The judge may also invite parties to complete the pleadings concerning the issues of fact. If a party agrees to proceed with the aforementioned rectifications, the facts that have been added, corrected, or clarified are subject to the general rules of the adversarial system.

(d) Pre-trial Discovery and Depositions

A5.28 This area of procedure is mainly regulated by the principles related to the 'burden of proof'.

A5.29 The general principle of the burden of proof is that whoever invokes the existence of a right has to prove the constituent facts of the alleged right. Therefore, the party that

invokes a right must disclose evidence related to it. Despite this fact, the duty to disclose documents and testimonial evidence that is not favourable to its procedure does not exist.

A5.30 In principle, the party that intends to start the proceedings should present the relevant documentation with the pleadings. It is possible to present new documentation at a later stage up to the closing of the dispute in the first instance, although in such a case it is usual to pay a fine. It must also be mentioned that there is always the underlying possibility of non-admittance of such documents as the judge may consider them irrelevant.

A5.31 If a party presents new documents, the counterparty is given the possibility to reply and present other documents. This is related to the ‘principle of the contradictory’.

A5.32 As to the witnesses’ statements, the rule is that they are produced at the trial stage unless anticipation of the testimony is requested in the case of serious fear that it will become impossible, or very difficult, to obtain it at a later stage. It must be submitted that this may happen even before the procedure has commenced for future proceedings (Article 419 of the Civil Procedure Code). Usually, these situations stem from the witness’s age and/or serious illness.

A5.33 The anticipation of testimony must be required in the court that has jurisdiction, at the location where the diligence will take place (Article 78 of the Civil Procedure Code).

A5.34 If testimony anticipation is requested, then the party has to indicate the reasons that give rise to the urgency as well as the person who will testify. In the event of requesting anticipation of testimony before the procedure has been initiated, the party must briefly summarize and indicate how it will plead, the grounds on which the claim is based, and the identity of the future counterparty so that the latter may be adequately notified for the cross-examination (Article 420 of the Civil Procedural Code).

A5.35 If the anticipation is admitted, the testimony will be recorded. However, if recording is not possible, the testimony will be put in writing, as dictated by the judge.

A5.36 If relevant information/documentation is in the possession of the counterparty, or even held by a third party, then it is admissible to request that the court notifies such persons to submit this documentation (Articles 429 and 432 of the Civil Procedural Code). This may be done in the name of a procedural cooperation principle contained in the Portuguese Procedural Code. However, when presenting such a request, the interested party must indicate the purpose for which the document is to be used.

(e) Pre-trial Expert Reports

A5.37 Expert reports are presented in court before the commencement of the trial. Parties may require that expert evidence should be produced through the means of a technical examination, prior to which a report must be rendered.

A5.38 The technical examination can be carried out by a single expert or, alternatively, it may be carried out by a group of up to three experts (which is the norm). In such cases, each party nominates one expert and the court nominates the third.

A5.39 The result of the examination is reproduced in the form of a report, which must explain the basis of its findings (Article 484 of the Civil Procedural Code).

A5.40 If the examination is carried out by a group of experts and unanimity is not reached, the expert who disagrees will present, in writing, his/her reasons and comments for doing so.

A5.41 In the event of a request from either party or if the judge considers it necessary, the expert(s) may be notified to appear in the trial to clarify some issue relating to the examination (Article 486 of the Civil Procedural Code).

A5.42 Both parties and the court itself may request, or order, a second examination. In this case, the basis of the disagreement regarding the result of the first examination must be specified. The trial judge may interpret the contents of the expert(s) report freely.

(f) Pre-trial Investigatory Procedures

A5.43 This subject has already been considered in the sections relating to the pre-trial hearings and the pre-trial expert's report.

(g) Trial Dates and Duration

A5.44 After the pre-trial stage is concluded, the judge will designate a date, or dates, for the trial hearing to be held.

A5.45 As to duration, it is possible for a period of one to three years to elapse between the presentation of the pleading in court and the conclusion of the pre-trial stage, which makes a total of five years on average for a first instance judgment.

A5.46 At this point, it must be stressed that both parties can amend, by means of alteration or addition, the witness list that was previously presented, up to twenty days before the designated trial date.

(h) Trial Procedures

A5.47 As explained in the earlier sections, one of the main legal principles established in the Civil Procedure Code is set out in Article 5, which prescribes that parties are obliged to allege all the facts comprising the cause of action and those on which the *exceptios* are based. The judge can base his/her decision only on the facts alleged by the parties.

A5.48 Moreover, Article 411 of the Civil Procedure Code prescribes the limits of the inquisitorial principle. Thus, and without prejudice to the burden imposed upon both parties to submit all facts to the court, it is the judge's obligation to initiate all necessary diligence for the regular progression of the civil action. Besides the inquisitorial principle, the reform of 2013 has granted that the duty of procedural management of a judge (autonomized in Article 6 of Civil Procedural Code) assumes the dignity of principle, which reinforces its powers in the search for the material truth of the facts.

A5.49 It is also incumbent upon the judge to promote and establish, on his/her own initiative, all diligence necessary to verify the true and fair composition of the civil case.

(i) Form of the Proceedings at the Trial

A5.50 As a rule, cases are decided by a single judge and all evidence is recorded.

A5.51 Though there are no juries in civil cases, under certain circumstances, a jury may be requested in criminal cases. The jury is competent to decide the case if its intervention was requested by the Public Prosecutor, by the counsellor, or by the defendant (when the case relates to crimes whose maximum penalty, in theory, may exceed eight years' imprisonment).

A5.52 Except for the evidence through documents, which, whenever possible, must be submitted during the initial (written) phase of the proceedings, all other forms of evidence must be indicated at the preliminary hearing. The forms of evidence allowed are documents, confession, expert evidence, judicial inspection, and witnesses.

A5.53 Portuguese Procedural Law does not make any distinction between a trial and a final hearing.

A5.54 According to Portuguese Procedural Law, there are no opening statements. The plaintiff presents his evidence first, followed by the defendant.

A5.55 During the trial, with regard to the witnesses appointed, the lawyer mentions the facts on which each witness will testify. The lawyers question the appointed witnesses and cross-examine the witnesses of the other party.

A5.56 During the hearing, lawyers are entitled to request, in agreement with the procedural law, whatever they may deem fit for the proper decision of the lawsuit, whereupon the judge will hear the other party and render a decision immediately, or within no more than ten days. The lawyers are entitled to request new evidence during the hearing; the judge may, or not, accept this. It is the judge's duty to conduct the hearing.

A5.57 The judge may intervene at any time during the questioning of the witnesses and may ask the witness to testify with respect to facts for which he/she was not appointed. During the progression of the hearing, the judge may include other matters of fact which are to be proven during the hearing.

A5.58 At the end of the phase where all evidence has been produced, the lawyer makes his/her closing statement and attempts to set out whether the facts were proven or not.

(ii) Availability of Recorded Evidence and Transcripts

A5.59 A recording of previous hearings is mandatory (Article 591, number 3 and 4 of Civil Procedural Code).

A5.60 During the trial, both the judge and the lawyers take their own notes.

A5.61 The records of the hearings are available to all parties. They can request a copy of the tape recording and consequently obtain the transcription.

(iii) Evidence

A5.62 According to Article 342 of the Portuguese Civil Code, 'Those who claim a right must prove the facts incorporating the alleged right. The proof of the impeding, modifying or terminating facts of the right is for the person against whom the claim is made. In case of doubt, facts shall be considered as constitutive rights.'

A5.63 The above-mentioned article states the general rule according to which whoever claims damages must prove the prerequisite of extra-contractual civil liability.

A5.64 The Portuguese legal system also predicts the relevance of legal and judicial presumptions, as stated in Articles 349–351 of the Portuguese Civil Code. A presumption is a conclusion that the law, or the judge, draws from a known fact to state an unknown fact.

A5.65 Nearly all forms of evidence are admitted. It is the judge's duty to decide if any given evidence has been produced merely to delay, or prevent, the court from establishing the truth.

A5.66 The Portuguese Civil Procedural Code sets forth the principle of free appreciation of evidence. However, there are certain facts that may only be proven by specific evidence (e.g., affiliation may only be proven by a document; the existence of a company may only be proven by producing the certificate of the Registrar of Companies). The weight of evidence is also set forth by the Portuguese Civil Code. Evidence may be requested to be produced through documents, confessions (personal testimony of the parties concerned), experts, judicial inspection, and witnesses.

Documentary Evidence

A5.67 The evidentiary documents proving the grounds of the lawsuit, or of the defence, must be presented with the written statement alleging the corresponding facts. If these are not submitted with the respective written statement, then the documents may still be submitted up to the closing of discussion in the first instance, but then the party will be subject to a fine unless proof is given that the documents could not be presented with the written statement of facts. Included in the evidence by documents are cinematographic reproductions and phonographic recordings, documents in the possession of the opposite party, documents in the possession of a third party, as well as commercial accountancy books and documents related thereto (the judicial exhibition of commercial accountancy being governed by the commercial law).

A5.68 In addition to the written documents mentioned earlier, other documents are only permitted to be added later if new facts are revealed that change or extinguish the rights claimed by the parties. The additional documents must be produced as soon as these new facts are known and may be presented up to the date of the start of the trial (Article 523, number 2 of Civil Procedural Code). This measure is intended to prevent disturbances emerging late production of documents as the parties' interest, while if the other party provides the court and its instant appreciation.

A5.69 Either party may request the court to order the other party to append certain documents or classes of documents. Should the relevant party fail to do so, the failure may be freely interpreted by the judge and may entail the shifting of the burden of proof (i.e., the fact is deemed proven if the other party fails to prove that the fact is not true).

A5.70 It should also be mentioned that technical opinions may also be attached to the lawsuit at any time. These technical opinions will normally relate to matters of fact and are intended to explain to the court the meaning and scope of facts of a technical nature whose interpretation requires special knowledge.

Proof by Party Confession

A5.71 Each party may only apply for the testimony of the opposite party or of his/her co-party. The subject of the testimony may only be personal facts or facts of which the deponent should have knowledge. However, testimony regarding criminal or obscene facts relating to the accused party is not admissible.

Also, worth noting is the possibility that the party may require the provision of statements (Article 466 of Civil Procedural Code) whose probative value shall be subject to the free assessment of the court. In the previous regime, such statements were never allowed even, if only, at the initiative of the court. This measure is intended to avoid certain difficulties involved in evidence of the facts which may prove difficult to produce other evidence.

Expert Evidence

A5.72 If the parties agree, the court can appoint a single expert. Parties may also assign one expert each, and the court then appoints its own expert as a third.

A5.73 The subject of the inspection must be specified by the requesting party, as well as the facts to which the inspection refers.

A5.74 There are no limitations on expert evidence. However, the judge may disallow some evidence on the grounds of it being irrelevant or not pertinent.

Judicial Inspection Evidence

A5.75 The judicial inspection is the analysis by the judge himself/herself of a certain fact that he/she deems to be relevant for the resolution of the case. For that purpose, the judge may visit the location of a specific occurrence or where an individual, who is the subject of the inspection, is located at the time.

Witness Evidence

A5.76 Parties who may testify in the case as proof by confession are prevented from testifying as witnesses. The plaintiff cannot offer more than ten witnesses to give testament to the grounds of the lawsuit, the same restriction being applicable to the defendant. In the case of a counterclaim, each party may again offer up to ten witnesses for its proof and respective defence. A party cannot produce more than five witnesses for each of the facts to be corroborated, not counting witnesses who declare that they know nothing.

A5.77 Oral testimony is the prescribed procedure. The witnesses are questioned by the lawyers and may also be questioned by the judge. During the trial, witnesses cannot present written submissions or replies.

A5.78 During the witness hearings it is possible to impair the credibility of any witnesses' testimony by producing evidence to that effect. It is also possible to request that any two witnesses who have given contradictory testimony on the same fact are questioned by the judge simultaneously.

(iv) Assessment of Damages

A5.79 Damages are always assessed by the judge at the trial on the basis of the evidence provided by the parties. In certain cases, the judge may rely upon the opinion of experts in order to arrive at the proper amount, but there will never be a judicial delegation of powers to the expert.

(v) Adjournments

A5.80 The trial can be adjourned several times. If the case lasts longer than the estimated trial time reserved by the court, a new date is scheduled in order to continue the trial.

(i) Judgments

A5.81 Once the trial phase is over, the process is remitted to the judge to pronounce his/her judgment.

A5.82 A Judicial Court decision can be subdivided into three different parts: the report, the endowment, and the decision *stricto sensu*:

- (a) The report can more easily be described as the introduction to the ruling, in which both the parties and the legal problem at stake are identified; eventually, it will also contain exceptions which were given rise to, either by one of the parties or by the court itself.
- (b) Pursuant to Article 607 of Civil Procedural Code, ending the split between the decision of the facts and matters of law, because the judge declares that the facts that judges tried and which ones judged not tested, critically examining the evidence, stating the lessons learned from instrumental facts, and specifying the other grounds that were crucial to his conviction. Moreover, although judges are not bound by the legal aspects, as put forth by each party, they are, by all means, compelled to answer all questions of fact presented by the parties. It must further be mentioned that if the judgment is not elaborated in compliance with what is prescribed above then it will be considered to be null.
- (c) As far as the decision goes, the judge will either condemn or acquit the defendant. Nonetheless, if any of the necessary legal procedural requirements is found to be lacking, then the judge is bound by duty to acquit the defendant; notwithstanding, the plaintiff may, at some later date (and assuming that all requirements are fulfilled), initiate the proceedings again.

A5.83 In addition, the court will also rule on who is to be responsible for the ‘court costs’, in agreement with the general rule which states that the defeated party must bear the costs, proportionally. Therefore, the winning party will be able to recover expenses borne throughout the lawsuit.

A5.84 The court’s judgment will then *transit in rem judicatum* prior to a ten-day period from the date on which the parties were notified of the decision. However, if an appellant review is requested and subsequently admitted, or opposition is rendered by a third party, the decision may be altered. The court ruling has what is known as ‘executory strength’, meaning that the winning party can execute the decision even if the losing party appeals.

(6) RECEPTION OF EVIDENCE AT TRIAL

(a) Foreign Witnesses

A6.1 First of all, to clarify, the duration of an ordinary suit, at the first instance level, can span four or five years. If there are witnesses to be heard in a foreign country or if expert evidence is required it may even take longer.

A6.2 As a general principle, all witnesses must testify at the trial location. However, the interview can also take place via videoconference if the witness’ domicile is outside the judicial district where the trial is taking place. Alternatively *precatory* (within Portuguese territory) or letters *rogatory* (in a foreign country) may be used if the necessary means for videoconference are not available.

A6.3 If, however, the foreign witness is found to reside within Portugal, then the inquiry will be carried out in the same manner as with all other Portuguese witnesses who *do* reside within Portuguese territory. Subsequently, if a particular witness is not fluent in the Portuguese language, the presence of an interpreter at the actual trial hearing will be mandatory and must be ordered by the judge. If the witness is only a temporary resident of Portugal and the testimony may prove problematic to obtain in the foreign country, it may be necessary to adopt expedient measures to guarantee that the testimony is procured in Portugal.

(b) Expert Witnesses

A6.4 In Portugal, it is not admissible to have an expert serving as a witness. The expert's role has previously been explained and is better detailed in the following section.

(i) Use of Court-Appointed Experts

A6.5 The request for an expert investigation is presented by the court to an appropriate official institute, laboratory, or organization, or, if this is not possible or proves inconvenient, it should be carried out by a single expert appointed by the judge from a class of individuals of renowned skill and knowledge in the subject matter.

A6.6 The parties must be heard with respect to the appointment of the expert, and they may suggest a particular expert to carry out the inspection. Should the parties agree on the expert to be appointed, the judge should proceed with the appointment unless he/she has grounds to doubt the expert's skill.

A6.7 The investigation may be carried out by more than one, and up to three, experts who will work as a team or cooperate with one another when:

- (a) the judge decides so *ex officio*, on the basis of the special complexity of the investigation or the know-how required in different areas;
- (b) either party requests that the investigation be carried out as a team.

A6.8 Failing an agreement of the parties with regard to the appointment of the witness, each party must appoint an expert and the judge must appoint a third one.

A6.9 The expert is under the obligation to diligently discharge the duties assigned to him/her and may be sentenced to pay a fine if he/she infringes the duty of cooperating with the court.

A6.10 The expert may further be dismissed by the judge if he/she discharges his/her duties carelessly; in particular, if he/she fails to submit the report within the given time limit.

(ii) Use of Experts Retained by Parties

A6.11 Please refer to the comments set out in (i) above.

A6.12 The parties may consult experts in addition to the single appointed expert referred earlier. These experts may testify as 'fact witnesses' (and not as experts) or consult with the party's single appointed expert.

(iii) Expert Reports

Court-Appointed Experts

A6.13 The result of the investigation is expounded in a report wherein the expert(s) give(s) their opinion on the matter and the grounds for this opinion.

A6.14 The parties are notified when the report is produced; should the parties deem that the report is incomplete, unclear, or not sufficiently grounded, they may request further clarifications.

A6.15 Should the request be accepted by the judge, he/she will then order the expert to complete, clarify, or give his/her grounds for the report in writing.

A6.16 Even without any request being submitted, the judge himself/herself may ex officio request any clarifications or additional information.

Experts Retained by Parties

A6.17 Please refer to the comments set out in the previous section.

(iv) Clarifications Presented at Trial

A6.18 If either party so requests, or the judge so mandates, the experts will appear at the final hearing in order to provide, under oath, any necessary clarifications.

A6.19 Experts from official institutes, laboratories, or services are heard via videoconference from their place of work.

(v) Challenging Experts

Court-Appointed Experts

A6.20 Either party may request a second inspection within ten days of the result of the first inspection, providing the grounds for his/her disagreement with the inspection (Article 487 of the Civil Procedural Code).

A6.21 The court may also unofficially order, at any time, that a second inspection be carried out, provided it is deemed necessary in order to find out the truth.

A6.22 The second inspection focuses on the same facts as in the first inspection, and its purpose is to correct any inaccuracies resulting from the first inspection, but the experts that took part in the first inspection must not take part in the second.

A6.23 The second inspection will not make the first one null; both inspections will be freely acknowledged by the court.

Experts Retained by Parties

A6.24 Please refer to the comments set out in the previous section.

(c) Foreign Law Evidence

A6.25 The existence and contents of the applicable foreign law must be demonstrated and proven by the party who invokes it. Nonetheless, the court should, of its own accord, attempt to obtain the necessary information so that it may itself be acquainted with the foreign law in order to provide an informed decision.

A6.26 The court should also, on its own initiative, ascertain the contents of the applicable foreign law even if parties have not given rise to the question or the other party has recognized the existence and the contents of the foreign law or, on the other hand, has not presented any opposition to it.

A6.27 If it is not possible to determine the contents of the applicable foreign law, or if the effects of the law conflict with Portuguese public order, the court should apply the most appropriate foreign law according to the case's particular circumstances, failing which Portuguese law will be applicable.

A6.28 The foreign law is interpreted according to the judicial system to which it belongs, and the interpretative rules stated in the foreign judicial system.

(7) WEIGHT OF JUDICIAL PRECEDENT

A7.1 The Portuguese legal system does not abide by the rule of precedent; thus, in the absence of such a rule, and when presented with a case and its intrinsic particularities, the court will decide the claim solely relying on what has been prescribed by law.

A7.2 Although court precedents do not constitute binding authority, they are not regarded as irrelevant. Precedents can be considered persuasive arguments and are often used to reinforce legal arguments in written pleadings. With regard to the persuasiveness, it must be pointed out that the strength of the persuasion will vary according to the court in which it is presented, whether it be a First Instance Court, an Appellant Court, or the Supreme Court of Justice, also depending on whether it is an ‘established view’. Article 8, number 3 of the Civil Code is interpreted restrictively by the courts, although it provides that the court must take into account all the cases that deserve similar treatment in order to obtain a uniform interpretation and application of the law.

A7.3 Therefore, courts are not obliged to decide in accordance with previous court rulings. It is, however, the Supreme Court’s duty to ensure that court decisions upon similar matters do not differ substantially from each other, so as to ensure a uniform application of the law. Hence, although there is no generally binding rule of precedent, if there is no difference between law and judgment, none should be made.

A7.4 Finally, the Parties may appeal to the plenary of civil sections when the Supreme Court of Justice issues a judgment, with *res judicata* force, that is in contradiction with another pre-existing judgment issued by the same court, regarding the same fundamental legal issue and the same fundamental question of law. In those circumstances, the Supreme Court of Justice may announce a decision to support uniform jurisprudence, by revoking the judgment under appeal and replacing it with a new one in which the contentious issue is decided (Article 688 of the Portuguese Civil Code, and Article 53 of LOSJ).

(8) PROVISIONAL OR CONSERVATORY RESTRAINING ORDERS

A8.1 Pursuant to Portuguese law, restraining orders can be either provisional or conservatory. Provisional restraining orders are intended to maintain an existing situation unaltered, so as to avoid prejudicial mutations. Conservatory restraining orders are intended to anticipate the decision that the court will make in the principal case, in order to ascertain the applicant’s threatened rights.

A8.2 The court can issue a restraining order only if the applicant provides evidence of:

- (a) the existence of his/her legal right;
- (b) the existence of a well-founded fear of serious and scarcely recoverable damage to that right.

A8.3 Since restraining orders are the anticipation of a decision that will be made by the court on the principal case, there are two occasions when the applicant may request the issuing of a restraining order:

- (a) before the presentation of the petition regarding the principal case: In this case, the application for the restraining order is preliminary to the principal case,

which has to be presented within a thirty-day period from the applicant's notification of the decision to issue the requested restraining order; (b) during the principal case: In this case, the application for a restraining order is regarded as incident to the principal case.

A8.4 The petition for a restraining order has to be presented in the court that will have jurisdiction to decide upon the principal case.

A8.5 When the court concludes that hearing the party against whom the restraining order was requested may frustrate its practical effect, the judge can decide to issue the restraining order without hearing the defendant. Although after the issuing of this decision, the defendant will be notified and may present his/her opposition or appeal with regard to the decision. When the court concludes that the hearing of the defendant represents no threat to the order's execution, the defendant will be granted the possibility of opposing the application for the restraining order.

A8.6 The court decides to issue the requested restraining order if the applicant proves his/her right as well as the existence of a serious fear of damage to the right (*periculum in mora*).

A8.7 However, even if the applicant is able to produce such evidence, the court can refuse to issue the requested restraining order if the harm deriving from such an order is greater to the defendant than the harm the applicant intends to avoid by issuing the restraining order.

A8.8 The restraining order requested by the applicant can be replaced by bail when requested by the defendant, and after the applicant has been heard the offered bail should prove to be sufficient to integrally prevent or repair the damage.

A8.9 The restraining order procedure, as well as the decision to grant a restraining order, loses its validity under the following circumstances:

- (a) if the applicant does not present the petition regarding the principal case within the thirty-day period previously mentioned;
- (b) if having adequately presented the petition regarding the principal case, the proceedings are suspended for more than thirty days as a result of the applicant's negligence;
- (c) if the principal case is declared as unfounded by a *res judicata* decision;
- (d) if the defendant is acquitted at a first instance level and the applicant does not present a new petition regarding the principal case in time to benefit from the effects resulting from the prior petition;
- (e) with the extinction of the right that the applicant intends to ensure with the issuing of the restraining order;
- (f) when the applicant has not acted with normal prudence, he/she is then responsible for the damages incurred by the defendant if the court decides that the requested restraining order is unfounded or if its effects have lapsed as a result of the applicant's misconduct.

A8.10 In case of violation of the restraining order issued by the court, the defendant incurs criminal responsibility.

A8.11 Apart from the restraining orders that follow the above-mentioned general regime, Portuguese Civil Procedure prescribes the following typical restraining orders (to which the general regime is subsidiarily applicable):

- (a) provisional reversion of possession;
- (b) suspension of company resolutions;

- (c) temporary alimony;
- (d) arbitration of provisional compensation;
- (e) attachment;
- (f) embargo on new work;
- (g) enrolment.

A8.12 When the legal conditions for the issuing of a typical restraining order are not present, the applicant has the possibility of requesting the application of a non-typical restraining order.

A8.13 A great innovation of the reform of 2013 was the reversal of the litigation (*inversão do contencioso*) which is to dispense with the claimant's burden to propose the main action that the arrangement is dependent, requiring, instead, the respondent, to bring an action for 'to oppose the reversal in conjunction with the litigation challenging the providence decreed' to be carried out alternatively on appeal or of opposition – Articles 369–371 of Civil Procedural Code.

A8.14 The great merit is to grant the defendant the burden of defining the situation in the short term, thus, avoiding the continued existence of interim protection for a limited duration: the defendant contests the enacted or providence, seeking to avoid consolidation, or does not contest this providence allowing the consolidation of the injunction as permanent guardianship.

(a) Provisional Reversion of Possession

A8.15 This restraining order can be issued in cases of violent dispossession. For this purpose, the owner has to allege the facts that give grounds for his/her possession, the dispossession, and the violence.

A8.16 If, based on the examination of evidence, the court concludes that the applicant was the owner and that he/she was a victim of violent dispossession, the court will order the reversal of possession without hearing the other party.

A8.17 If the dispossession is carried out without violence, then the applicant may resort to the general regime of restraining orders.

(b) Suspension of Company Resolutions

A8.18 Such a restraining order can be requested by any shareholder or partner of a company or association. This may be done in order to obtain a suspension of execution of a resolution that is against the law, against the articles of incorporation, or against the contract. In such cases, the applicant has to justify his/her status as a shareholder or partner of the company or association and has to demonstrate that the execution of the determination is liable to cause considerable damage.

(c) Temporary Alimony

A8.19 A restraining order would intend to establish the monthly amount that the applicant should receive, as temporary alimony, while the principal case where the applicant has requested the rendering of alimony is as yet undecided.

(d) Arbitration of Provisional Compensation

A8.20 This restraining order is to be applied during the principal case in which an indemnity grounded on death or physical injury has been petitioned for. The scope of such

an order is the establishment of the monthly rent that the applicant should receive as a provisional compensation for the damages that he/she has suffered.

(e) Attachment

A8.21 The attachment is an order for the temporary apprehension of the movable or immovable property of the defendant. This is limited to the amount of the alleged debt. The attachment allows the applicant to ‘freeze’ the debtor’s property giving him/her guarantees that his/her credit will be satisfied. In this case, if the applicant provides the court with evidence (*fumus boni juris*) regarding the serious probability of the credit’s existence and equally proves that he/she will not be able to collect his/her credit if he/she waits until the end of a case on the merits (*periculum in mora*), the court can authorize the apprehension of movable or immovable property of the debtor as well as his/her assets.

A8.22 This order of attachment can be granted during or before a merits case between the creditor and the debtor. However, the attachment does not imply the apprehension of all property that is indicated by the applicant in his/her petition. In fact, the court will only authorize the apprehension of propriety to a sufficient amount to cover and ensure the applicant’s credit.

A8.23 Once issued by the court, the property attached stays under the control of the court through the means of a depositary appointed by the latter.

A8.24 A decision on the merits favourable to the applicant automatically converts the attachment into the seizure of the attached property, thus, providing the creditor with the right to proceed with the forced auction sale of the movable or immovable formally attached.

(f) Embargo of New Work

A8.25 Such a restraining order is intended to safeguard property from damages caused by new work. In this case, the applicant has to prove that the new work is causing damage or is threatening to cause damage to his/her property, requesting the works’ immediate suspension.

A8.26 The application for the issuing of the referred restraining order has to be presented to the court within a thirty-day period from the date on which the applicant acquired knowledge of the works.

A8.27 The applicant also has the possibility to enforce the embargo of new work without bringing an action before the court. In this case, the applicant will have to verbally notify the building’s owner, before two witnesses. However, this extrajudicial complaint will lose its effect if, in the following five days, the applicant does not apply for the judicial ratification of the order.

(g) Enrolment

A8.28 The issuing of the restraining order is requested when there is a founded fear of loss, concealment, or dissipation of documents, movable or immovable goods (Article 391 of the Civil Procedural Code).

A8.29 The applicant – who has to have an interest in the maintenance of the documents and movable or immovable goods – has to demonstrate his/her relative right to the said

documents and goods as well as the facts that cause his/her fear of loss or dissipation. If his/her relative right is dependent on the outcome of a principal case already presented or to be presented, the applicant has to convince the court that the pleading will probably proceed.

A8.30 The inventory is equivalent to a description, evaluation, and deposit of the documents and/or goods. The latter information is converted into a written document that should be signed by the court's official, by the depositary and by the owner of the assets.

A8.31 If the inventory is urgent and it is not possible to promote it immediately or it is not possible to conclude it on the same day on which it was initiated, the court can order the sealing of the buildings or movable property subject to loss in order to continue the inventory on another day, to be indicated by the court.

(9) AVAILABILITY OF JUDGMENTS FOR INTEREST ON DEBT OR DAMAGES

A9.1 According to Portuguese law, the payment of interest, whatever its nature, arising out of non-payment of a debt or damages can be demanded in court. The Portuguese Civil Code provides that interest can have a legal or contractual nature. The legal rate of interest is, generally, fixed annually by the Treasury (Article 559 of the Portuguese Civil Code). The contractual rate of interest is freely fixed by the parties, but the interest rate must not be abusive, as the Portuguese Civil Code forbids 'usurious interest' (Articles 559-A and 1146 of the Portuguese Civil Code).

A9.2 Currently, the rate of legal interest stands at 9.05% if the creditor is a company and at 4% if the creditor is an individual.

A9.3 The interest runs from the date when the creditor formally requests payment from the debtor after the due date of payment or, if payment has a specific deadline, from that day onwards. In other cases, interest runs from the date when proceedings are commenced and, in both situations, continues to run until full and integral payment.

A9.4 Automatic accrual of compound interest is not allowed and is considered illicit (except for banks and equivalent companies). Notwithstanding, the claimant may notify the debtor (even during the procedure) to pay the interest incurred in a certain period of time (generally one year), on penalty of capitalization.

(10) AVAILABILITY OF ORDERS FOR COSTS

A10.1 In every kind of proceeding, the parties bear their own costs, including all the expenses or charges of the proceedings, whatever their nature.

A10.2 The payment is made at two separate times: when the lawsuit is filed and at the end of the written phase of the proceedings, just before the hearing.

A10.3 According to the rule, the defeated party must bear the costs, albeit proportionally, the winning party recovers the amount of the expenses borne throughout the lawsuit (judicial costs only, not including lawyer's fees) without the need to lodge a request for legal costs.

A10.4 Portuguese Procedural Law does not provide the possibility of security for costs.

(11) ENFORCEMENT OF DOMESTIC JUDGMENTS AND ORDERS

A11.1 Enforcement proceedings are always based and preceded by an executive title, which can be a judicial judgment, according to Article 10 of the Civil Procedural Code.

A11.2 The purpose of the enforcement proceedings can either be (i) payment of an exact amount; (ii) obligation to deliver a certain object; and/or (iii) the obligation to carry out, or to abstain from performing, a specific action.

A11.3 In 2003, the regime of the ‘enforcement proceeding’ was significantly altered in Portugal allowing for a significant number of proceedings to be taken away from the Civil Courts’ jurisdiction, thus, enabling them to present a final decision in a shorter period of time.

A11.4 The enforcement proceeding begins with the presentation of the seizure application, which must be put forward in compliance with a legal template (Article 724 of the Civil Procedural Code and Decree-law No. 200/2003, of 10 September).

A11.5 The seizure application is addressed to the competent enforcement court and signed either by the creditor himself or by his lawyer. It must contain a number of indications: reference to the enforceable judgment, the amount due, the appointment of the ‘executory solicitor’, and the request of previous citation release (Article 724 number 3, Civil Procedural Code). However, when an executory solicitor is not appointed within the application, the appointment will be promoted by the court (Article 720, Civil Procedural Code). Executory solicitors were created in the 2003 reform and are now the competent bodies to obtain the debtor’s coercive payment by discovering the latter’s assets, such as bank accounts, real estate, and movable property. If the seizure application does not contain these indications or the executive title the court registry will refuse its submission (Article 725, Civil Procedural Code). With the presentation of the seizure application, the applicant must pay a court tax.

A11.6 The general territorial jurisdiction rule is established on the basis of the place where the obligation should have been performed (Article 84 of the Civil Procedural Code). There are, however, exceptions to be made to the general rule. When the enforcement proceeding is based on a final judgment of a Portuguese court, jurisdiction rests with the court where the merit proceeding has been judged (Article 80 of the Civil Procedural Code). When the enforcement proceeding is based on a final foreign judgment, jurisdiction will rest with the court of the place in which the executed is currently domiciled (Article 81 of the Civil Procedural Code, *ex vi* Article 85 of the Civil Procedural Code).

A11.7 It is fair to say that a seizure application always implies a certain amount of risk for the applicant, for, in the event of failure, the applicant will be legally bound to pay for all the proceeding’s inherent costs.

A11.8 All the debtor’s assets that are capable of being seized represent the enforceable debt and are, according to substantive law, subject to execution (Article 735 of the Civil Procedural Code). Seizure proceedings can mainly be aimed at chattels or real property as sums due to the debtor by third parties and bank deposits.

A11.9 Payment of the debt can be accomplished by cash delivery, attached assets adjudication, judicial deposit of the debtor’s revenue, or by the result of assets’ sale (Article 795 of the Civil Procedural Code).

A11.10 Unless the debtor has paid the creditor in the meantime (which can occur at any time and immediately extinguishes the procedure) the forced sale of the assets and correlative distribution of the result among all the creditors who have joined in the proceedings will be the last step to be taken with regard to the seizure of goods or real property.

A11.11 If the debtor and/or third parties involved in the enforcement want to present his/her/their arguments against the execution proceeding, he/she/they may do so within twenty days from the summons date by opposing the legitimacy of the execution proceeding, as well as the seizure, thus, initiating a full trial on the merits.

A11.12 In addition to attachment of assets, companies, partnerships, and traders, in general, may be faced with an indirect form of execution of the judgment by way of bankruptcy proceedings. Strictly speaking, this is not viewed as a form of enforcement of a judgment, for the pre-existence of a court decision is not seen as a legal requirement.

A11.13 There are two fundamental legally established requirements to obtain the aforementioned bankruptcy judgment: (i) the debtor has to be a trader; and (ii) the state of insolvency must pre-exist. However, in order to obtain such a judgment, the trader has to prove to the court that the state of insolvency is not merely temporary and that the financial hardship is permanent.

(12) GERMAINE JURISDICTIONS

A12.1 Only the countries with legal systems originating in Roman law have similar procedures to the Portuguese.

(13) APPEAL

(a) In Which Courts Are They Heard? What Is the Procedure for Their Initiation and Conduct?

A13.1 In procedures where the value exceeds EUR 30,000.00, generally, final first instance judgments and interim orders are liable to be appealed from with two degrees of jurisdiction. While both issues of fact and issues of law can be brought to the Appellate Court, the Supreme Court deals only with issues of law (Article 629 of the Civil Procedural Code).

A13.2 According to the Portuguese Civil Procedural Law appeals can be either ordinary (appellate review and the application for review on jurisdiction) or extraordinary (revision and opposition from third parties).

(i) Ordinary Appeals

A13.3 The applicant shall submit a request for appeal to the court that issued the appealed decision, indicating the type, the effect and the mode of the rise of the appeal (Article 637 of the Portuguese Civil Code).

A13.4 Subsequently, the appellant shall specify his/her allegations describing the grounds and arguments on which his/her claim is based. It is mandatory to present conclusions

within the allegations. If the allegations are not lodged in time, the appeal is immediately considered extinct.

A13.5 If the appeal only refers to questions of law, the conclusions must mention:

- (a) the rules that were violated;
- (b) the way that, according to the appellant, these rules should have been interpreted and executed;
- (c) if an error in the determination of the rule has been invoked, the rule that, according to the appellant, should have been applied.

A13.6 If issues of fact are also invoked in the appeal, there is a special burden on the appellant. On penalty of rejection, he/she must specify:

- (a) the actual facts he/she considers misjudged;
- (b) the actual probatory means, within the procedure or registered and recorded during the lawsuit, that should have led to a different decision over the issues of fact.

A13.7 If the probatory means – referred in (b) above – invoked to justify the misjudgment are recorded, the appellant has to specify the statements on which it is founded, on penalty of rejection.

A13.8 The reform of the Civil Procedure Code, by Law 62/2013 of 26 August, proceeded to the unification of the system of appeals, regardless of the form of appellate review, overcoming the traditional distinction between appeals and review or interlocutory appeals.

A13.9 Appellate review generally does not suspend the effects of the decision *in crisis*, but, when lodging the appeal, the appellant can require suspension if the execution of the decision would bring considerable damage and if the latter presents a guarantee. The granting of this effect depends on the actual payment of the guarantee within the term established by the court.

A13.10 The appellant shall present his/her written allegations within a thirty-day period – or a fifteen-day period, if it is an urgent procedure or a type of decision listed in Articles 644(2) and 677 of the Civil Procedural Code – from the notification of the appealed decision. The appellate can reply, in an equal term, from the notification of the counterparty allegations (Article 638(1) and (5) of the Civil Procedural Code).

A13.11 If the appeal is based on a re-appreciation of recorded evidence, ten days are added to the terms mentioned earlier (Article 638(7) of the Civil Procedural Code).

A13.12 When the term to present the allegations end, all appeals not considered extinct are sent to a superior court.

A13.13 It must be mentioned that the parties may attach documents to the allegations – including opinions from lawyers, professors, and specialists – in exceptional situations concerning the proof of new or subsequent facts or if this is necessary in the presence of the county court decision.

A13.14 The county court decision over fact issues may be altered by the Appeal Court if, in the lawsuit, there are all the proof elements on the basis of which that decision was made. The county court's decision over factual issues may also be altered by the Appeal Court if, when the statements are recorded, the decision founded on this evidence is disputed. Finally, the county court's decision over factual issues may also be altered by the Appeal Court if the elements provided by the lawsuit require a different decision, indicated by

other evidence, or if the appellant presents a subsequent new document that, alone, is sufficient to dismantle the proof on which the decision was based.

A13.15 The specific ground for the appeal of an application for review on jurisdiction is, therefore, the violation of a substantive rule that may consist in its wrong interpretation and execution or an inaccurate determination.

A13.16 With regard to interlocutory appeals, which generally deal with formal or merely procedural questions, it is important to know the time at which they are promoted to the superior courts.

A13.17 An appellant review rises immediately:

- (a) when lodged in connection with the decisions that put an end to the proceeding;
- (b) when lodged in connection with a judge's decision in which he/she considers himself/herself unable to decide the proceeding or in connection with a decision which overrules a party's claim of incapacity;
- (c) when lodged in connection with a decision that appreciates the absolute competence of the court;
- (d) when lodged in connection with any judgment made after the final decision.

A13.18 In addition to these appeals, those whose retention would make them completely useless are also immediately promoted to the superior courts.

A13.19 The appellant review, when referring to interlocutory decisions that are immediately promoted, generally has a suspensive effect. On the other hand, the following interlocutory appeals suspend the effects of the appealed decision when:

- (a) the appeals are lodged concerning decisions that resulted in pecuniary fines;
- (b) the appeals are lodged over decisions that have required the fulfilment of a pecuniary obligation, ensured by a deposit or guaranty;
- (c) the appeals are lodged over decisions ordering the cancellation of any registration;
- (d) appeals in which the judge determines such effects; and
- (e) all others for which the law expressly foresees such effect.

A13.20 The appellant must present his/her allegations within a fifteen-day period from the notification of the appeal's acceptance. The appellee may reply within an equal term, from the notification of the counterparty's allegations.

A13.21 After the presentation of the allegations and counter-allegations, the lawsuit is submitted to the judge in order for him/her to confirm his/her decision or amend it. If he/she confirms the decision, the lawsuit is promoted to the superior court. On the other hand, if the judge amends his/her decision, the defendant may require, within ten days from the notification of this judicial decision, that an 'interlocutory' appeal is promoted, as it is, so that the question on which two opposing decisions were given can be settled.

(ii) Extraordinary Appeals

A13.22 Finally, it must be said that a Revision Appeal is lodged over a decision that constitutes *res judicata*. Such an appeal can be lodged only in the following cases:

- (a) when it is demonstrated, by a final criminal decision, that it resulted from an abuse of trust, bribe, or corruption of any of the involved judges;
- (b) when a document or judicial act, deposition, or declaration of experts, that may have determined the decision, is found to be false. However, this finding is not

ground for a Revision Appeal if it was already argued in the lawsuit from which the decision resulted;

- (c) when the party that lost the original lawsuit presents a document that he/she was not aware of at the time or could not have used in that lawsuit, and that document is, by itself, sufficient to modify the decision on his advantage;
- (d) when the confession, abandonment, or composition of the lawsuit in which the decision was founded is void or voidable;
- (e) when, if the lawsuit and its execution were given by default, due to the total lack of intervention by the defendant, it is shown that the summons were void or inexistent;
- (f) when the decision is contrary to another that constitutes *res judicata* to the parties.

A13.23 A Revision Appeal is lodged in the court where the lawsuit actually is, but it is addressed to the court that issued the decision and cannot be lodged if more than five years have passed after the decision constituted *res judicata*.

A13.24 Opposition from third parties is an extraordinary appeal which is admissible when the lawsuit was based on a simulation without the court's acknowledgement (Article 672 of the Civil Procedural Code). The final decision, even after it has constituted *res judicata*, may be opposed through opposition from a third party that has suffered damages as a result of the decision.

A13.25 The appeal is addressed to the court that issued the decision; if the lawsuit is already in a different court, it is in this court that the requirement for its lodging will be presented to. This requirement is attached to the lawsuit, which will then be addressed to the competent court.

A13.26 The appeal must be attached with the decision that has constituted *res judicata* where it is said that the appealed decision has resulted from a proceeding simulation of the parties and involves damages to a third party.

A13.27 The appeal should be lodged within the three months following the constitution of *res judicata* of the final decision of the simulation lawsuit.

A13.28 On the other hand, the formal proceedings of the simulation lawsuit must be started within the five years subsequent to the constitution of *res judicata* of the appealed decision.

PART B—PARTICULAR CLAIMS

(1) CLAIM FOR BREACH OF CONTRACT FOR SALE OF GOODS

(a) Appropriate Court for Claim and Method of Initiation of Claim

B1.1 Regarding territorial jurisdiction, for a claim based on a breach of contract, the plaintiff may choose, at his/her own discretion, alternative fora in relation to contractual obligations: he/she may choose the place where the obligation is to be complied with or the place where the obligation should have been performed.

B1.2 In order to ascertain the place where the obligation should have been performed, it is necessary to consider a number of rules contained in the Portuguese Civil Code.

B1.3 In fact, the determination of the place where the obligation should have been performed depends mostly on the type of contract that we are dealing with, for it is necessary to consider the parties' intention as established by contract, and only when this cannot be ascertained with certainty should the rules of law be referred to.

B1.4 In short, and as a general rule, it can be said that the place of performance of obligations which are quantified or quantifiable by means of a simple arithmetical calculation is that of the creditor's domicile, for this is where the payment should have been performed by the debtor. Otherwise, the place will be that of the debtor's domicile.

B1.5 Furthermore, it is important to remember that under Portuguese law, the law that is applicable to a contract is regulated by the Convention of Rome of 19 June 1980.

B1.6 The statement of claim for breach of contract whereby the plaintiff initiates the lawsuit has a complete description in Part A, which describes the form of a writ and the formalities of service and lodging with the court.

(b) Claims By and Against More Than One Party: Availability of Third Party Proceedings

B1.7 Proceedings can be initiated by more than one plaintiff against more than one defendant. This situation can be the result of a court order when it seems that the judgment must be rendered with respect to other such parties, or on the initiative of the party who has an interest in intervening in the proceedings.

B1.8 Proceedings involving more than one plaintiff or defendant follow the course of normal proceedings.

B1.9 Both the plaintiff and the defendant may request a third party intervention if they believe that the third party will be interested in participating in the dispute, or simply because they find the intervention absolutely necessary.

B1.10 In all these cases the participation must be authorized by the judge so that the third party is properly summoned and can appear at the hearing and explain its own arguments.

**(c) Method of Pre-trial Definition Issues:
Counterclaim Procedures**

B1.11 Refer to the definition of issues set out in Part A, as the same procedure is followed.

B1.12 It should be noted that the plaintiff, in his/her statement of claim, must expound the facts and grounds for action; but, if the judge finds that some particular aspects are not clear, he/she may give the plaintiff the possibility of completing any sort of lacunae and will fix a term for this.

**(d) Pre-trial Conservatory Remedies Available for
This Kind of Claim and Method of Applying for
Such Remedies**

B1.13 Refer to Part A, section 8, which describes the procedure for provisional or conservatory remedies. The sequestration procedures and urgent reliefs are applied in the same way considering the specific circumstances surrounding the claim.

**(e) Pre-trial Hearings Including Applications for
Summary Judgment, Orders Obtainable**

B1.14 As far as the pre-trial hearing is concerned, please refer to Part A.

B1.15 There is a special procedure that is important to refer to in a claim of breach of contract, which is called injunction and may consist of a summary judgment of a claim.

B1.16 This particular solution is provided for a creditor who is in possession of consistent documentary evidence of his/her claim and against which the debtor can hardly produce an arguable defence.

B1.17 Summary judgment becomes final if no opposition is presented by the debtor within a strict time limit of fifteen days. However, if such opposition is filed, the procedure reverts to an ordinary full trial.

B1.18 The defendant (debtor) is summoned to pay or to file its opposition within fifteen days. The defendant opposition must include all defences, either by exception or by direct opposition, since the procedure may always revert to an ordinary full trial.

B1.19 This 'abbreviated' and faster procedure is only available in relation to claims for payment of sums of money; claims for delivery of a specific quantity of goods; or claims for delivery of a specific asset; and only when performance of the obligation is already due and written evidence of the claim can be provided.

B1.20 The proceedings are commenced by way of an application containing the addresses, the subject matter, the reasons for the application, and a brief description of the evidence submitted.

B1.21 Final judgment can be enforced according to the general enforcement rules.

(f) Pre-trial Discovery/Depositions: Procedures

B1.22 Please refer to Part A, section 5.

(g) Other Pre-trial Procedures, Such as Orders for Exchange of Expert Reports, Witness Statements, Legal Submissions, or Briefs

B1.23 Please refer to Part A, section 5.

(h) Pre-trial Investigatory Procedures by the Court or Court Experts

B1.24 Please refer to Part A, section 5.

(i) Trial Dates

B1.25 Please refer to Part A, section 5.

(j) Preparation of Evidence

B1.26 Please refer to Part A, section 5.

B1.27 However, since commercial transactions normally occur between commercial enterprises and, usually, there are several persons involved in the preparation and elaboration of documents or in the negotiations before the conclusion of the contract, it should be noted that the impossibility of testifying as a witness is applicable only to those who represent the society or are members of the board or are managers. Thus, this legal interdiction does not include the company's employees.

B1.28 Thus, the personal testimony of the company's legal representatives, which is called confession of the parties, has to be ordered by the judge or requested by the counterparty who has an interest in the personal deposition of the other party.

B1.29 As far as the quantum of the damages is concerned, one must further mention that it is dependent on the particular type of contract for which a breach has been alleged. The general rule defines that damages include both actual loss (wasted cost and expenses) and the loss of earnings (profit that was not earned due to the breach).

B1.30 The main goal is to reinstate the 'innocent' party in the same situation that he/she would have been in if the contract had been adequately complied with.

B1.31 Damages may only be considered, and, of course, claimed, if they directly derive from the breach; thus, it is imperative to prove a relevant connection between the damages and the breach.

B1.32 As a consequence of the general rules, even future damages can be claimed for if it is reasonable to expect on the balance of probabilities that they will occur.

(k) Conduct of the Trial, Speeches, Giving Evidence, Judgment, Damages, and Interest Costs

B1.33 Please refer to Part A, which describes the entire trial procedure, particularly sections 9 and 10.

B1.34 A claim in which the plaintiff petitions for interest must be specifically formulated in the writ. In fact, in a dispute for breach of contract for the sale of goods, interest can

begin to run either from the date agreed upon contractually or, if that date is not mentioned in the contract, the interest can only begin to accumulate from the date on which the creditor formally requests payment, or even from the date on which the defendant/debtor was summoned.

(1) Appeal Procedure and Conduct of Appeals

B1.35 Please refer to Part A, section 13.

(m) Enforcement of Judgment Against Defendants Within the Jurisdiction

B1.36 Please refer to Part A, section 11.

(2) MINERAL CONCESSIONS

(a) General Aspects

B2.1 Although Portugal is not a mining or oil country, the fact that exploration activities often conflict with the basic values of the common national patrimony, namely the maintenance of the ecological equilibrium, leads these activities to be regulated by the state.

B2.2 Article 84 of the Portuguese Constitution establishes that mineral deposits are part of the state's non-disposable patrimony. Law 54/2015 of 22 June defines the terms under which the geological resources are in the state public domain.

B2.3 The Minister of Economy has supervisory powers and attribution over mining activities (Decree-law 11/2014 of 22 January), namely ensuring that the exploration of mineral resources is integrated into Portugal's economic activities in such a way that it may contribute to the general well-being and the development of the economy.

B2.4 The following rights may be granted over mineral deposits and resources integrated into the state public domain:

- prospecting and research, enabling the performance of operations destined to discover mineral deposits and the determination of their characteristics and economic value;
- exploration, enabling the execution of activities subsequent to prospecting and research, that is, the economical utilization of the mineral deposits.

B2.5 Rights to prospect and research are acquired upon the conclusion of administrative contracts with the state, governed by 'public law'.

B2.6 The national territory and exclusive economic areas, thus, include reserved areas (defined as those over which there are constituted rights arising from contracts for prospecting, research, and exploration) and available areas.

(b) Litigation

B2.7 Not every private individual or entity is entitled to demand compliance by the administration with the rules governing administrative procedures. Only those private

individuals or entities that have a direct relationship with the administration so that their legitimate interests are directly violated may exercise this right.

B2.8 The admissible grounds for a claim against the state are virtually reduced, always, to one: namely, a declaration that the activity which the state administration conducted was not legitimate in that the administration concerned acted against the law, abused its powers, or exceeded its jurisdiction. Therefore, all an Administrative Court can do is to establish whether a certain action of the public administration was legitimate or illegitimate and, should it be legitimate, declare it void. It has no power to rule upon the specific matter in a different way since this power is exclusively given to the public administration.

B2.9 Litigation against the administration concerning mineral concessions will be litigation related to legitimate interests and, as such, will be dealt with by the Administrative Courts. These are governed by the Administrative Procedural Code and, even though they have their own rules and specific kinds of lawsuits, they generally remit to the Portuguese Civil Procedural Code.

(3) CLAIM FOR TITLE TO OR DAMAGE TO GOODS

(a) Appropriate Court for Claim and Method of Initiation of Claim

B3.1 Please refer to the rules of jurisdiction and territorial jurisdiction as outlined in Part A.

B3.2 Regarding the claim for title to goods it is important to mention that, as a general rule, the competent court is determined by the place of the asset in question.

B3.3 In the case of a claim to the title of goods that are located in different areas of jurisdiction, it is important to note that the competent court will be that of the court where the most valuable real estate is located.

B3.4 As far as registered movable property, namely vessels and aircraft, is concerned, it should be recalled that the competent court is, rather, the one at the place where the assets are registered, or, if the claim involves movable property that is registered in various jurisdictions, the plaintiff may choose the jurisdiction that suits him/her the best, depending on the jurisdictions involved.

(b) Claims By and Against More Than One Party: Availability of Third Party Proceedings

B3.5 Please refer to Part A, section 5, and also to claim for breach of contract.

B3.6 It is important to mention that in a claim for title to goods among joint owners, all of them must be part of the proceeding, either as co-plaintiffs or as co-defendants.

(c) Method of Pre-trial Definition Issues: Counterclaim Procedures

B3.7 Please refer to the definition of issues as set out in Part A, since it follows the same procedure (Part A, section 5).

(d) Pre-trial Conservatory Remedies Available for This Kind of Claim and Method of Applying for Such Remedies

B3.8 Please refer to Part A, section 8, which describes the provisional or conservatory remedy procedure. Sequestration procedures and urgent relief are applied in the same way, so long as the claim's specific circumstances are adequately considered.

(e) Pre-trial Hearings Including Applications for Summary Judgment, Orders Obtainable

B3.9 For the pre-trial hearing, please refer to Part A.

(f) Pre-trial Discovery/Depositions – Procedures

B3.10 Please refer to Part A, section 5.

(g) Other Pre-trial Procedures, Such as Orders for Exchange of Expert Reports, Witness Statements, Legal Submissions or Briefs

B3.11 Please refer to Part A, section 5.

(h) Pre-trial Investigatory Procedures by the Court or Court Experts

B3.12 Please refer to Part A, section 5.

(i) Trial Dates

B3.13 Please refer to Part A, section 5.

(j) Preparation of Evidence

B3.14 Please refer to Part A, section 5.

(k) Conduct of Trial, Speeches, Giving Evidence, Judgment, Damages, and Interest Costs

B3.15 Please refer to Part A, sections 9 and 10.

(l) Appeals Procedure and Conduct of Appeals

B3.16 Please refer to Part A, section 13.

(m) Enforcement of the Judgment Against the Defendant Within the Jurisdiction

B3.17 Please refer to Part A, section 11.

(4) CLAIMS FOR MONEY DUE UNDER INSURANCE/REINSURANCE CONTRACTS

B4.1 As far as civil law is concerned, please refer to what has been said in Part A.

B4.2 With regard to the context, the 1968 Brussels Convention (Civil Jurisdiction and Enforcement of Judgments in Civil and Commercial Matters), amended by the 1978 Luxembourg Protocol, must be mentioned, especially the provisions concerning insurance (Article 7, paragraph 3, up to Article 12, as well as Articles 4, 5, and 7). The general principle is that the weaker party should be protected by rules of jurisdiction more favourable to his/her interests. Those provisions allow the insured to choose where to sue the insurer in a wide span of venues, at the same time restricting the choice of the domicile of the defendant. However, these special provisions may be put aside by an agreement entered into by the contracting parties, which must strictly satisfy the conditions set out in Articles 12 and 12*bis*.

B4.3 Since 22 December 2000, these rules have been governed by EC regulation, Regulation (EC) No. 44/2001 (section 3), which was later recast by Regulation (EU) No. 1215/2012, dated 12 December 2012. These regulations are binding and directly applicable to all Member States, with the exception of Denmark. Insofar as the regulation replaces the provisions of the Brussels Convention, any reference to the Convention should be understood as a reference to the regulation.

(5) CLAIM TO ENFORCE CORPORATE SHARE-SALE TRANSACTION

B5.1 As far as civil law is concerned, please refer to what has been said in Part A.

B5.2 Nonetheless, concerning the above-mentioned subject, there is some information that should be specified: Portuguese companies are mainly governed by the Portuguese Companies Code (*Código das Sociedades Comerciais* – CSC) and by the Securities Market Code (*Código do Mercado de Valores Mobiliários*). There are two main forms of business entities: limited liability shares companies (*sociedades anónimas* – SA), where members subscribe to company shares and their liability is limited up to the amount entered into by the member (Article 271 CSC); and limited liability quota companies (*sociedades por quotas* – LDA), where the capital is divided into quotas/portions between partners (Article 197 of CSC).

B5.3 Pursuing the company deliberation stability principle, the Portuguese legislator has limited the situation of nullity of deliberations to a reduced number of extreme cases, exhaustively laid down in Article 56 of the Portuguese Companies Code, allowing the annulment of voidance to be carried out by means of a retroactive confirmation of the deliberation. In case of voidance, the partners must bring a judicial action against the company so that the court may, in turn, annul the aforementioned deliberation (Article 59 of CSC). If the claim is not presented within a thirty-day period from the deliberation, the defects of the contract will become definitively cured. However, there is still the possibility of resorting to a protective order so as to suspend the invalid deliberation, according to Article 380 of the Portuguese Civil Procedure Code.

B5.4 The sale of future shares (issued by a company which has not yet been incorporated), as well as any contract that implies the sale in question, is considered to be void.

B5.5 A public deed is prescribed for the assignment of quotas (Article 228 of the Portuguese Code of Companies). This act is allowed between spouses, ascendants and descendants, and between partners. In other cases, such an act will be dependent on the company's prior acquiescence on the matter (Article 228(2) Portuguese Code of Companies) unless the company's statutes prescribe otherwise (Article 229, (2) and (3) of the Portuguese Code of Companies). Therefore, the possibility of starting a specific performance action of a reservation sale contract depends on the company's consent. Consequently, if the consent is not granted, the reservation contract only binds its parties and only the reserving buyer has the right to compensation, in accordance with general contractual liability.

B5.6 On the other hand, if the articles of association contain any pre-emption rights in favour of the company or of any of the partners, and if such pre-emption rights are violated, the shareholders (having pre-emption rights) can initiate a pre-emption action or a specific performance action, in the general terms as prescribed by Articles 1410 and 830 of the Portuguese Civil Code.

B5.7 Furthermore, with regard to limited liability share companies, the company's articles of association may impose limitations on share transference so long as certain conditions are met. Hence, given the necessity of the company's consent or the existence of pre-emption rights laid down in the company's articles of association, the reservation sale contract of shares cannot be executed since it does not bind the company.

B5.8 Another point to be taken into consideration is the possibility of share sequestration procedures or conservatory remedies. Concerning this matter, any conservatory action must be aimed at recognizing, for a certain period of time, the right of the main action that may be declared, constituted, or demanded. The former cannot attain a goal that the latter cannot. Hence, only the rightful claimant, acting with a recognized right over the shares or to be declared in an action already started or about to be started, can claim the shares (Articles 404(2) and 405(1) of the Portuguese Civil Procedure Code).

(6) CLAIM TO ENFORCE COPYRIGHT/TRADEMARK

(a) Trademark

B6.1 As far as trademarks are concerned, one must mention that there are two ways of protection and enforcement; at an international level and at a national level. At the national level, and in compliance with the provisions of the Industrial Property Code (Decree-law No. 110/2018 of 10 December), all claims related to industrial property rights should be lodged with the National Industrial Property Institute, which is the competent authority to start an administrative procedure.

B6.2 Appeals against the granting or refusal of registration, or any other decision taken under the above-mentioned administrative procedure, may be lodged with the commercial courts (civil specialist courts), and the judicial procedure follows the principles and procedural steps described in Part A.

B6.3 Another point to note is that registration is essential to protect trademarks. The Code admits the possibility of registering words, including names, designs, letters, numbers, shapes of products or their respective packages, and even sounds and advertising slogans.

This registration is valid for ten years, beginning on the date on which it is granted. This period may be extended, for equal lengths of time, indefinitely.

B6.4 Furthermore, the registration of descriptive generic signs is now possible as long as, in day-to-day commercial practice, they are capable of becoming effectively distinctive. With regard to models and designs which have distinctive characteristics, the protection provided has a five-year duration, which may be extended to a maximum period of twenty-five years. The Code includes the possibility of converting a request or registry of a European trademark into a national one.

B6.5 Portugal is one of the founding members of the international Convention on Trademark Protection (*Union de Paris* – 1883), and it is also one of the original signatories of the Madrid Agreement (1891) and a party to the Nice Agreement, the Lisbon Agreement, and the Washington Treaty. Portugal has signed several treaties as a WTO member, such as the Trademark Law Treaty (1994) and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).

(b) Copyright

B6.6 In accordance with Article 31 of the Copyright Code (*Código do Direito de Autor e Direitos Conexos*), literary, scientific, and artistic works are protected, including authors' rights. Copyright expires seventy years after the death of its creator. In the case of violation of any of these rights, the Copyright Code lays down fines that may exceed EUR 2,500, without prejudice to the criminal proceedings. The Director of Copyright (chief of a public office) is competent to collect these fines. In urgent matters, a restraining order can be requested from the administrative authorities or the courts.

B6.7 Portugal has recently ratified (by Decree-law No. 168/99 of 22 July) the Rome Convention of 26 October 1961 for the Protection of Interpreters or Executors Artists (actors, dancers, musicians, etc.), producers of sounds records and broadcasting organizations.

(7) CLAIMS TO AN INTEREST IN A BANK DEPOSIT

B7.1 Please refer to Part A, as the procedure follows the general principles outlined there.

(8) CLAIM FOR RECOVERY OF CHARTER HIRE/ DAMAGES UNDER A CHARTERPARTY

B8.1 Please refer to Part A in so far as the general aspects are concerned.

B8.2 A charterparty is governed by Decree-law No. 191/87 29 April, which establishes, among other matters, the jurisdiction of the Portuguese courts. Any disputes arising from the interpretation or execution of a charterparty will be settled in Portuguese courts if:

- the port/harbour is located in Portugal;
- the charterparty was made in Portugal;
- the ship flies the Portuguese flag;
- the ship is registered in Portugal;
- the freighter/affreighter, carrier, addressee or consignee's headquarters or branch is located in Portugal.

B8.3 In any other unforeseen situation, the international jurisdiction will be determined as indicated in Part A.

B8.4 Furthermore, it should be noted that under Portuguese law, ships have, in certain specific situations, legal judicial personality, that is, the capacity to sue or to be sued, therefore, being liable, in certain cases, for their own damages. For example, if the carrier is unknown, a ship will constitute an autonomous patrimony, having a judicial personality by means of a legitimacy extension. Finally, it should also be mentioned that the Portuguese Civil Procedural Code, in Articles 1072–1077, allows for a voluntary jurisdiction process (seaworthiness implied warranty).

(9) CLAIMS FOR AMOUNTS DUE UNDER A JOINT VENTURE AGREEMENT

B9.1 According to Decree-law No. 231/81 of 28 July (which regulates a joint venture's constitution, modification, and dissolution), a joint venture is not liable, by itself, for the payment of any amount as the above-mentioned legal diploma establishes their lack of legal personality. This being so, it will only be liable when this is expressly mentioned in a joint venture agreement.

B9.2 The legal procedure concerning a joint venture follows the principles set out in Part A.

B9.3 However, the above statement is subject to an exception related to conflicts of jurisdiction: if a party to the contract is the state itself or a state-controlled enterprise acting in its public capacity, the Administrative Courts will probably consider themselves competent to settle the dispute.

(10) ATTACHMENT OF SHIPS

B10.1 The Portuguese Civil Procedure Code, before the reform was undertaken in 2013, included a regulation about the arrest of ships.

B10.2 The reform of this Code, by the Law 62/2013 of 26 August, imposed the revocation of this rule, following the general proceeding of the asset's arrest and seizure, though there is a specific requirement imposed by Article 394 of the Portuguese Civil Procedural Code which prescribes that beyond the general requisites and depending on the credit's nature, seizure may be admissible. Even in that case, apprehension will not take place if the debtor immediately offers bail that either the creditor accepts or that the judge, within two days, deems to be proper. Nonetheless, the ship will not be allowed to leave the port until bail has been settled.

(11) ENFORCEMENT OF FOREIGN JUDGMENTS

B11.1 Without prejudice to what is prescribed in treaties, conventions, European Union (EU) Regulations, and special laws, foreign judgments may only serve as an executory title after being reviewed and confirmed by a competent Portuguese court.

B11.2 As part of the Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters 1968 and as an EU Member State (bound by EC Regulation No. 44/2001 dated 22 December 2000, and later recast by EU Regulation No. 1215/2012, dated 12 December 2012), it is admissible that judgments ruled by the other members of the Convention are immediately recognized without the need for any further procedure. It is not possible to have foreign judgments reviewed on their merits.

B11.3 If the judgment was rendered in any country that has signed the New York Convention, the only purpose of the recognition procedure will be to analyse the judgment in order to find if any of the recognition-refusal causes referred in Article V of the Convention apply to the award.

B11.4 On the other hand, if the judgment was rendered in a country not bound by the regulation or the New York Convention, the causes of non-enforcement under Portuguese law are very similar to those prescribed in those documents (Chapter III, section I of the regulation/Article V of the Convention). In this case, the petition for the recognition is filed with a Second Instance Court, and it must be presented – in any case – with the documents referred to in Article IV of the Convention. The defendant may answer within fifteen days and the plaintiff may reply in ten days. The grounds for the opposition are, in general, those prescribed in Article V of the Convention.

B11.5 As for enforcement of foreign judgments within the EU, it must be said that so long as the executory strength of a certain judgment has been declared by the country of origin, on request of one of the parties, the judgment may then be executed in the foreign country.

B11.6 The aforementioned request must be presented at the court or the competent authority as indicated in Attachment II of the EU Regulation. The territorially competent court is that of the domicile of the debtor or that of the place where the goods to be seized are located.

(12) ENFORCEMENT OF FOREIGN/DOMESTIC ARBITRATION AWARDS

B12.1 The proceedings are entirely similar to those described in Part A, section 11. Nevertheless, Article 47 of the Arbitration Law sets out additional formal requirements for the enforcement of arbitration award, such as the provision of the original award or a certified copy thereof and, if not written in Portuguese, a certified translation into that language.

B12.2 Once deposited, an award rendered in Portugal (provided that no appeal, in which a suspensive effect was approved by the judge, has been filed) has no other obstacle existing to its enforcement.

B12.3 The enforcement obeys the provisions of the Portuguese Procedural Rules regarding the enforcement of Judicial Court decisions. Those rules still allow some opposition procedures to the enforcement (with very strict grounds), but, in general, those procedures are not capable to stop the enforcement procedure unless bail is offered.

