

## I. INTRODUCTION

As a general rule, individual employment contracts are not subject to written form or to a defined duration, except in certain specific cases provided in the law. There are some types of contracts that have to be in writing, such as part-time work contracts, fixed or unfixed term employment contracts, intermittent contracts, employment contracts for foreign employees etc..

The basic duties and rights of an employee under an individual employment contract are defined by law and the main principles are guaranteed by the Portuguese Constitution.

An employment contract can be with or without a reference to a specific duration, although fixed term contracts are tightly regulated.

Regarding the duration of the employment contracts, they can be divided into the following categories:

- i) Permanent contract or *open-ended* employment, which can be either entered into in written form or not;
- ii) Fixed term contract – subject to written form;
- iii) Indefinite term contract – subject to written form;
- iv) Intermittent employment contracts subject to written form; - Specific for companies that carry on their business in an intermittent way: work will be interrupted by one or more periods of inactivity. The beginning and end of each period of employment must be defined; the period worked cannot be less than 6 months of full-time work per year, of which at least 4 must be consecutive.

### **Trial Period**

The trial period is the first: a) 90 days of employment for most employees; b) 180 days of employment for employees that have a position of great technical complexity or responsibility; c) 240 days of employment for directors and top managers.

For fixed term contracts, the trial period is 15 days where the contract is for less than 6 months or where the contract is for an uncertain term, not expected to exceed 6 months or 30 days, in any other case.

The professional training period is included in the trial period, provided it does not exceed half of the duration of the trial period. Absences, even when justified, including leave or excuses from work suspend the trial period.

The trial period can be excluded under the individual employment contract or reduced under the individual or collective employment contract. The trial period may also be reduced when the same employee was previously hired under another type of contract for the same position.

During the trial period, unless otherwise agreed, either party may terminate the contract without prior notice and without evidence of just cause, no compensation being due. However, where the trial period has lasted for more than 60 or 120 days, the employer may rescind with, respectively, 7 or 15 days' notice.

## **2. THE DIFFERENT TYPES OF EMPLOYMENT CONTRACTS AND THEIR TERMINATION**

### **2.1 THE PERMANENT OR OPEN-ENDED EMPLOYMENT CONTRACT**

As a general rule, this is the main type of Employment Contract and the employer cannot terminate it at its sole discretion.

Apart from the cases where the permanent employment contract expires due to the impossibility of the employee continuing to provide services or of the employer continuing to receive them, or the employee retiring due to old age or disability, the other forms of termination of the contract are strictly governed by law.

#### **2.1.1 Forms of Termination**

##### **Mutual agreement**

The employee and the employer may jointly terminate the contract, provided this is done in writing and the agreement is signed by both parties. The employee may revoke the termination agreement by written notification addressed to the employer within a period of 7 days of signature of the termination agreement, except if the agreement was duly dated and signed in the presence of a notary public. The employee at the same time has to make available to the employer the total severance paid as a result of the termination of the labour contract.

##### **Termination based on just cause/dismissal**

Dismissal may be said to have been based on a just cause when there is a culpable behaviour on the part of the employee, which, because of its seriousness and derived consequences, makes the continuation of the employment relationship immediately impossible in practice.

The Labour Statute lists various situations which fall within the concept of just cause, namely failure to abide by legitimate orders given by superiors or infringement of rights and guarantees of other employees.

To verify a just cause in each particular case, it is necessary to demonstrate not only the occurrence of one of the foreseen forms of behaviour, but also to prove that those actions have resulted in the practical impossibility of the employment relationship lasting.

The burden of proof of dismissal for a just cause always falls upon the employer.

Dismissal for a just cause must be carried out in accordance with a strict legal procedure which gives the employee involved an opportunity to respond to the allegations made. If this process does not take place, the dismissal will be considered null and void.

### **Individual Redundancy**

An employee may also be made redundant if they are unable to keep up with changes arising out of structural, technical or market changes or if there is a proven reduction in the company's business caused by declining demand or changes in production techniques, or the permanent closure of the company or part of it due to financial problems.

### **Termination by the employee**

An employee may also terminate the contract immediately for a just cause, if, for example, they are not paid their salary on time or their dignity has been seriously infringed. After 60 days without pay, the employee has the right to terminate the contract immediately and also has the right to receive compensation.

The rescission must be in writing, and must provide details of the reasons behind it, and it must be delivered within 30 days of the relevant facts being known.

Where the contract was rescinded due to specific circumstances set out in law, the employee is entitled to compensation corresponding to 15 up to 45 days' pay for each year of work, with a minimum of three months' pay.

The employee may also rescind the contract without just cause where this is communicated in writing to the employer with 30 or 60 days' notice, depending on whether the contract lasted for less than two years or for two years or more.

### **2.1.2 Unlawful/Unfair Dismissal**

The unlawfulness of the dismissal, whether individual or collective, can only be declared by a court as a result of a law suit filed by the employee.

A dismissal or individual redundancy may be deemed unlawful or unfair if it fails to observe the proper procedure, or it is motivated by political, ideological or religious considerations or fails to meet the criteria of a "just cause".

The employee may challenge the dismissal by submitting an official application form before the competent court, within 60 days after the communication of the dismissal or after the date of termination of his/ her employment contract.

In the case of a collective dismissal, that period is extended to six months and no official application form is applicable.

Apart from the said limitation period to challenge the dismissal, the Portuguese labour code also states that all claims arising from the contract of employment and its breach or termination, whether belonging to employer or employee, are subject to a limitation period of one year from the date on which the contract is terminated.

A ruling of the Labour Court declaring that the dismissal was unlawful/unfair has the following effects: the termination is invalid and the employment contract therefore remains in force; applicants are entitled to receive the pay that they would otherwise have received from the date

of dismissal up to the date of the ruling; and applicants are entitled to reinstatement with all their rights and guarantees unaffected. Employees can opt for compensation instead of reinstatement and compensation amounts to 15 to 45 days' pay for each year of work subject to a minimum of three months' pay.

## 2.2 FIXED TERM EMPLOYMENT CONTRACT

A fixed term contract is only allowed in the case of a temporary need of the employer and it can only last for the period which is strictly necessary to satisfy such a need. The fixed term contract is only allowed in the following cases:

- a) Direct or indirect replacement of an absent employee who, for any reason, is temporarily unable to work;
- b) Temporary direct or indirect replacement of a dismissed employee with a pending law suit against the employer challenging the legality of his/her dismissal;
- c) Direct or indirect replacement of an employee taking an unpaid leave of absence;
- d) Replacement of a full-time employee who for a certain period will only be working part-time;
- e) Seasonal or other activities whose yearly production cycles present irregularities due to the structural nature of the market, including the supply of raw materials;
- f) Exceptional increase in the employer's activity;
- g) Occasional tasks or precisely defined short-term services;
- h) Execution, direction and supervision of civil construction work, industrial repair and assembly, or other project or activity precisely defined and with a temporary nature;
- i) Launch of new activities of an uncertain duration as well as the beginning of the activity of a new company or establishment with fewer than 750 employees;
- j) Workers seeking their first job or people who have been unemployed for a long period, or other persons specifically designated in the context of a political employment strategy.

The fixed term contract must specify the following items:

- Name and address of employer and employee;
- Object of the contract - functions of the employee and his salary;
- Place where the work should be performed and normal duration of it;
- Date of commencement of effects of the contract;
- Indication of the contract's term (duration) and the ground for it;
- Date the contract was entered into.

The fixed term contract will be considered to be for an indefinite period if:

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<sup>1</sup> In case of unlawful dismissal the first instance must be notified, by the court, to the Social Security Services. When more than 12 months have elapsed since the date of presentation of the application form, Social Security shall be responsible for the payment of the salaries to the employee with respect to such period. This is a new provision introduced by the legislative reform of 2009, that will avoid the employer being overcharged due to the slowness of court decisions.

- It is not written down;
- It is not signed by both parties;
- It does not evidence the dates the contract was entered into and of commencement;
- It does not evidence the ground for being a fixed term contract or its duration or the ground presented and the explanation of its duration are considered to be insufficient.

The temporary restrictions on fixed term employment contracts are determined as follows:

- The contract must be for at least 6 months unless it results from one of the factors outlined in a) to g) above, in which case it may be entered into for a shorter period;
- The fixed term employment contract, cannot be renewed more than 3 times and the total duration cannot exceed 3 years;
- In cases included in i) and j) above - the total duration of the contract, including its renewals, may not be longer than 180 days and 2 years respectively.

The parties may establish in the contract that it will not be subject to renewal. If the parties do not foresee such a clause, the contract is automatically renewed for an equal period of time and subject to the same material conditions as the initial one.

The renewed contracts and the initial one are considered to be a single contract and if any of the limits are exceeded, the contract becomes one of an unlimited period.

The termination of a fixed term contract occurs when the agreed term comes to an end and provided that the employer or the employee has given 15 or 8 days' notice, respectively.

In the event of unlawful dismissal of the employee, the employer must pay compensation for all losses related thereto in an amount equivalent to the pay that the employee ceased to receive from the date of dismissal up to the end of the term of the contract, or, should the term of the contract expire at a later date, to the end of the limitation period applicable to the Court decision concerned.

### **2.3 INDEFINITE TERM EMPLOYMENT CONTRACT**

This type of contract is only allowed in cases a) to c) or e) to h) above.

The employment contract lasts as long as the absent employee needs to be replaced or until the end of the temporary activity, task or work which required the indefinite term contract. The total duration of the indefinite term employment contract, cannot exceed 6 years

An indefinite term contract becomes a permanent contract if the employee continues to work beyond the notice period or for 15 days after the end of the activity, task or work for which he was contracted or after the return of the employee he was replacing.

In the case of contracts with an indefinite term, the employer must give seven days', thirty days' or sixty days' notice, depending on whether the contract lasted for six months, for more than six months and less than one year or for over two years.

### **2.4 THE TEMPORARY EMPLOYMENT CONTRACT**

The legal definition designates the situation where one company, in return for a fee, places one or more workers temporarily at the disposal of another user company.

The setting-up and operation of temporary-employment agencies are regulated in fairly stringent terms, (Decree law 260/2009 of the 25<sup>th</sup> of September) depending on a series of formalities such as the need to obtain a licence and to deposit a sum of money as a guarantee (200 minimum wages plus corresponding social contributions to social security).

Technically, the relationship is established through the conclusion of two separate contracts: a contract for services between the lessor company (temporary-employment agency) and the user, in which the former undertakes, in return for a fee, to place workers at the disposal of the latter; and a contract of employment concluded between the lessor and the temporary worker being hired out, the special nature of which lies in the fact that the worker undertakes to perform work in user companies.

Most of the situations in which temporary contracts can be entered into, are coincident to the motives and circumstances that are foreseen for the fixed or indefinite term employment contracts. Maximum limits of six to twelve months are imposed on the use of such workers.

### **3. SOCIAL CONTRIBUTIONS AND DIFFERENT KINDS OF BENEFITS IN PORTUGAL**

#### **3.1 INTRODUCTION TO THE PORTUGUESE SOCIAL SECURITY SYSTEM**

##### **3.1.1 Characteristics**

According to the Social Security Basic Law currently in force (Law N. 4/2007, of 20 January), the Social Security System comprises:

- (i) Essential citizenship protection (Sistema de protecção social de cidadania), funded by national solidarity, which includes economic support and benefits to fight poverty, subject to conditions concerning the resources and income of the potential beneficiaries;
- (ii) Providential Protection (Sistema Previdencial) funded on a contributory scheme, based on contribution-sharing by employers' and employees' contributions;
- (iii) Complementary Protection (Sistema Complementar) – which includes a public capitalization system and complementary regimes of individual and collective initiative (aims to increase protection of the benefits guaranteed by the welfare subsystem, and are optional for both employers and individuals).

##### **3.1.2 Social Security Affiliation**

Affiliation is carried out by the social security offices of the “Instituto de Segurança Social” (Institute for Social Security) of the location of the employer’s head office or establishment.

##### **Communication of the beginning, suspension or termination of activity**

Since March 2007 such communication (formerly addressed by the employers to the Social

Security offices) should be addressed by the Tax Administration offices<sup>2</sup> to the Institute for Social Security.

Social security affiliation is for life and it is indispensable to apply for benefits made available by the social security system (such as unemployment benefits, sickness compensation, old age pension, etc).

Employers must register the workers who start to work for them before the end of the month following the beginning of activity and the employee affiliation becomes effective from the 1<sup>st</sup> day of the month of the beginning of activity.

#### **Admission of new employees**

Employers must inform the social security services of the admission of new workers, as a general rule, before the end of the first half of the normal daily work period. Such communication can be done by any written means, including through social security Internet online services.

The employers must also deliver to the new employees a statement that includes: the date of the new employees' admission; the social security number and the tax payer number of the employer; employees' registration with social security.

The employers may also ask the new employees to present them with evidence of their enrolment with social security, through a written statement or a social security statement available at Social Security Services online

The employees are also obliged to inform the social security office of the link to a new employer within 24 hours of the beginning of the employment contract. Such communication can be done by any written means, including through social security Internet on line services.

#### **Effects of non-fulfilment of affiliation obligations**

The failure by the employers to communicate the admission of new employees entails the payment of contributions from the 1<sup>st</sup> day of the 6<sup>th</sup> month preceding the beginning of activity. Employers who are aware that they are hiring employees receiving sickness or unemployment benefits are responsible, together with the employee, for reimbursing social security of benefits unduly paid.

A failure to communicate this information by the employee entails the consequence that non-declared periods of work are not taken into account for the qualifying periods needed for granting of benefits.

The non-presentation of communication within the legal period may entail that only periods of work completed from the date of the delivery are taken into account unless contributions have been paid for former periods.

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<sup>2</sup> Communications on commencement, suspension or termination of activity to the tax authorities are mandatory

### **Self-Employed Persons Affiliation**

Communication of the commencement, suspension or termination of activity:

Since March 2007 such communication (formerly addressed by the Social Security offices) should be addressed by the Tax Administration offices <sup>3</sup>to the Institute for Social Security.

Affiliation is:

- Mandatory for self-employed individuals whose gross yearly income is higher than 6 times the value of IAS (*Indexation method for social supports, which since 2007 replaced the “national minimum salary” as a reference for calculating pensions, benefits and contributions; for 2010 IAS amounts to € 419,22*);
- Optional or Voluntary for those self-employed persons whose gross yearly income is equal to or lower than 6 times the value of IAS and not mandatory for first time self-employed persons, during a period of 2 months.

### **Statement of Earnings and Payment of contributions**

Declaration of earnings must be delivered to social security services by the employer (an official form must be filled in to that end). For employers with more than 10 employees, it is mandatory to submit the declaration of earnings via the internet application “social security online”.

Employers are required to pay the social contributions of their employees to the Social Security Authorities. Such contributions have a mandatory nature and are calculated by applying the global contribution rate to the employee’s actual remuneration, which constitutes the basis of the contribution calculation.

The declaration of remuneration and the payment of the respective contributions must be made on a monthly basis – between 1<sup>st</sup> and the 15<sup>th</sup> day of the following month to which the remuneration and contributions refer.

For most employees (general regime), the overall contribution rate is 34,75% - of which 23,75% is paid by the employer and 11% is deducted at source by the employer from the gross remuneration of the employee and then delivered to the social security services. <sup>4</sup>

For members of corporate managing bodies, the overall contribution rate is 31,25%: 21.25% (employer) and 10% (employee).

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<sup>3</sup> Communications on commencement, suspension or termination of activity to the tax authorities are mandatory

<sup>4</sup> The provisions of the “Contributive Code” reduced the employer’s contribution to 22, 75% in case of contracts for indefinite periods and increased the rate to 26,75% in case of term contracts. This Code also introduces new rules for taxation of earnings which, until now, were exempted from social security contributions, such as expense allowances, travel bonus, use of the employer’s vehicles, bonuses, compensation for dismissals etc. This Code was approved and was due to enter into force in January 2010, but has been postponed to 2011 in order to avoid potential negative impact on the national economy, due to the world crisis.

For some special types of employees, the contribution rates may vary (e.g domestic workers, members of churches or religious entities, members of aid organizations, solidarity institutions, teachers, civil servants).

The contributive obligation may also be temporarily reduced or not applicable as an incentive to promote employment in specific activities and regions of the country (for instance, in the context of recovery of inland regions) and among some layers of the population, such as long-term unemployed persons, first job seekers, prisoners, etc.

### **Sanctions**

Failure or delay in delivering statements of commencement and termination of activity; failure or delay in sending the declaration of earnings, false statements which may result in a coverage by a social security scheme without meeting the conditions prescribed by law, may constitute a breach, subject to a fine.

Conduct of entities (employers or employees) or other beneficiaries resulting i) in total or partial non-payment, in receiving total or partial undue social security benefits with the intention of obtaining for themselves or others an illegal advantage higher than € 7500 and ii) deduction from earnings of employees or of members of social bodies the amount of contributions legally due and not delivered, totally or partially, to social security may constitute the crime of fraud, qualified fraud or crime of misappropriation of funds, punishable by imprisonment of up to 3 years or a fine of up to 360 days or imprisonment from 1 to 5 years (individuals) or fine from 240 to 1200 days (corporate bodies).

Sanctions may be applicable if a period of 90 days has passed after the date for legal delivery of the amount.

Conduct of entities (employers or employees) or other beneficiaries resulting in i) total or partial non-payment, in receiving total or partial undue social security benefits with the intention of obtaining for themselves or others an illegal advantage higher than € 7500 and in ii) deduction from earnings of employees or of members of social bodies the amount of contributions legally due and not delivered, totally or partially, to social security may constitute the crime of fraud, qualified fraud or crime of misappropriation of funds, punishable by imprisonment of up to 3 years (individuals) or a fine of up to 360 days (corporate bodies) or imprisonment from 1 to 5 years (individuals) or fine from 240 to 1200 days (corporate bodies). Each day of fine corresponds to an amount that varies in accordance with the economic situation of the convicted entity.

Sanctions may be applicable if a period of 90 days has passed after the date for legal delivery of the amount.

### 3.2 THE STATE PENSION SCHEME

#### Old-age Pension

The Portuguese law grants a monthly payment (the state pension) to beneficiaries of the social security system who, among other legal requirements, have reached the minimum age of 65 years and have completed a qualifying period of 15 continuous or non-continuous calendar years.

For the completion of the qualifying period, the only years to be taken into account will be those years where at least 120 days of work with registered remuneration were undertaken. Both 13th and 14th month allowance are payable every July and December and equal the monthly amount of the pension.

Once the qualifying requirements have been verified, the retirement will not take place automatically but only if and when the employee so requests. Upon this request the law foresees the automatic termination of the contract through lapse. The same applies to the employment contract in force between the parties when the employee reaches 70 years of age and has not applied for retirement yet.

For the purposes of granting the pension, the retirement is viewed purely as the end of a person's formal career, and in Portuguese law, retirement does not imply necessarily the cessation of professional activities. In fact, the old-age pension may be freely cumulated with work earnings, and with other pensions or social benefits.

The old age pension awards the beneficiaries, covered by the general social security scheme, a lifetime pension.

The old age pension may be claimed by anticipation, before 65 years of age, provided that the applicant has a minimum age of 55 years and 30 calendar years with registered earnings (up to 55 years of age).

In this case, a reduction rate of 0,5% shall be applied for each month of anticipation until the applicant reaches 65 years of age.

If, at 55 years of age, the insured person has more than 30 calendar years with registered earnings relevant to the pension calculation, the number of anticipation months will be reduced by 12 months for each period of 3 years that exceeds those 30 calendar years.

The applicants that receive a reduced anticipated pension and have ceased activity may continue to pay contributions voluntarily in order to increase the pension amount.

Old age pensioners have the right to a minimum amount of pension that will vary in accordance with the length of their former working period. If the amount of the pension, after the calculation, does not reach that minimum level, a social supplement is awarded, which cannot be higher than the non-contributory social pension scheme.

The pension calculation is based on the contribution periods completed by the person concerned. As from 01/01/2008, a "sustainability factor" will be applied which will consist of a calculation formula based on the relation between the average life expectancy in the year 2006 and the one that will occur in the year before the pension claim.

The pension amounts are calculated according to the following formula:

Pension Amount	Reference Earnings (RE)	Global Formation Rate	Sustainability Factor
=	X	X	(SF)
Reference Earnings (RE)	TE (nxI4)	TE = Total annual earnings (after they have been adjusted) (a) of the whole insurance career (b) n = Number of calendar years with registered earnings, up to the limit of 40 (c)	
=			
Pension Global Formation Rate =	Annual Formation Rate 2,3% to 2%	Number of calendar years with registered earnings relevant to the pension calculation	
Sustainability Factor (SF) =	X <u>ALE 2006</u> ALE year I-I	ALE 2006 = average life expectancy at the age of 65 in 2006 ALE year I-I = average life expectancy at the age of 65, established for the year before the pension begins (d)	

- (a) The annual earnings registered in the social security and taken into account by the reference earnings calculation – (RE) are adjusted according to the Consumer Price Index – (CPI) without taking into account the living expenses (home factor). For the purpose of calculating the pension according to the whole insurance career, the earning amounts registered between 01.01.2002 and 31.12.2011 are adjusted by applying an index resulting from the weighing of 75% of the CPI, without taking into account the home factor, and of 25% of the average evolution of the earnings which underlie the contributions stated to the social security, whenever this evolution is higher than the CPI, without taking into account the home factor. The annual adjustment index cannot be higher than the CPI, without considering the home factor, plus 0,5%.  
The adjustment is made by applying the coefficient, corresponding to each one of the years considered, to the annual earnings taken into account for the reference earnings calculation. The indexes for the calculation basis adjustment will be reassessed until 31.12.2011;
- (b) When the earnings record is too old and therefore it is not technically possible to determine the earnings as indicated, the flat rate earnings amounts established in appropriate legislation will be taken into account; nevertheless, the insured persons may present evidence on the earnings amounts that were effectively received and subject to contributions payment to the social security;

- (c) For the purposes of calculating the reference earnings, whenever the number of calendar years with registered earnings is higher than 40, the best 40 annual earnings will be taken into account, after they have been adjusted;
- (d) The indicator of the average life expectancy at the age of 65, for each year, is published by the Instituto Nacional de Estatística (National Institute of Statistics).

Source: Social Security online information

### 3.3 THE UNEMPLOYMENT BENEFITS SCHEME

(Decree law 220/2006 of 3<sup>rd</sup> of November)

#### 3.3.1 Characteristics

The **unemployment protection system** comprises the following benefits:

- Unemployment Benefits;
- Unemployment Social Benefits – initial or following the Unemployment Benefits;
- Partial Unemployment Benefits.

The applicant is entitled to apply in advance for the total amount of the unemployment benefits with a view to creating self-employment (subject to proof of effective viability of the project). Under certain circumstances it is also possible: to accumulate partial unemployment benefits with part-time work; totally or partially suspend the unemployment benefits while attending a vocational training course with payment of compensation; maintain the unemployment benefits during occupational activities promoted by the Employment Centres.

#### 3.3.2 Qualifying Requirements

The entitlement to unemployment benefits depends on the following cumulative circumstances:

- to be involuntary unemployed;
- to have been bound by an employment contract;
- to be in the situation of a total lack of employment<sup>5</sup>;
- to be capable of and available for work;
- to be enrolled as a job seeker with the Employment Services;
- to fulfil the qualifying period : i.e. to have completed, at least 450 days with registered earnings within the 24 months immediately prior to the date of unemployment<sup>6</sup>.

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<sup>5</sup> This condition is considered to be fulfilled in the situations where there is accumulation of an employed activity with self-employment and the beneficiary's monthly income does not exceed 50% of the value of "IAS" Indexante de Apoios Sociais – (Social Support Index) which amounts, for 2010, to €419,22

<sup>6</sup> Exceptional regime created to fight the effects of economic crisis: qualifying period is reduced to 365 days, between 1st January and 31st December 2010.(Applies also to pending unemployment benefits requests in January 2010 )

### **Unemployment Social Benefits**

In cases where someone has exhausted their entitlement period for unemployment benefits, unemployment social benefits will be paid following the unemployment benefit and/or where someone has completed, at least 180 days with registered earnings within the 12 months immediately prior to the date of unemployment.

In both situations, the beneficiary's monthly income per person of the household must be lower than 110% of the value of the IAS.

### **Partial Unemployment Benefit**

Applicable where the unemployed person has accepted a part-time employment contract and if the remuneration is lower than the amount of the respective unemployment benefit;

### **Special situations for the entitlement to unemployment benefit–**

Unemployment benefit may be granted in specific situations (e.g. Law n.º 105/2009 of September 14) which include dismissal (due to the suspension of the labour contract determined by the employer or due to the closure of the company for more than 15 days, situations of entrepreneurial crisis etc.) and/or in case of salaries in arrears.

### **3.3.3 Amounts and duration**

#### **Unemployment benefits**

The daily amount corresponds to 65% of the reference earnings and it is calculated on the basis of 30 days a month. Such reference earnings are defined as  $R/360$ , where R corresponds to the total registered earnings within the first twelve months prior to the second month preceding the date of unemployment.

Limits: cannot be lower than the value of I.A.S or the amount of the reference earnings if it is lower than IAS. Upper limit is three times the said IAS.

#### **Unemployment Social Benefit**

The daily amount is calculated with reference to IAS on the basis of 30 days a month.

100% or 80% of the IAS depending whether the applicant has a family or lives alone - If the amount resulting from these percentages exceeds the net amount of the reference earnings, the latter shall be applicable.

The reference earnings is defined as  $R/180$ , where R corresponds to the total registered earnings within the first six months prior to the second month preceding the date of unemployment.

#### **Partial Unemployment Benefit**

The amount corresponds to the difference between the unemployment benefit increased by 35% and the amount of earnings received for part-time work.

Unemployment Benefits are in general granted from the date of the application, nevertheless, the application form must be submitted within 90 days of the beginning of the involuntary unemployment situation.

The periods during which unemployment benefits and initial unemployment social benefits will be paid are defined in accordance with beneficiary's age and the number of months of registered earnings within the period immediately prior to the date of unemployment, as follows:

Age of the applicant	Number of months with registered earnings	Number of days during which the benefits are granted	Increase
Under 30	Up to 24	270	----- 30 days for every 5 years of registered earnings
	More than 24	360	
From 30 to 39	Up to 48	360	----- 30 days for every 5 years of registered earnings within the last 20 calendar years
	More than 48	540	
From 40 to 44	Up to 60	540	----- 30 days for every 5 years of registered earnings within the last 20 calendar years
	More than 60	720	
From 45 or more	Up to 72	720	----- 60 days for every 5 years of registered earnings within the last 20 calendar years
	More than 72	900	

## **4. FOREIGNERS WORKING IN PORTUGAL**

### **4.1 GENERAL RULES & FORMALITIES**

Currently, the regime adopted by the Labour Code and by a set of legislation adopted and regularly amended since 1998 provides that foreign workers have the exact same rights and privileges, namely regarding remunerations and social benefits, as any other Portuguese worker.

An employment contract with a foreigner - non national of the countries of the European Union – must be in writing, signed in duplicate and contain the information and conditions required by law: it should clearly indicate the date of beginning and end of the contractual relation, the place and time where the work is going to be performed, the functions that the worker is hired for, the remuneration and the way it will be paid. As a rule, a trial period must be expressly excluded by the employer.

As an annex to the employment contract, the parties have to present a copy of the legal document that enables the foreign citizen to live and work in the country. The foreign employee must also sign a statement, appointing the beneficiary (ies) of the relevant insurance in case of death caused by an accident at work.

The employer is required to give prior notice of the signing of the contract to the Labour Ministry Inspection Services (Autoridade para as Condições do Trabalho, “ACT”) and communicate the termination of such contract to the same entity within 15 days thereafter.

### **4.2 EU CITIZENS AND OTHER CITIZENS WITH SPECIAL STATUS**

The general rules indicated above do not apply to nationals of EU Member States and members of their families who benefit from the European Union principles and rules regarding the right to work and establishment within the European space.

The Act n° 37/2006 of the 9th of August ( in accordance with Directive n.º 2004/38/CE of 29 of April) determines that the initial entry of foreign citizens from European Union countries in Portugal only requires the presentation of their identity documents or passports. For a period of residence of up to three months there are no conditions and formalities other than the need to hold a valid identity document or passport.

Nationals of EU Member States who intend to live in Portugal for over three months must register within 30 days of the end of their first three months in the country at the Town Council (Municipality) in which they live. These services will issue a registration certificate valid for a maximum of five years.

A valid identity card or passport is required for issuing the certificate of registration and a sworn declaration that the applicant:

- Works under a contract of employment or is self-employed in Portugal, or
- has sufficient resources for himself and for his family, or
- is registered in a public or private education establishment and has sufficient resources for themselves and their family.

Nationals of EU Member States who live in Portugal as family members must ask the Town Council (Municipality) where they live for a registration certificate. To that end, a valid identity

card or passport, a document proving the family relationship and the registration certificate of the person they are going to join must be presented.

Family members of nationals of an EU Member State who are nationals of a third country must apply for a residence card from the Immigration Services (SEF- Serviço de Estrangeiros e Fronteiras) in the area where they live within 30 days of the end of their first three months in Portugal. To that end, a valid identity card or passport, a document proving the family relationship and the registration certificate of the person they are going to join must be presented.

As a rule, after a maximum of five years these nationals and their family members will be entitled to permanent residence.

Also, citizens from countries which have signed Treaties for the Equal Treatment of their nationals with Portugal (such is the case of Brasil and some other Portuguese speaking countries) are not regarded, in some aspects, as foreign workers and benefit from simpler regimes.

### **4.3 VISAS FOR FOREIGNERS**

The legal framework governing the entry, presence, departure and removal of foreigners to, in and from Portugal is defined by the 23/2007 Act of the 4th July and Regulatory Decree n.º 84/2007 of the 5 November.

This legislation contains a set of provisions which seek to improve the control of migrant movements, and at the same time, provisions that aim to contribute to a positive development of the employment opportunities market, making the movement of technical staff, teachers, professions of scientific areas, including students easier.

To enter into Portugal, foreign nationals must hold a valid Visa, appropriate for the purpose of the journey – such as stop over visa, transit visa, short stay visa, temporary stay visa and residency visa for obtaining residency permit.

Such visas are granted abroad, usually at the Portuguese embassy or consular services in the country of origin – after the compliance of several formalities and normally between 30 (temporary stay visa) and 60 (residence visa) days after the receipt of the visa application.

#### **4.3.1 Visa For Purposes of Subordinated Professional Activity**

The granting of a visa to obtain a residence permit for purposes of subordinated professional activity is dependent on the existence of job opportunities.

Yearly, based on a preliminary assessment of the Permanent Commission for Social Concertation the Council of Ministers defines a quota of “job opportunities” which are presumed not to have been taken by Portuguese nationals, by workers who are nationals of European Union Member States, by European Economic Space nationals, by citizens of third States with which the European Union has signed a free movement of persons agreement, as well as by workers who are third-country nationals and legally reside in Portugal.

Such decision of the council of Ministers may exclude specific sectors or activities that do not require further workers, provided the market circumstances so indicate.

The list of employment opportunities- which is made available via the Institute for Employment and Professional Training to the consular services - will define the number of “residence visas for employment purposes” that can be granted each year. For the year 2010, a Ministry’s Resolution dated 26 of March (RCM n.º 21/2010) defined a limit of 3800 visas.

Temporary stay visas and residence visas are only valid for the Portuguese territory and the issue is subject to previous authorisation of the Foreigner Services Department (SEF).

Temporary stay visas as well as residence visas may be granted to foreign nationals who wish to work in Portugal, provided they have an employment contract or an employment promissory agreement (in the context of **dependent professional services**), or a contract to provide services (in the context of an Independent Professional Activity), among several other requirements.

#### 4.3.2 Temporary Stay and Residence Visas

The residence visa is granted to foreign citizens who wish to obtain a residence permit, whether they are planning to work here or not. The issuing of this visa depends on the purpose and viability of the permanency of the foreign citizen in the country, on the subsistence means he is able to present (e.g. a copy of a promissory labour contract) and on the conditions of residence the applicant has (e.g. a copy of a lease agreement). The residence visa is the adequate pass for the foreign citizen living and working in Portugal to apply for a residence permit as well as to request the entry in Portugal of his own family if he obtains the residence permit. The residence visa allows the foreign citizen to live and work in Portugal up to four months, during which time he must apply for a residence permit.

The temporary stay visa is an adequate pass for the foreign citizen living and working in Portugal for an estimated period of 6 months.

#### 4.3.3 Residence Permits

There are two types of residence permits:

- Temporary residence permits which are valid for a period of one year and that may be renewed for successive periods of two years;
- Permanent residence permits which do not have a time limit but should be renewed every five years or whenever there are changes to the identification of its holder (e.g. civil state). The issuing of permanent residence permits requires that (i) the applicant has been legally living in Portugal for at least 5 years, (ii) evidence of basic Portuguese language knowledge.

The issuing of residence permits and their renewals also depend on the following conditions:

- The applicant owns a valid residence visa or a temporary residence permit for at least five years;
- There are no facts that, if known by authorities, would have prevented the applicant from obtaining a residence visa;
- The applicant is physically in Portugal;

- The applicant has complied with the Portuguese legal rules, namely those that concern tax and social security duties;
- The applicant is able to prove that he has means of subsistence (usually made by producing a copy of the labour contract and declaration of the employer);
- The applicant is able to prove that he has a place to live (for instance, through a copy of the lease agreement);
- During the period of the stay, the applicant has not been convicted by court to imprisonment for criminal offences for more than 1 year.

#### 4.3.4 Previous Job Offer

The hiring and work of foreign citizens in Portugal can be preceded by a job offer promoted by the employer. In this case, the future employer has to first present the job offer to the competent services of the Labour Ministry (Institute for Employment and Professional Training) and request for a positive opinion of the services regarding the viability of hiring a foreign worker, issued within 30 days. Where there are European citizens or non-European citizens legally residing in Portugal who fulfil the conditions and skills required for the job, the vacancy should preferably be occupied by them.

#### 4.3.5 Obtaining visas in the case of Scientific, Education areas and Highly Skilled foreign workers

The following documents and conditions must be presented:

- Proof they have been hired as collaborators (either as dependent or independent employees) at a research centre duly recognized by the Ministry of Science Technology and Higher Education or in a Higher Education Institution;
- Hold a work contract or a written proposal to the same effect, or a contract for the provision of teaching services or for performing a Highly Skilled Activity in Portugal including those at the service of privately owned companies.

The applicant may request a Temporary Stay Visa if the period of activity is less than one year or a Residence Visa if the applicant intends to apply for a residence permit in Portugal.

In addition to the visa application, which must be delivered by the interested party to the respective consulate, the future employer may follow a complementary procedure to speed up the visa process, requiring, upon justification, the intervention of the Secretary-general of the Ministry of Science, Technology and Higher Education and the Directorate General of Consular Affairs.

Once the applicant is in Portuguese territory, the following procedure should be observed (procedure under the control of SEF):

- Holders of a **Temporary Stay Visa** may apply for an extension of stay, for up to one year. This may be extended, once, for the same period of time.

- Holders of a **Residence Visa**, must, within a period of 4 months in national territory, submit a request for a Temporary Residence Permit. If necessary, the applicant may later apply for a Renewal of the Temporary Residence Permit.

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