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Franchising in Portugal

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General framework

Business climate and recent developments

What is the extent of franchise business in your jurisdiction, including any particular franchise-heavy sectors and notable recent developments?

In 2016, according to the 22nd Franchising Census, 574 franchise brands were operating in Portugal, providing 2.79% of the gross domestic product and 2.55% of total employment. Service-sector businesses, particularly those in food retail, represented 57.3% of all franchised business.

Regulation

Are there any franchising-specific laws in your jurisdiction? What other legal regimes apply?

There are no franchising-specific laws in Portugal. Franchise agreements are governed by the general principles of contract law and there are no special legal requirements necessary for them to be legally enforceable.

Franchise agreements are atypical agreements, meaning that the law foresees no specific regulations or rules in that regard.

However, franchisors should consider that Portuguese scholars and the courts deem that the agency's termination and clientele indemnification legal regime apply to franchise agreements, as long as certain elements of the agency agreements are present in the franchising relationship (ie, assuming it is possible to provide evidence that the franchisee's contribution to the business is similar to that of the agent, in terms of attracting clients).

Franchisors should also consider the effect of other general laws on commercial relationships (eg, IP law, employment law, competition law and data protection law).

EU Regulation 2790/1999 (December 22 1999) applied to this issue, pursuant to Article 81.3 of the Treaty on Categories of Vertical Agreements and Concerted Practices, but it expired on May 31 2010.

Is there a legal definition of 'franchise'?

There is no legal definition of ‘franchise’ in Portugal. Franchise agreements are atypical agreements governed by the general principles and rules of contract law and there are no special legal requirements necessary for them to be legally enforceable.

Scholars and the courts have provided various definitions of ‘franchise agreement’. One of the Supreme Court decisions states that:

“Under the franchise agreement, the franchisor grants to the franchisee the use, in a particular geographical zone, of trademarks, names, logo, manufacturing processes, commercial techniques, know how under the control and supervision of the Franchisor and against payment of a consideration, usually the ‘initial fee’ and the ‘royalties’.”

Are there any specific regulatory implications for foreign franchisors seeking to expand into your jurisdiction?

No, there are no specific regulatory implications for foreign franchisors seeking to expand into Portugal. Europe’s lack of a homogenous approach to pre-contractual disclosure or ongoing relationships is problematic and could create a technical barrier to cross-border franchises within the European Union.

Are any regulatory reforms envisaged or underway that affect franchises?

In September 2016 the European Parliament produced a draft report recommending the adoption of a European legal act regarding franchises.

Franchise models

Which models and company forms are commonly used for franchises in your jurisdiction? Are there any restrictions or requirements as to which models and forms may be used?

The franchise contract is an atypical contract in Portugal. There are no restrictions or requirements regarding which models or forms can be used. Franchise agreements can even be entered into orally.

Industry associations

Are there any national or regional franchising associations? If so, is membership mandatory and what operational codes and guidelines apply?

The main franchising association is the Association of Franchising. Membership is not mandatory and it applies the European Code of Ethics for Franchising.

Franchise agreements

Common features and contractual requirements

What are the common elements of franchise agreements in your jurisdiction? Do any requirements or restrictions on contractual provisions apply?

According to the European Code of Ethics, a franchise agreement should include the following terms and conditions:

- the rights granted to the franchisor;
- the rights granted to the franchisee;
- the franchisor’s IP rights, which should be established for a term at least as long as the term of the franchise agreement;
- the goods and services to be provided to the franchisee;

- the franchisor's obligations;
- the franchisee's obligations;
- the franchisee's terms of payment;
- the duration of the agreement, which should be long enough to allow franchisees to amortise their initial and subsequent investments specific to the franchise;
- the basis for any renewal of the agreement, including the notice required by each party;
- the terms on which the franchisee has the right to sell or transfer the franchised business as a going concern and the franchisor's possible pre-emption rights in this respect;
- provisions relevant to the use by the franchisee of the franchisor's distinctive signs, trade names, trademarks, service marks, store signs, logos or other distinguishing identification;
- the franchisor's right to adapt the franchise system to new or changed methods;
- provisions for termination of the agreement; and
- provisions for surrendering promptly on termination of the franchise agreement any tangible and intangible property belonging to the franchisor or other owner thereof.

The European Code of Ethics guidelines highlights the topics that should be addressed in franchise agreements. Such topics are not mandatory; however, precisely because there are no specific regulations or laws concerning franchise agreements, the parties must be very clear on certain matters and regulate them thoroughly in order to avoid future problems or pitfalls.

Are parties to a franchise agreement subject to an implied or explicit duty of good faith?

Yes, Articles 227 and 762 of the Civil Code establish a general duty of good faith in the negotiation of any contracts and in the performance of contracts.

Are franchise agreements subject to any formal or documentary requirements, including registration?

No. Franchise agreements are governed by the general principles of contract law and there are no special legal requirements necessary for them to be legally enforceable.

As such, franchise agreement can even be entered into orally: a written document is not required in order for the franchise agreement to be valid. However, given the complexity of such agreements and their international nature, franchise agreements are usually made in writing and thoroughly regulate important topics such as:

- each party's rights and obligations;
- territory (eg, exclusive or non-exclusive, and right of first refusal for adjoining territories);
- payment duties (eg, royalties and fees);
- IP rights and licences;
- know-how;
- purchase and sale of products;
- the franchise site, in particular whether:

o a franchisee must own the business premises or lease them; or

o the franchisee must hold the head lease or whether the franchisor can hold the head lease and sublet to the franchisee;

- operational aspects of the franchising and manual system, including:

o compliance with the system;

o the franchisor's specifications and the operating manual;

o sale of products and provision of services specified by franchisor;

o purchase of inventory;

o supplies and equipment from the franchisor or franchisor-approved suppliers;

o no alteration of business premises without franchisor's consent; and

o minimum levels of working capital and inventory;

- non-competition and confidentiality;
- insurance and indemnity;
- accounting, including:

o reports and how often they must be submitted;

o records; and

o financial statements and audits;

- sale and assignment, in particular:

o whether a franchisee can assign a franchise agreement at any time or only with franchisor's consent; or

o on what basis the franchisor can withhold consent;

- duration;
- termination and renewal of the agreement;
- events of default;
- effect of termination (eg, a franchisor's right to purchase the franchise business on termination);
- notices;
- applicable law; and
- settlement of disputes.

There is no formal requirement for a franchise agreement to be notarised. The language used in the agreement can be freely agreed between the parties.

Without prejudice, the franchisor and franchisee should keep in mind that licences to use trademarks and operate any other kind of registered IP right must be made in writing in accordance with Articles 30 to 32 of the Code of Industrial Property. Licences must be registered with the Industrial Property Authority in order to allow the franchisee to enforce such rights before third parties (assuming that the IP right is already registered in the franchisor's name). If the licences are not registered with the competent authority, the licence will affect only the parties to the franchise agreement.

The proposal of European Legal Act states that registration should not be required.

In the new Industrial Property Code, which will come into force on 1 July 2019, the above-mentioned Articles 30 to 32 will be articles 29.º to 31.º.

Due diligence

What due diligence should both parties undertake before entering into a franchising agreement?

Both the franchisor and franchisee should undertake a duty of care before entering into a franchise agreement.

The franchisor company should fully and extensively inform the potential franchisee about the franchisor, its business and business executives.

A potential franchisee should consider the following:

- the material terms of the franchise agreement;
- the direct and indirect costs of establishing and operating the franchise;
- financial performance;
- finance and working capital needs;
- competitors;
- litigation history, including any litigation between the franchisor and other franchisees;
- consent that may be required before a business can be operated legally;
- the number of franchisees by country, state or region;
- the number of franchisee terminations, non-renewals, transfers and other departures;
- rate at which the franchise is growing; and
- turnover (ie, how many franchisees are leaving the franchise – a high turnover could indicate a potential problem).

It is extremely beneficial for a potential franchisee to make contact with franchisees already operating within the system.

The franchisor should conduct due diligence regarding the franchisee's technical and financial capacity, experience and reputation.

Pre-contractual disclosure

Are franchisors subject to pre-contractual disclosure requirements? If so, do any exemptions apply? What remedies are available to franchisees in the event of breach of these requirements?

No legal requirements apply. Regarding good faith while negotiating contracts, Article 227 of the Civil Code may apply as a legal basis for liability and other general principles of contractual and civil law.

In practice, the general rule of Article 227 requiring any parties to an agreement to negotiate with good faith implies and ensures that:

- the franchisee should exercise due diligence before entering into the franchise contract; and
- the franchisor should disclose in good faith all the facts material to the franchisee's decision to enter into the franchise contract.

The European Code of Ethics for Franchising states that before signing any contract the franchisee should be given:

- written information on the agreement's purpose; and
- any consideration that the franchisee may be required to pay to the franchisor for expenses incurred during the pre-contract phase.

The pre-contract should define its term and include a termination clause. The franchisor can impose non-competition and confidentiality clauses to protect its know-how and identity.

Choice of law

May the parties freely choose the governing law of the franchise agreement?

Yes, the parties may freely choose the governing law of the franchise agreement and Portuguese courts will accept a choice of foreign law in a franchise agreement, provided that its application does not result in an infringement of Portuguese public policy.

However, Portuguese scholars and courts deem that in some situations the agency's termination and clientele indemnification legal regime apply to franchise agreements, as long as certain elements of the agency agreements are present in such franchise agreements (ie, as long as it is possible to provide evidence that the franchisee's contribution to the business is similar to that of the agent, in terms of whether it is considered relevant in attracting clients).

Decree-Law 178/86 provides the legal framework for agency agreements and establishes a 'best treatment' principle in favour of the agent (or the franchisee), but its scope is restricted to the regime of the termination of the agreement. According to the best treatment principle, the franchisee has the benefit of the rights granted to it in Chapter 4 of Decree Law 178/86, which includes client indemnity (compensation relating to new customers that the franchisee has brought to the franchisor or to a significant increase in the volume of business) if applicable. As long as the franchisee conducts its activities exclusively or mainly in Portuguese territory, Articles 24 to 36 of the decree-law, which govern termination of the agency agreement, will always apply unless the applicable foreign law (as freely chosen in the relevant franchise agreement) is more favourable to the agent and franchisee than Portuguese Law.

Fees

What fees are typically charged under a franchise agreement?

The initial fee to cover costs for selection, franchisee training and opening the business is to be paid when signing the contract. Royalties are to be paid monthly, as a percentage of the revenue. Advertising and marketing fees should be deposited into a common fund by all franchisees.

Renewal

Do franchisees have a right of renewal?

There is no specific right of renewal of the agreement. It will depend on the terms and conditions of the franchise agreement which have been freely agreed between the franchisor and franchisee. Normally, contracts allow for renewal in order for the franchisee to be able to recoup the investment.

On what grounds may a franchisor refuse to renew?

It depends on the terms and conditions of the franchise agreement. The franchisor may refuse to renew the agreement if the franchisee is in breach of the agreement (eg, if the franchisee fails to pay a renewal fee or to complete renewal training).

How are renewals of franchise agreements usually effected? Do any formal or substantive requirements apply?

The law does not provide for a specific right of renewal of the franchise agreement. Such a right must be foreseen in the agreement, otherwise the agreement will lapse at the end of its initial term. Usually, franchise agreements provide for one or more rights of renewal in the terms and conditions. Renewal rights are usually agreed in a specific clause as automatic before termination of the initial term or any subsequent period of terms unless one party notifies the other of its intention not to renew the agreement.

Fees or other amounts can be established on renewal, depending on what has been mutually agreed between the parties. It is unusual to pay renewal fees, but this does not exclude the fact that renewal fees can be agreed between parties.

Termination

On what grounds may a franchisor terminate a franchise agreement? Are any remedies available to franchisees in this regard?

The franchisor may terminate the franchise agreement if the franchisee fails to comply with its contractual obligations, including:

- non-compete rules;
- payment default;
- disclosure of confidential know-how;
- failure to meet minimum turnover or stock; and
- failure to follow the franchisor's instructions or to maintain quality standards.

The franchise agreement should clearly foresee and list the situations which allow termination with grounds. Franchise agreements usually foresee the possibility for the franchisee to remedy its breach of contract within a reasonable period.

Ongoing franchisor/franchisee relationship

Operational compliance

What mechanisms (formal and informal) are commonly used by franchisors to ensure franchisee compliance with the operational terms and standards of the agreement?

The franchisor may subject the franchisee to inspections and reporting obligations during the course of the agreement.

Amendment of operational terms

Can the franchisor unilaterally change operational terms and standards during the course of the agreement?

No, but it will depend on the terms agreed by the parties. Normally, the franchise agreement allows the franchisor to adapt the franchise system to new methods. The agreement should be clear as to this possibility, in order to avoid the franchisee claiming that the franchisor has breached the contract.

Applicable laws

Do any specific laws affect the ongoing franchisor/franchisee relationship after they enter into the franchise agreement?

The ongoing franchise relationship is regulated at member state level by a variety of laws, particularly:

- good faith;
- unfair competition;
- consumer law; and
- the application by analogy of commercial agency law.

Price fixing is not allowed under EU competition law.

Ongoing disclosure

Do any ongoing disclosure requirements apply during the course of the agreement?

No.

Transfer and sale

Transfer and sale

What rules and procedures apply to the transfer and sale of a franchise business?

The rules that apply to the transfer and sale of a franchise business are those which have been settled on by the parties (franchisor and franchisee) in the franchise agreement.

Competition issues

Applicable laws

What competition laws apply to franchises, with particular regard to:

(a) Non-competes and other restrictive covenants?

Competition law in Portugal is governed mainly by the Competition Act (approved by Law 19/2012, May 8 2012) and is publicly enforced by the Portuguese Competition Authority.

Further, the Competition Act tends to follow the rules and regulations of the European Union, as well as European Court of Justice decisional practice and the European Commission's approach stated in its guidelines, including in cases where the relevant arrangements do not affect trade between EU member states. Therefore, the Vertical Agreements Block Exemption Regulation (EU Regulation 330/2010, April 20 2010) and the commission's guidelines on vertical restraints (2010/C 130/01) should be considered.

Non-compete arrangements and other restrictive covenants – such as an obligation or incentive scheme on the franchisee to purchase more than 80% of the franchisees' requirements from the franchisor (or from another designated supplier) – may infringe the Competition Act and will not benefit from the Vertical Agreements Block Exemption Regulation if the duration of such an agreement exceeds five years. In such a case, a fine may be imposed. The act also establishes a nullity penalty on prohibited agreements.

As for the vertical restraints on the purchase, sale and resale of goods and services within a franchise arrangement (eg, non-compete obligations), the safe harbour provided for in the regulation applies when the supplier's and buyer's market shares do not exceed 30% each in the relevant markets affected by the agreement and the duration of the agreement does not exceed five years.

The commission's guidelines on vertical restraints also make some remarks in case the exemption is unavailable:

- The more important the transfer of know-how, the more likely it is that the restraints:

o create efficiencies or are indispensable to protect the know-how; and

o fulfil the conditions for a special exemption from the prohibition.

- A non-compete obligation on the goods or services purchased by the franchisee falls outside the scope of the prohibition where the obligation is necessary to maintain the common identity and reputation of the franchised network. In such cases, the duration of the non-compete obligation may also be irrelevant under competition laws, as long as it does not exceed the duration of the franchise agreement.

Direct or indirect non-compete agreements in the post-contractual phase can limit competition, and as such, the relevant circumstances should be assessed (including under the regulation).

(b) Exclusive geographical areas?

Territorial restraints may be considered to be hardcore restrictions. However, under the regulation certain territorial restraints (eg, clauses restricting franchisees from actively selling in each other's exclusive territories) in franchise agreements are allowed under certain conditions (Article 4(b) of the Vertical Agreements Block Exemption Regulation), provided that there are no restrictions on passive sales. Additionally, and for such an arrangement to fall within the scope of the regulation, the individual market shares of the parties to the agreement should not exceed 30% in the relevant markets.

The commission's guidelines on vertical restraints provide that the restrictions on selling (eg, contract territory) may provide an incentive for franchisees to invest in the franchise concept and help maintain the common identity, thereby offsetting the loss of intra-brand competition. These clauses are usually inherent to the nature of franchising. However, in the case of absolute territorial exclusivity in favour of a franchisee, it is likely that this situation will fall outside the exemption.

(c) Price fixing and mandatory product purchases?

Vertical price fixing is a hardcore restriction and is included in both national and EU regulations. Specifically, the prohibition of directly or indirectly fixing purchase or sale prices or any other trading conditions is established. According to the commission's guidelines on vertical restraints, and in order to benefit from the exemption foreseen in the regulation, a franchisor may recommend prices or restrict maximum prices charged by its franchisees, provided that the market share of each of the parties to the agreement does not exceed 30% in the relevant markets. Nevertheless, the commission's guidelines also recognise that resale price maintenance can be pro-competitive, albeit in limited circumstances, including:

- the promotion of the launch of new products or services by franchisees; or
- to support a coordinated short-term low price campaign (eg, for two to six weeks) which will benefit consumers.

With regard to mandatory product purchases, an obligation or incentive scheme on the franchisee to purchase more than 80% of the franchisees' requirements from the franchisor (or from another designated supplier) is caught by the prohibitions laid down by EU regulations and, consequently, by the Competition Act, whenever they have as their objective or effect the impediment, distortion or restriction of competition. However, these sorts of agreement are exempted by the Vertical Agreements Block Exemption Regulation where the supplier's and buyer's market shares do not exceed 30% each, and are subject to a five-year limitation for the non-compete obligation.

(d) Online trading?

Marketing and sales through websites is typically regarded by competition authorities as passive selling. According to the Competition Authority, in line with the commission's guidelines on vertical restraints, passive sales correspond to unsolicited requests from certain individual customers or group of customers, including the delivery of goods or services to such customers, or from customers outside a specified territory. Such passive sales should not be restrained at the risk of violating the Competition Act. General advertising that reaches customers in other (eg, exclusive) territories or customer groups is generally regarded as passive selling.

(e) Other?

The Competition Act applies to any competition law concern, including any agreement that might have as its objective or effect the impediment, distortion or restriction of competition. The legal regime on individual restrictive trade practices (Decree-Law 166/2013) also applies to franchise agreements. This includes provisions on:

- price lists;
- selling below cost;
- abusive commercial practices; and
- refusal to supply.

Although very similar to the act, the Portuguese legal regime on individual restrictive trade practices is not part of competition law and is not enforced by the Competition Authority.

Intellectual property

IP rights

How can franchisors protect their intellectual property (eg, trademarks and copyright)?

Intellectual property owned by the franchisor may include:

- copyrights;
- trade names;
- trademarks;
- logos;
- design;
- patents; and
- know-how (commercial secrets).

Trade name and corporate name certificates are required by the National Register of Corporate Bodies before the incorporation of a company. The issuance of a trade name certificate provides the applicant with provisional protection over the trade name for a three-month term. This protection prevents other applicants from requesting a similar trade name certificate. Trade names are also protected if the applicant has already registered a trademark with the Industrial Property Institute which has been communicated to the register.

At national level, trademarks and logos are protected by the Industrial Code. In order to register a trademark or logo, the franchisor must file an application before the Industrial Property Institute. Trademarks and logos may also be registered at a European level with the European Union Intellectual Property Office.

Portugal is also signatory to the World Intellectual Property Organisation (WIPO) Madrid Agreement Concerning the International Registration of Marks 1891 (the Madrid Agreement) and the WIPO Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks 1989 (the Madrid Protocol).

Copyright protection aims to protect the author and the work produced by the author as an original creation of the human mind. Copyright protection generally protects literary, artistic, dramatic and musical works. Copyright provides protection for the author's rights, which includes moral and economic rights. The scope and exercise of the economic rights must always respect the author's moral rights.

Copyright protection is not subject to registration and arises as soon as a work is created. However, in order to provide evidence, some authors and associations of authors choose to voluntarily register their works, usually in domestic associations which register such works.

Designs and patents may be protected at national, European or international level.

Must IP licences be registered?

Licences to use registered intellectual property (eg, trade names, corporate names, trademarks, logos, patents and designs) must be made in writing and should be registered in order to be opposable to third parties.

Know-how

How can franchisors protect their know-how and trade secrets?

Know-how protection in Portugal is limited. Unauthorised use of know-how by persons other than the rights holder may be regarded as unfair practice and a violation of the trade secret. Consequently, administrative fines may be applied whenever the know-how:

- is secret and measures have been taken to maintain secrecy;
- has commercial value; and
- is transmitted without the owner's consent.

Breach

What are the consequences of a franchisee's breach of the franchisor's IP, know-how or trade secret rights and what remedies are available to the franchisor in this regard?

The franchisor may terminate the franchise agreement and seek indemnity.

If a franchisee breaches the franchisor's IP rights, they may be subject to:

- administrative fines; or
- for criminal offences, imprisonment of up to three years or a fine.

In order to investigate criminal offences (ie, the illegal use of rights), the IP rights holder/franchisor must file a complaint within six months of learning of the infringement.

If a franchisee breaches a franchisor's know-how or trade secrets, they may be subject to administrative fines under the Industrial Property Code. The new provisions in the code concerning know-how and trade secrets have been in force since 1 January 2019. The rest of the code will come into force on 1 July 2019. Further, the new Article 353 establishes a five-year deadline for the enforcement of any remedies for breaching a franchisor's know-how or trade secrets.

In addition to obtaining compensation, complementary measures can be requested in court – for example:

- a temporary prohibition on certain business activities;
- the loss of the right to partake in fairs or markets; or
- a temporary or permanent closure of the establishment.

Real estate

Laws and considerations

What real estate laws and considerations should franchisors bear in mind where:

(a) The franchisor owns the premises on which the franchisee operates?

If the franchisor owns the premises on which the franchisee operates, it should always have in mind the Civil Code and complementary legislation which provides the legal framework for lease agreements. Lease agreements should be entered into between the franchisor and the franchisee in order to regulate the relationship, as well as contract duration, renewal and termination.

(b) The franchisor sub-leases the premises to the franchisee?

The franchisor should, under the lease, be able to sublet the premises. Ideally, the lease should reflect in part or in whole the terms entered into with the landlord.

(c) The franchisee leases the premises from a third-party landlord?

If the franchisee leases the premises from a third-party landlord, the franchisor is excluded from this legal relationship.

(d) The franchisee owns the premises?

If the franchisee owns the premises, the franchisor may want to establish an option in the franchise agreement to purchase the premises at the end of the agreement.

Employment issues

Liability

Can franchisees or their employees be regarded as employees of the franchisor for liability purposes? If so, how can franchisors mitigate this risk?

Franchisees or their employees may trigger employment-related liabilities for the franchisor in the event that they can successfully demonstrate that they are in practice *de facto* employees of the franchisor.

Best practice therefore dictates that contracts contain wording that explicitly discards any such link, namely by confirming that they act autonomously and independently and that any resources allocated to the execution of the contract are third parties and not franchisor employees. However, regardless of the qualification of the contract that is attributed by the parties, it is also necessary that practical steps be taken to mitigate the risk of any such allegation in the day-to-day management of the services that the contract governs – for example, by clearly differentiating franchisor employees from franchisee employees and avoiding any direct supervision or instruction between the franchisee employees and the franchisor.

Tax and currency controls

Tax implications

What tax regimes apply to the franchisor/franchisee relationship?

Both franchisors and franchisees deemed to be resident in Portugal for tax purposes are subject to corporate income tax (CIT) under general terms. CIT is payable on the company's taxable profits at a rate of 21%. The tax rate applicable to the first €15,000 of taxpayers' taxable income qualifying as small and medium-sized enterprises (as provided by the European Commission's Recommendation 2003/361/EC) is 17%. Companies with taxable profits of more than €1.5 million are also subject to a state surcharge of 3%. The surcharge increases to 5% for taxable income exceeding €7.5 million, and to 9% for taxable profits in excess of €35 million. A municipal surcharge is levied in addition to CIT in most municipalities at a rate of up to 1.5% of taxable income.

Payments of royalties and initial fees to non-Portuguese resident franchisors are subject to withholding tax at 25% (35% if the recipient consists of an entity which is domiciled in a blacklisted jurisdiction), which may be reduced to 15%, 12%, 10% or 5% under an applicable tax treaty.

Cross-border fees regarding services rendered by the franchisor (including commercial and technical assistance and advertising fees) are, as a rule, exempt from withholding tax.

Currency controls

Do any currency controls apply with respect to foreign franchisors?

No currency controls apply with respect to foreign franchisors.

Dispute resolution

Common disputes

What issues are typically the subject of disputes arising in the franchisor/franchisee relationship?

The typical disputes arising in Portugal regarding the franchisor-franchisee relationship relate to:

- franchisors' lack of assistance;
- franchisees' non-fulfilment of obligations to pay;
- non-competition obligation; and
- franchisees' goodwill compensation claims when franchisors terminate contracts.

Venue

Which venues are empowered to hear franchising disputes in your jurisdiction? What considerations should be borne in mind when choosing a venue?

Most contract disputes are solved through litigation. The civil courts are the competent institutions to hear franchising disputes in Portugal and their competence for each case will depend on the address of the parties.

Arbitration is also available for any dispute with a pecuniary nature. These proceedings tend to be confidential.

Alternative dispute resolution

Is alternative dispute resolution (ADR) commonly used for franchising disputes in your jurisdiction? What considerations should be borne in mind when opting for ADR?

Arbitration and mediation are available in Portugal for franchising disputes. The parties can choose to make use of the rules and facilities of the Chamber of Commerce. These proceedings can be quicker and more efficient. However, parties should keep in mind that an arbitration award can be challenged in annulment proceedings in court, which can increase the duration of the arbitration proceedings.

Foreign judgments and awards

What regulations and procedures apply to the recognition of foreign judgments and arbitral awards where international franchising networks are concerned?

In the European Union, the recognition of foreign proceedings is made according to the terms of EU Regulation 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (the recast Brussels Regulation). Portugal is also a party to the New York Convention on the enforcement of arbitral awards.

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