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# Environmental Law

Portugal  
SRS Advogados

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# PORTUGAL

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## **LAW AND PRACTICE:**

p.3

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The 'Law & Practice' sections provide easily accessible information on navigating the legal system when conducting business in the jurisdiction. Leading lawyers explain local law and practice at key transactional stages and for crucial aspects of doing business.

# Law and Practice

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**SRS Advogados** is a full-service, multi-practice firm that has advised clients on all aspects of national and international law over the last 27 years. The firm aims to extend its experience, expertise and services globally through the creation of SRS Global – with the head office in Lisbon now supplemented by offices in Angola, Brazil, Macau, Malta, Mozambique and Singapore – and a strong network of international relationships with third parties. The environ-

mental team advises on the development and implementation of large environmental projects, working in areas such as waste, environmental safety and licensing. The team has extensive experience in environmental impact assessments, contracting for energy efficiency and renewable energy, and provides legal support (due diligence) in pre-litigation and environmental litigation.

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## 1. Regulatory Framework

### 1.1 Key Policies, Principles and Laws Governing Environmental Protection

The basis of environmental regulation in Portugal is contained in the Constitution, that charges the State with protecting the environment and provides that everyone has the right to a safe, ecologically balanced, human-friendly environment but also have the duty to protect it. However, the bulk of environmental law comes from, or is based on, the European Union legislation. Portugal integrates within its legislation all the principles of environmental safeguard defended in the EU.

Key pieces of statutory legislation on environmental protection include:

- integrated pollution prevention and control (Decree-Law No 127/2013);
- environmental impact assessment (Decree-Law No 151-B/2013);
- the right to take part on administrative proceedings (Decree-Law No 83/95), including those concerning the environment;
- environmental liability (Decree-Law No 147/2008);
- protection of soil (Law 31/2014);
- control of air pollution (Decree-Law No 102/2010 and Decree-Law no. 127/2013);
- noise (Decree-Law No 146/2006 and Law 9/2007);
- water (including Law 58/2005).

### 1.2 Notable Developments, Regulatory Changes, Government/Regulatory Investigations

The following pieces of statutory legislation should be mentioned:

- Decree-Law No 39/2018 on the control of air pollution, which provides new targets for the control of air pollution during the next decade;
- Decree-Law No 47/2017, which has updated the legal regime on the quality of air.

### 1.3 Developments in Environmental Policy and Law

Apart from a draft bill on contaminated land, and in relation to the access to public knowledge referred to below, no significant regulatory developments or changes to the environmental legal framework are being considered, nor any significant revisions being implemented in the near future. Also it should be noted that the legislation regarding waste is being changed in order to adapt to the more recent EU waste directives of 2018.

### 1.4 Environmental NGOs or Other Environmental Organisations/Groups

NGOs are active in Portugal and envisaged by law as important players in the environmental arena.

Environmental NGOs are acknowledged as such in Law 82-D/2012. They are entitled to take part in the definition of environmental policy as well as to assess information on projects having an environmental impact or an impact on nature, including the conservation of living species and territorial planning. They are also entitled to challenge government decisions in the courts, to take part in criminal proceedings involving the environment, and are relevant in the field of environmental liability.

## 2. Enforcement

### 2.1 Key Regulatory Authorities and Bodies

Key Portuguese authorities charged with the enforcement of environmental policy are the Portuguese Environment Agency (APA), the Regional Co-ordination and Development Commissions (CCDR North, Centre, Lisbon and Tagus Valley, Alentejo and Algarve) and the General Inspection of Agriculture, the Sea, the Environment and Territorial Planning (IGAMAOT).

Apart from these authorities the public prosecutor is also to be noted, as damage to the environment can be regarded a criminal offence subject to criminal penalties of up to ten years' imprisonment.

### 2.2 Investigative and Access Powers

Powers of authorities charged with the enforcement of environmental policy notably include the power to investigate offences and apply penalties and other sanctions.

It is also worth mentioning their power to take preventive action, including the suspension of activities that may be harmful or potentially damaging to the environment and the closure of facilities in the event of non-conformity with their determinations if there is a risk to public health or to the safety of persons and goods.

Furthermore, they are vested with the power of ordering the immediate removal of illegal occupations and to determine that the construction in protected areas, or in violation of the law or of permits, be ceased.

As mentioned, a damage to the environment can be a criminal offence and a penalty of up to ten years can be in order and the full indemnification of the damages.

### 2.3 Approach to Enforcement

The entities responsible for environmental policy act mainly in terms of inspection and licensing operators and of enforc-

ing laws and regulations, notably by means of applying penalties and taking preventive and remedial action.

It should be underlined that in specific cases there is the possibility of the environmental authorities entering into agreement with operators. That is the case with the so-called environmental adaptation agreements as means of boosting compliance with environmental standards. Such possibility is provided for in Decree-Law No 236/98, on the standards, criteria and quality targets concerning the protection of aquatic environment and the improvement of water quality. As a consequence of the aforementioned adaptation, thresholds on emissions to the water may be derogated.

### 3. Environmental Impact Assessment and Permits

#### 3.1 Requirement for an Environmental Permit

There are several types of permits that may qualify as environmental permits under Portuguese law. One of them is simply called “environmental permit”. It is required for activities involving industrial emissions within the scope of integrated pollution prevention and control, including those of combustion plants, waste incineration plants, waste co-incineration plants, installations and activities using organic solvents, installations producing titanium dioxide.

An environmental permit is also required for energy industries, the production and processing of metals, mineral industry, chemical industry, waste management, other industrial installations, activities involving textile fibres, the tanning of hides and skins, slaughterhouses, the treatment and processing certain raw materials or of milk, the intensive rearing of poultry or pigs, the production of carbon, the capture of carbon dioxide, the chemical preservation of wood and wood products and certain types of independently operated treatment of waste.

Other types of permits related to the environment include permits concerning the prevention of major accidents involving dangerous substances, the emission of greenhouse gas, waste management, the use of water resources, landfills, facilities for hazardous waste recovery and disposal, waste from the exploration of minerals, the environmental impact of power generation, transport and distribution, and pollutant emissions for the air.

#### 3.2 Requirement for an Environmental Impact Assessment

Two separate types of cases should be highlighted in this regard:

- cases where assessment is mandatory at all times due to the project’s environmentally offensive nature; for example, when related to petrol refineries, nuclear power plants, air-

ports, motorways, ports, dams, etc. The full comprehensive list of projects that require the EIA is found on ANNEX I of both Decree-Law No 151-B/2013 and Directive 2011/92/EU.

- cases where the relevant EU directive allows Member States to decide upon the set of specific circumstances in which they may or may not require the EIA, and the Portuguese law dictates that the projects mentioned in its ANNEX II (which refers to projects under a case-by-case analysis) may be subjected are those that are, or may come to be, partially or totally located in potentially environmentally hazardous areas, if they are within a fixed threshold, if the entities responsible for attributing licenses consider the project to be potentially offensive to the environment, etc.

#### 3.3 Obtaining Permits and Rights to Appeal

Interested parties shall apply for permits and those permits may or may not be granted further to an administrative procedure designed to assess whether legal requirements are met. If permits are not granted, the interested parties are entitled to challenge the administrative decision of not granting the permit, ordinarily in the courts.

However, it should be noted that the government may enjoy discretionary powers when assessing whether some legal requirements are met and that the courts should not review the discretionary assessments. Aspects of a purely legal nature are nonetheless subject to full judicial review.

#### 3.4 Integrated Permitting Regimes

A facility might require multiple permits in order to be operated and those permits may not always be of an environmental nature. They may notably refer to the sector with which the facility is concerned.

Be that as it may, there is an integrated permitting regime – the unified environmental licensing regime (LUA) – which aims to simplify the administrative proceedings concerning the granting of different permits in relation to environmental matters. Applicants are then provided with a single document describing all permits concerning environmental matters that they hold.

The integrated permitting regime refers to environmental impact assessment and the licensing concerning the prevention of major accidents involving dangerous substances, the emission of greenhouse gas, waste management, the use of water resources, landfills, facilities for hazardous waste recovery and disposal, waste from the exploration of minerals, certain types of environmental impact and pollutant emissions in the atmosphere. However, it should be noted that all permits continue to apply.

#### 3.5 Transferring Environmental Permits

There is no general rule on the transfer of permits under Portuguese law and likewise with regard to environmental

matters. Some legal regimes are silent on the matter and those addressing it do not address it in the same way. Some examples of the latter are referred to in the following entries.

As to integrated pollution prevention and control, under Decree-Law No 127/2013 interested parties may apply to the Environment Protection Agency for the transfer of permits. In some situations, failure to apply for the transfer shall determine the permit to expire.

Regarding the emission of greenhouse gas, Decree-Law 38/2013 provides that the transfer of installations shall be reported to the authorities within 30 business days.

Concerning waste management, under Decree-Law No 178/2006, both seller and purchaser shall jointly request the authorities for the transfer of permits. The authority shall decide within 15 business days. In case it does not, the transfer shall take effect.

The use of water resources is regulated in Decree-Law No 226-A/2007, with some permits being traded, provided that legal requirements are met. The party transferring the permit shall inform the authorities one month in advance of the transfer taking effect. Failure to comply with this legal regime may result in the transfer becoming null and void.

According to Decree-Law No 183/2009, the party to which the permit is to be transferred may request the authorities for the transfer of permits concerning landfills. The request shall be decided within 15 business days. Failure to comply with said legal regime qualifies as a serious environmental administrative offence.

As to facilities for hazardous waste recovery and disposal, Decree-Law No 3/2004 provides that any modification to the permit concerning its holder depends on the prior authorisation by the authorities. Furthermore, any change concerning the status of the permit holder, including the merger and division of companies, shall be reported to the authorities. Failure to comply with such determinations may in certain situations imply that the transfer is null and void.

Concerning waste from the exploration of minerals, Decree-Law No 10/2010 provides that the party to which the permit is to be transferred may request the authorities for the transfer of permits. The request shall be decided within 15 business days. In the event that no decision is taken, the transfer shall take effect. Failure to comply with the regime qualifies as an administrative offence.

Under Decree-Law 172/2006, on power generation, transport and distribution, the transfer of permits is subject to authorisation by the authorities. Merger and division of companies is also relevant.

### 3.6 Time Limits and Onerous Conditions

Environmental permits are time-limited and likely to be subject to conditions concerning the environmental impact of the licensed activity.

Operators may see some conditions as onerous in the sense of time and/or resource-consuming.

### 3.7 Penalties/Sanctions for Breach

Breach of permitting requirements may result in the payment of fines from EUR2,000 to EUR5 million the apprehension of documents or assets and the revocation of permits.

In the event of serious and critical environmental administrative offences, ancillary penalties may also apply. Those may include loss of assets involved in, or resulting from, the performance of the offence; prohibition from undertaking activities, which performance depends upon licensing by the authorities (for up to three years); ineligibility to obtain public benefits or aid (for up to three years); ineligibility to take part in trade fairs or markets with a view to trade or advertise one's products (for up to three years); ineligibility to tender within public procurement procedures (for up to three years); closure of facilities, which operation is subject to licensing by the authorities (for up to three years); termination or suspension of licences (for up to three years); loss of tax benefits and of access to lending facilities (for up to three years); the sealing of equipment (for up to three years); imposition of measures preventing environmental damage, restoring the status quo ante and minimising the outcomes of the offence (for up to three years); publicising of the decision determining that an offence has been committed; or the seizure of animals.

## 4. Environmental Liability

### 4.1 Key Types of Liability

The following types of liability are provided for under Portuguese law (following the EU directive): criminal liability; administrative offences; tort arising from environmental damage; and environmental liability with regard to the prevention and remedying of environmental damage.

## 5. Environmental Incidents and Damage

### 5.1 Liability for Historic Environmental Incidents or Damage

Portuguese law does not provide for a clear answer as to the question of knowing whether environmental liability prevention and remedial actions would still apply in case of the damaged site changing hands. However, it is our understanding that they most likely would, as it would not make sense under the law to allow for situations harmful to



the environment to continue as a result of the site changing hands. Therefore the buyer should be careful when buying a land or a site that has the potential of causing problems to the environment.

### 5.2 Types of Liability for Environmental Incidents or Damage

Tort arises from offences to rights or interests of third parties connected to the environment. Environmental liability with regard to the prevention and remedying of environmental damage arises from environmental damages to protected species, natural habitats, water and soil, or by any imminent threat of such damage. Lastly, environmental administrative offences also carry liability in relation to any unlawful acts which are not in compliance with environmental legislation.

Key defences used in this type of process may include statutory time limits, lack of intent and the request that an admonition or similar action be taken in the place of penalties. Procedural issues are also often raised and concern failure on the part of the authorities to comply with due process.

It is to be noted that statutory time limits vary and are subject to suspension or interruption as provided by law. The limits are of three years for non-serious administrative offences, five years for serious and very serious administrative offences, and 30 years for environmental liability implying the taking of remedial action.

Furthermore, environmental administrative offences may qualify as very serious, serious and not serious. Not serious environmental administrative offences are punishable through fines from EUR2,000 up to EUR36,000. Serious environmental administrative offences are punishable through fines from EUR12,000 up to EUR216,000. The limits are raised by a third in the event of recurrence. As to very serious environmental administrative offences, they are punishable through fines from EUR24,000 up to EUR5 million. The limits are doubled if the offence concerns a hazardous substance seriously affecting health, the safety of people or of assets and the environment.

### 5.3 Landmark/Significant Cases

There are no landmark cases that define the legal and jurisdictional way of dealing with these cases.

Recently there was a case that earned a lot of media attention about a company that polluted a main Portuguese river. The company was sued and the court decided to apply a EUR12,500 fine which was, legally, nearly the lowest that could have been ordered, which the company later came to revoke and replace with a written warning.

This case, in spite of all the attention that it received, seems to be in line with the general panorama of legal procedures for most environmental cases.

## 6. Corporate Liability

### 6.1 Liability of a Corporate Entity

There are particular rules concerning liability of a corporate entity within the scope of environmental matters.

In the first place, concerning administrative offences and environmental liability with regard to the prevention and remedying of environmental damage, it is worth noting that directors, shareholders and mother companies may in certain situations be held liable, as pointed out below.

In the second place, particular rules exist concerning environmental crime. Companies may be held criminally liable if the criminal conduct is performed on their behalf and in their interest and by people holding a leading role or by someone under the authority of the latter. People holding a leading role are those in the legal person's bodies, those holding the power to act on behalf of it and those within it holding the power to control its action.

Depending on the actual type of situation, offences are punishable through fines or imprisonment for up to ten years. In some situations, penalties may be raised by a third in case of death of an individual or of serious bodily injury. The following penalties may be applicable to a company: payment of fines; winding up of the company; order to undertake action, notably actions aimed at ceasing the criminal conduct or at preventing its outcomes; prohibition from undertaking its activities (for a period from three months to five years); prohibition of entering into certain agreements or of entering into agreements with certain entities (for a period from one to five years); ineligibility to obtain public benefits or aid (for a period from one to five years); closure of facilities (for a period from three months to five years); publicising the decision which determines that an offence has been committed.

On the other hand, legal persons' criminal liability does not exclude individual criminal liability and it does not depend upon it. Please note that individual criminal liability in connection to a company's action may occur.

Criminal liability does not lapse as a result of the division or merger of companies, it being transferred to the company resulting from the merger or to the divided companies. It would also not lapse as a result of a share deal. In case of an asset deal, liability would not be transferred from one company to the purchasing one.

However, insofar as the assets are relevant to the offence (in the instance of facilities operating beyond the remit of the law), it should be expected that they will come under the scrutiny of the authorities.

## 6.2 Shareholder or Parent Company Liability

Shareholders are jointly liable for the payment of fines concerning environmental administrative offences.

As to non-contractual civil liability arising from environmental damage and to environmental liability with regard to the prevention and remedying of environmental damage, mother companies and controlling companies may be held liable in the event of misuse of legal personality or of fraudulent evasion of the law.

## 7. Personal Liability

### 7.1 Liability of Directors or Other Officers

As to criminal liability, individuals holding a leading role in the company shall be held liable for the payment of fines and damages concerning:

- crimes committed during their term of office and to which they did not expressly object;
- crimes committed before their term of office, if they are liable for the company's assets not being enough to enable the performance of the payments. In our view, this would apply in the event of a share deal but not in the event of an asset deal; and
- crimes committed before their term of office, providing the final decision in the criminal proceedings is notified to the company during their term of office and they are to be held liable for the failure of the company to perform the payments. In our view, this would also apply in the instance of a share deal but not in the event of an asset deal. If multiple individuals are to be found liable, their liability is a joint liability.

Concerning environmental administrative offences, directors are jointly liable for the payment of fines. Furthermore, directors and people holding de facto management powers shall be held liable in the alternative for the payment of fines concerning administrative offences:

- committed before their term of office, in the event that they are to be liable for the company's assets not being enough to enable the performance of the payments; and
- committed before their term of office, in the event that the final decision of the proceedings is notified to the company during their term of office and they are to be held liable for the failure of the company to perform those payments;
- for proceeding costs.

If multiple individuals are found liable, their liability is a joint liability. Therefore they can only be called to pay the fine if it is not paid by the company.

As to non-contractual civil liability arising from environmental damage and environmental liability with regard to

the prevention and remedying of environmental damage, directors and managers are jointly liable for the discharge of duties falling upon companies.

### 7.2 Insuring Against Liability

From a legal point of view, directors and individuals holding a leading role in a company may insure against civil liabilities/penalties concerning environmental matters.

## 8. Lender Liability

### 8.1 Financial Institution/Lender Liability

Financial institutions and lenders are not held liable for environmental damage or breaches of environmental law in those specific capacities. However, they may be held liable in the event that they are shareholders of companies held liable for environmental damage as provided by law.

### 8.2 Lender Protection

Lenders may protect themselves from any such liability risk by means of warranties, indemnities or similar provisions.

## 9. Civil Liability

### 9.1 Civil Claims for Compensation

It should be noted that sometimes intent is not a legal requirement for damages to be determined and parties may be held liable for environmental damage regardless of fault. That is relevant in the instance of operators performing any of the following activities:

- the operation of installations subject to licence under the legal regime on integrated pollution prevention and control;
- waste management operation;
- discharges to inland surface water;
- discharge of substances into ground water;
- discharge or injection of pollutants into surface water or groundwater;
- water abstraction and impoundment of water;
- manufacture, use, storage, processing, filling, release into the environment and on-site transport of dangerous substances, dangerous preparations, plant protection products and biocidal products;
- transport of dangerous or polluting goods;
- the operation of installations subject to licence under the legal regime on the combating of air pollution;
- contained use involving genetically modified micro-organisms;
- the deliberate release into the environment, transport and marketing of genetically modified organisms;
- transboundary shipment of waste;
- management of extractive waste;
- operation of storage sites.

## 9.2 Exemplary or Punitive Damages

Punitive damages as such are not awarded under Portuguese law.

## 9.3 Class or Group Actions

Class actions as such are not regulated under Portuguese law. Different people may nonetheless join as co-parties where applicable legal requirements are met. Environmental protection associations may initiate, or intervene in, legal proceedings connected to the environment, notably in administrative courts of law.

## 9.4 Landmark Cases

There are no relevant or landmark cases of civil liability for environmental offences. There are few of these cases and none stands out as particularly important.

# 10. Contractual

## 10.1 Transferring or Apportioning Liability

Liability for incidental damage or non-compliance with rules protecting the environment is determined by law and is not subject to transfer or apportion by means of indemnities or other contractual arrangements. Those arrangements would not have a binding effect and would be highly unlikely to influence regulators. Warranties, indemnities or similar provisions are likely to have an impact between the seller and the purchaser only.

## 10.2 Environmental Insurance

With the exception of faults or malicious acts committed by companies, environmental liability insurance usually covers the potential environmental risk inherent in the activities carried out by each individual company.

The common policies include the following coverage:

- costs with biodiversity, water and soil damage;
- costs to the prevention and remedying of environmental damage;
- costs to deal with emergency situations related to the safeguarding of people and property;
- court costs.

# 11. Contaminated Land

## 11.1 Key Laws Governing Contaminated Land

There is no specific legislation about land contamination. A preliminary draft bill on the matter has been placed on public consultation.

Key laws on the matter include Decree-Law No 178/2006 on waste management.

## 11.2 Definition of Contaminated Land

There is no legal definition of contaminated land. However, damage to soil is defined in Decree-Law No 147/2008 as “any soil contamination which creates a significant risk to human health by the direct or indirect introduction into the soil or surface of substances, preparations, organisms or micro-organisms”.

## 11.3 Legal Requirements for Remediation

Remediation may be imposed in the event of any environmental damage, including to land, regardless of intent. There being environmental harm or the imminent threat thereof is sufficient to determine the operator to immediately remedial action and to inform the authorities.

## 11.4 Liability for Remediating Contaminated Land

Those who have contaminated the land are primarily liable for its remediation regardless of intent, the legal framework on environmental liability being applicable.

## 11.5 Apportioning Liability

Directors are liable for damage caused by the companies they work for. Furthermore, in case liability falls upon several different people, all of them are jointly liable for the damage.

## 11.6 Ability to Seek Recourse from a Former Owner

Pursuant to Decree-Law No 147/2008, an operator shall not be required to bear the cost of preventive or remedial actions when he can prove that the environmental damage or imminent threat of such damage (i) was caused by a third party and occurred despite the fact that appropriate safety measures were in place; or (ii) resulted from compliance with a compulsory order or instruction emanating from a public authority other than an order or instruction consequent upon an emission or incident caused by the operator’s own activities.

## 11.7 Ability to Transfer Liability to a Purchaser

Portuguese law addresses this matter with regard to waste management.

Pursuant to Decree-Law No 178/2006, liability that may arise from waste is annulled by means of transferring it to parties holding permits for treatment of waste.

# 12. Climate Change and Emissions Trading

## 12.1 Key Policies, Principles and Laws Relating to Climate Change

The Portuguese strategy for climate change is regulated in the Council of Ministers Resolution No 56/2015 of July 30, which sets up the Strategic Framework for Climate Policy (QEPiC) and the key targets of national climate policy for

2030. The key targets include that of a low carbon level economy.

Climate change mitigation policies aim to promote the transition to a low carbon competitive economy, notably by reducing greenhouse gas emissions of 30% to 40% by 2030 in line with European objectives.

### 12.2 Targets to Reduce Greenhouse Gas Emissions

Three different areas should be highlighted on this matter.

The European Union Energy and Climate Package has set as a community objective a reduction of at least 20% of greenhouse gas emissions in the community by 2020 compared to 1990, which has been further regulated in Decision No 406/2009 of 23 April. Pursuant to this, Portugal has to limit, between 2013 and 2020, the increase in greenhouse gas emissions from non-CELE sectors by 1% compared to 2005.

On the other hand, Directive 2001/81/EC has set a framework for national emission limits for certain atmospheric pollutants. This directive has been transposed into national law by Decree-Law No 193/2003 on a national programme for the reduction of pollutant emissions.

Finally, the regulation of the discharge of pollutants into the atmosphere is set out in Ordinance No 190-A/2018 of 2 July, which sets the methods for calculating chimney height and conducting studies on the dispersion of atmospheric pollutants, establishing emission limit levels.

### 12.3 Energy Efficiency

The Council of Ministers Resolution No 20/2013 has approved the National Action Plan for Energy Efficiency for 2013-2016 (PNAEE 2016) and the National Action Plan for Renewable Energies for 2013-2020 (PNAER 2020).

On the other hand, Decree-Law No 28/2016 aims at implementing the improvement of the energy performance of buildings, transposing into Portuguese law Directive 2010/31/EU.

Decree-Law no. 29/2011 concerns energy performance contracts and rules for the selection of the applications submitted under the Plan for the Promotion of Energy Efficiency, set out in Ordinance No 26/2013.

### 12.4 Emissions Trading Schemes

Portuguese emissions trading is permitted by Decree-Law 38/2013. An auction format applies. The rules governing the auctions proper are set out in Commission Regulation (EU) No 1031/2010 of 12 November.

Bidders submit their bids during one given time window, during the course of which they have no access to other bids. The auction runs on an electronic platform. In the event of

a draw, bids which have been sorted through are randomly selected.

The volumes bid shall be added up, starting with the highest bid price. The price of the bid at which the sum of the volumes bid matches or exceeds the volume of allowances auctioned shall be the auction clearing price.

## 13. Asbestos

### 13.1 Key Policies, Principles and Laws Relating to Asbestos

The most important law in Portuguese jurisdiction is the Decree-Law 101/2005, which has transposed Directive 1999/77/CE into the internal legal order. Pursuant to this, marketing of asbestos is forbidden and it cannot be used on the construction of new structures.

On the other hand, Law 2/2011 provides for the identification and removal of asbestos-based constructions on public buildings.

In the meantime, the national parliament has approved a bill on the identification of privately owned constructions containing asbestos with a view to replace them.

### 13.2 Responsibilities of the Landowner or Occupier

Landowners that are public authorities have to remove asbestos from their buildings pursuant to Law No 2/2011. There is no such obligation for the privately owned buildings.

### 13.3 Asbestos Litigation

Asbestos litigation within Portuguese jurisdiction is fairly uncommon; most cases of litigation are related to illegal or unlicensed waste and residuals discharge onto the environment and not necessarily related to individuals claiming damages from asbestos exposure.

### 13.4 Establishing a Claim for Damages

Under Portuguese law, physical harm or injury has to be established for a court to determine that damages must be paid. Moral damage may also give rise to damages.

### 13.5 Significant Cases on Asbestos Liability

There are no significant or relevant cases of asbestos liability. The government acknowledged the asbestos problem and, as aforementioned, efforts have been made to remove asbestos from buildings.

## 14. Waste

### 14.1 Key Laws and Regulatory Controls Governing Waste

Decree-Law No 178/2006 sets out the rules for the licensing of waste management operations and is the key piece of legislation on this matter.

### 14.2 Retention of Liability After Disposal by a Third Party

Under Portuguese law the liability of a producer or consignor of waste is extinguished when waste management is transferred to a licensed entity to perform waste treatment operations or a licensed entity responsible for the management of specific waste. Please refer to section 14.1 above.

### 14.3 Requirements to Design, Take-Back, Recover, Recycle or Dispose of Goods

As per Decree-Law No 152-D/2017, it falls upon manufacturers and importers of packages, oils, tires, electric and electronic equipment, batteries and vehicles to be required to collect and manage them once they become waste. Responsibility for these operations may be transferred to entities licensed for this purpose.

## 15. Environmental Disclosure and Information

### 15.1 Requirement to Self-Report Environmental Incidents or Damage

In any case of an imminent threat of environmental damage, operators shall immediately inform the environmental authorities of all relevant aspects of the situation, of preventive measures taken and of the outcome of those measures.

Environmental authorities may also, at any time, require the operator to provide information on any imminent threat of environmental damage or, in suspected cases, of such an imminent threat.

### 15.2 Public Access to Environmental Information

There is a specific statutory legislation addressing public access to environmental information in Portugal, which transposes Directive 2003/4/CE into the internal legal system. Such legislation provides that public authorities or bodies shall make environmental information held by or for them to any applicant at their request and without them having to state an interest. This legal norm is framed as a right of everyone.

For these purposes, public authorities and bodies include public agencies that are a part of the executive branch of government, regardless of that being at the State, regional or local levels of government, other public agencies insofar as they perform public administrative functions, public under-

takings, other legal persons controlled by public authorities, entities charged with managing archives of a public nature, entities discharging public power and any entity holding environmental information for a public authority.

### 15.3 Disclose Environmental Information in Their Annual Reports

Holders of environmental permits are bound to report to environmental authorities on monitoring data and the environmental impact of their activities.

## 16. Transactions

### 16.1 Environmental Due Diligence on M&A, Finance and Property Transactions

Environmental due diligence is typically conducted on M&A, finance and property transactions in Portugal with a view to determine the regulatory status of the target of the deal.

### 16.2 Environmental Liability for Historic Environmental Damage

Criminal liability does not lapse as a result of the division or merger of companies, instead it is transferred to the company resulting from the merger or to the divided companies; nor would it lapse as a result of a share deal. In the example of an asset deal, liability would not be transferred from one company to the purchasing one. However, it should be noted that the assets which are relevant to the nature of the offence (facilities not operating in accordance to the law) will receive due focus from the authorities. It should also be noted that liability arising from administrative offences would not lapse as a result of a share deal. In the instance of an asset deal, liability would not be transferred from one company to the purchasing one. However, notice should be taken that any assets relevant to the offence (facilities not operating in accordance to the law) will also require the attention of the authorities. As to non-contractual civil liability arising from environmental damage and to environmental liability with regard to the prevention and remedying of environmental damage, mother companies and controlling companies may also be held liable in the event of misuse of legal personality or of fraudulent evasion of the law. It is arguable that this would apply in the instance of a purchase.

### 16.3 Retention of Environmental Liability by Seller

Please refer to section 16.2 above.

### 16.4 Environmental Due Diligence by a Purchaser of Shares/Assets

Legal due diligence which focuses on environmental issues usually involves the scrutiny and assessment of permits and their amendments, applications for permits, correspondence between the operator and the environmental authorities, reports to environmental authorities, administrative pro-

ceedings, court and arbitral tribunal proceedings, criminal and administrative offence proceedings and threatened criminal and administrative offences, litigation and arbitration issues.

Besides legal due diligence which focuses on environmental issues, environmental due diligence which is not conducted by lawyers but by specialised environmental consultants often occurs too.

## 16.5 Requirement for Seller to Disclose Environmental Information to the Purchaser

It is a general rule under Portuguese law that sellers should disclose relevant information to purchasers. Failure to do so may imply pre-contractual liability on the part of the seller, notably within the context of post-signing or post-closing disputes. It should be understood that such framework also encompasses environmental information.

## 16.6 Environmental Warranties, Indemnities or Similar Provisions

Environmental warranties, indemnities or similar provisions by the seller to the purchaser may be given concerning liability arising from facts taking place before the deal takes effect.

However, it should be noted that the provisions do not prevent target companies or their new shareholders from being held liable in accordance with the law, the same reasoning being applicable to assets.

## 16.7 Insolvency Rules

Insolvency rules do not specifically concern environmental matters or liabilities.

## 17. Taxes

### 17.1 Green Taxes

Law No 82-D/2014 of 31 December, which approved the reform of green taxation in Portugal, marked a total new era in regards the approach to environmental taxes.

This new legislation, whose measures were introduced with effect on 1 January 2015, is responsible for the introduction of a series of new taxes, that are, among others, the introduction of carbon taxation, a new tax on plastic bags, corporate tax breaks for depreciations expenses and autonomous taxation related to electric-powered vehicles, hybrid vehicles plug-in and gas-powered vehicles (VNG and LPG), the extension of VAT deduction on expenses related to acquisition, rental, use and repair of electric, plug-in hybrid or gas-powered (VNG and LPG) vehicles, the eligibility for corporate tax purposes of the provisions made by the companies belonging to the extractive industries or of removal and treatment residuals to cover remedying expenses of environmental damages on the assigned locals of exploration, Municipal Property Tax breaks of 50% provided to facilities that generate renewable energy and, in certain conditions, to farm buildings that provide ecosystem services, redefinition of the vehicle (ISV) taxation, with emphasis on the vehicle's carbon dioxide emissions, and creation of a tax incentive programme for the retirement of end-of-life vehicles.

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