U.PORTO

FLUP FACULDADE DE LETRAS
UNIVERSIDADE DO PORTO

3º CICLO DE ESTUDOS EM CIÊNCIAS DA LINGUAGEM
ÁREA DE ESPECIALIZAÇÃO: TRADUÇÃO

Are we talking about the same thing?

Analysis of problems resulting from using English as an intermediary language in the legal framework between Japanese and Portuguese

Mamiko Sakamoto

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Tese realizada no âmbito do Doutoramento em Ciências da Linguagem, orientada pelo Professor Doutor Rui Manuel Sousa Silva
e coorientada pela Professora Doutora Belinda Mary Harper Sousa Maia

Faculdade de Letras da Universidade do Porto

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Aos meus pais e à minha irmã

Contents

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Declaro que a presente tese é de minha autoria e que o texto não foi utilizado previamente noutro curso ou unidade curricular, desta ou de outra instituição. As referências a outros autores (afirmações, ideias, pensamentos) respeitam escrupulosamente as regras da atribuição, e encontram-se devidamente indicadas no texto e nas referências bibliográficas, de acordo com as normas de referenciação. Tenho consciência de que a prática de plágio e auto-plágio constitui um ilícito académico.

Porto, 24 de Outubro de 2018

Mamiko Sakamoto

Acknowledgements

I would like to show my greatest appreciation to Professor Belinda Maia and Professor Rui Sousa-Silva who always provided carefully considered feedback and valuable comments, in addition to encouraging me through all these years, as well as taking time to proofread this thesis. I am proud to be one of the last PhD candidates supervised by Professor Belinda and one of the first of the first supervised by Professor Rui. I am also in debt to all the Professors and the staff involved in the 3rd Cycle of Studies in Language Sciences at the Faculty of Arts and Humanities of the University of Porto, who helped me to form an initial base for this study as well as to providing me with a basis for academic research. My appreciation also goes to all my friends, especially to my colleagues on the doctoral course, Katarina Duarte, Milaydis Sosa, and Joana Forbes, for their kind encouragement, advice and support, as well as to those whose seminars I attended, especially Professor Dorothy Kenny and Professor Katia Peruzzo, whose opinions and information have helped me very much throughout the production of this study. In addition, I should like to express my appreciation of the precious advice from Dr. Nelson Faria Oliveira, and kind support and encouragement from Professor Futoshi Iwata and Professor Atsushi Ichinose from my alma mater, Sophia University. I am also indebted to Professor Chikako Tsuruta from Tokyo University of Foreign Studies for reading the draft and making a number of helpful suggestions. Finally, I would like to express my deepest gratitude to my family – my parents, my sister and her husband – for their devoted support and warm encouragements over the last few years and during the writing of this thesis.

Resumo

O presente estudo tem como objetivo explorar uma situação cada vez mais frequente no âmbito de tradução: realizar a tradução com recurso ao inglês como referência. A utilização do inglês como referência (língua que é reconhecida efetivamente como uma *língua franca*) muitas das vezes ajuda e facilita, na verdade, as tarefas de pesquisa de termos correspondentes. A utilização da língua inglesa como intermediária, no entanto, levanta algumas dúvidas quanto a determinadas situações específicas, uma vez que, em primeiro lugar, existem sempre diferenças históricas e socioculturais entre línguas, e, em segundo, não há uma língua inglesa universalmente uniformizada.

Para investigar estas dúvidas e avaliar o impacto decorrente da utilização do inglês como língua intermediária, atribui-se um enfoque especial a uma área que envolve inteiramente os elementos culturais – i.e. tradução de assuntos jurídicos e terminologia jurídica. A vertente escolhida foi o Código das Sociedades Comerciais, por refletir sobretudo os aspetos socioculturais de cada país. Além disso, não podemos esquecer também que existe mais de uma variedade da língua inglesa, começando pelo inglês britânico, inglês americano e inglês australiano.

A presente investigação, abordando os aspetos referidos acima, visa, portanto, os seguintes temas globais: procurar as influências deixadas pelo inglês quando este é utilizado como língua intermediária e analisar de que modo ele contribui, de facto, para causar uma certa confusão durante a transferência linguística que, em última instância, pode vir a afetar o resultado da tradução. Tendo em conta estes objetivos, foram criados corpora com os dados do Código das Sociedades Comerciais em duas línguas (japonês e português) e as suas traduções para inglês, respetivamente; de seguida, realizou-se um estudo comparativo. A análise qualitativa realizada revelou que a utilização de inglês como língua intermediária pode, de facto, suscitar confusão na interpretação.

Palavras-chave: Inglês como língua-ponte, língua intermediária, tradução jurídica, terminologia jurídica, línguas inglesas no mundo, Código das Sociedades Comerciais.

Abstract

The present study aims to explore an increasingly frequent situation in translation - i.e. translation with the help of English as a reference. As it is recognized as a 'de facto' lingua franca, English actually helps and facilitates the tasks of finding corresponding terms. The use of the English language as an intermediary language, however, leaves doubts in some specific situations, because, firstly, there are always historical and sociocultural differences among languages, and secondly, there is no universally uniform version of the English language.

To specify these doubts and to clarify the impact of intermediary English, this thesis will focus on an area that involves complex linguistic and cultural elements - i.e. the translation of legal documents and legal terminology. The area of the Companies Law was chosen because it reflects the sociocultural aspects of each country. In addition, one cannot overlook the fact that there is more than one variety of the English language – such as British English, American English, and Australian English.

The present research, therefore, seeks the following global theme: to look for the influences left by English when it is used as bridge language and to demonstrate that, in fact, it can cause a certain confusion during the linguistic transference that may possibly affect the result of the translation. For these purposes, corpora were created with the data of Company Law in two languages (Japanese and Portuguese) and the respective translations into English; a comparative study was then conducted. The qualitative analysis carried out revealed that the use of English as an intermediary language may, in fact, lead to confusion in interpretation.

Keywords: English as a bridge language, intermediary language, legal translation, legal terminology, World Englishes, Companies Law.

List of figures

List of tables

Introduction

English today is a global phenomenon. According to a British Council report (2013, p. 2), about a quarter of the world's population is able to speak English at a useful level. The report also points out that English is currently the world's lingua franca and the number of non-native speakers greatly exceeds that of native speakers (2013, p. 3). English is used as the main medium of communication throughout the world, especially in technological, academic and business settings. If a multinational team for academic research is established and it consists of scholars from Norway, Italy and Brazil, for example, the language used to communicate, discuss the results and elaborate the report will most likely be English. When there is a business meeting between Chinese and Japanese companies, the negotiation will be conducted in English, despite the common use of writing characters in Chinese and Japanese. According to data available, as many as seventy countries have adopted English as an official language in government, the courts, the media and education and it is currently the working language in sectors of international industry, especially in finance, petroleum, aviation, and the Internet (Eversheds, 2011, p. 6). English has turned into the world's common language that connects people's activities in general, being used to "bridge language barriers" (Ostler, 2010, p. 4) and facilitate wider communication. In other words, English has become a 'bridge language' – i.e. a language that connects and mediates between two or more different languages, filling in the communication and cultural gap between them in all kinds of communication in the world.

On the one hand, although it is true that the English language serves as a 'bridge', when we take a closer look into the language, we find another reality: its diversity. There is a great variety of 'Englishes' and this fact leads us to the following question: when we mention 'English', which type of English are we actually dealing with?

According to Crystal (2003, p. 29), one of the reasons for the prosperity of the English language is historical. The establishment of the British Empire enabled English to spread across the world, from Africa, Asia and Oceania to the Caribbean islands. Many of the countries that were obliged to implement the English language adopted it

later as an official language, in addition to their indigenous languages. Naturally, the English introduced in these locations evolved in its own way, influenced by the local languages and culture, and developed its own characteristics. Particular terms, expressions, grammars and writing styles were added and integrated into the local English, leading to great variation within this language. The most famous examples include Hong Kong English, Singlish, US English, in addition to the original UK English. All these varieties of English are currently called 'World Englishes' (Kirkpatrick, 2007, p. 1).

Thus, it is not surprising that this variety of Englishes often causes confusion in communication. Their diversity goes further to such a scale that not only should we be attentive to 'conventional' linguistic differences among Commonwealth Englishes, but also carefully observe the emerging new varieties of Englishes.

In addition to its variety, the fact that English serves as a bridge language also influences other dimensions: the English learned and used in each country. English is recognized worldwide as a medium of communication, and is learned as a primary foreign language in most of the world. However, the English adopted in foreign language education in each country can vary. For example, an observation of the English used in the majority of European countries, including Portugal, reveals that they adopt UK English, whereas USA English is learned in countries such as Japan and Brazil. This fact suggests that the type of English adopted in the non-English speaking countries can also leave some traces in its use.

In view of these phenomena, the following questions arise: can different types of English actually cause some confusion when they are mixed and used together in communication? What kind of confusion can be caused and how far should we pay special attention, especially in the context of translation and interpreting?

From this point of view, the purpose of this research is to examine how the English being used as a bridge language influences translation, and to investigate this phenomenon using examples of problems that arise when translating to and from Japanese and Portuguese. In order to conduct this analysis, I focus on legal settings because they involve cultural and historical elements. Company Law was selected for

analysis, among the various legal domains possible, because in my point of view this area especially involves specific cultural and social characteristics as it reflects commercial tradition and practice of each nation. Corpora were created for contrastive analysis including the texts of Company Law in Japanese and in Portuguese, and their respective translations into English. Relevant materials were extracted by comparing the corpora, and subsequently examined so that the contrasts and differences among the original languages and their translations can be revealed. The matters identified in the literature and in the empirical analysis proved that, in fact, confusion is very likely to occur when English – or Englishes – is used as a bridge language, and therefore, one needs to pay attention when one is engaged in translating legal texts in such circumstances.

Motivation

The interest in exploring the proposed question comes from my own professional experience as a freelance translator and interpreter working with English, Portuguese and Japanese. I have had several opportunities to work with Japanese companies who intend to expand their business in Portugal. Through my experience, I came to realize that, in addition to cultural and social differences, there are some legal concepts that differ between Japan and Portugal. Furthermore, the situation can become more complex when the differences between two types of English – UK English and USA English – are part of this problematic circumstance. In fact, it is very common for the two parties – Portuguese and Japanese – to prefer to negotiate in English. This complex situation has caught my attention as it includes potential risks that can lead to serious translation problems.

This project requires two innovative approaches: to be multidisciplinary, by associating two research areas – language and law, and to be multilingual, by dealing with three language combinations – Portuguese, English and Japanese.

First of all, the present research intends to link two themes: English as a lingua franca and legal translation. Extensive research projects have been conducted on each of

these topics, but studies that combine both themes are practically scarce. Taking into account the reality mentioned above, this research aims to combine the two themes in order to bridge the existing gap between them.

Secondly, there are many studies of translation focusing on language pairs such as Portuguese <> English and English <> Japanese. Nevertheless, limited research has been conducted from a multilingual point of view up to the present, especially focusing on comparing English, Portuguese and Japanese, or Portuguese <> English <> Japanese. Currently, however, a multilingual situation often occurs (especially in this language combination) and more in-depth studies are desirable and needed. This research is expected to offer a new perspective of the relationships among multiple languages, i.e. when three or more languages are involved in a translation setting.

Therefore, I hope to contribute to the new situation in translation, by drawing attention to it, analyzing it and presenting some suggestions that can lead to possible solutions.

Defining the theme

The present research proposes to observe the translation problems in legal communication contexts, especially focusing on the impact of English when it is used as a bridge language between two other languages, one European, the other Asian. The main stress falls on the comparison between the European and Asian languages, since there are considerable differences that are not only linguistic, but also social, cultural, and conceptual. This difference is explained by Yan Fu (1854-1921), a leading Chinese thinker and translator, in an example given by Cao (2007):

> In the Chinese language, objects exist or do not exist, and this is called *li* [order in nature, things as they are, or the law of nature]. The prohibitions and decrees that a country has are called *fa* [human-made laws]. However, Western people call both of these ‘law’. Westerners accordingly see order in nature and human-made laws as if they were the same. But, by definition, human affairs are not a matter of natural order in terms of existence or non-existence, so the use of the word ‘law’ for what is permitted and what is prohibited as a matter of law of nature is a case in which several ideas are

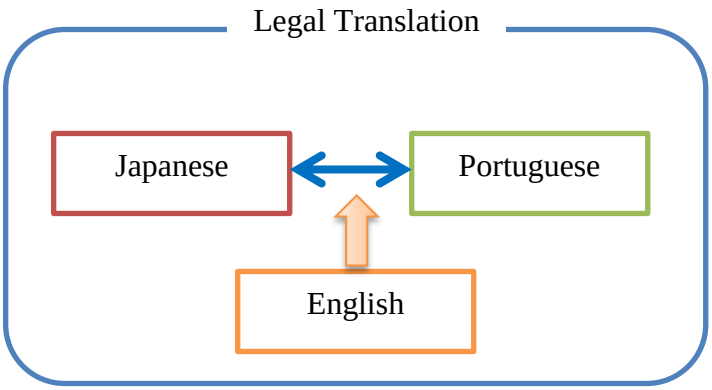
> conveyed by one word. The Chinese language has the most instances in which several ideas are expressed by one word, but in this particular case the Chinese language has an advantage over Western languages. The word 'law' in Western languages has four different interpretations in Chinese as in *li* [order], *li* [rites, rules of propriety], *fa* [human-made laws] and *zhi* [control]. Scholars should take careful note. (p. 1)

Although the legal system of Japan belongs to the same legal family to which most of Western Europe and a considerable part of the world also belong, the quotation above is also applicable in Japan, as the Japanese language shares characteristics and a historical and cultural background with Chinese. The gap between Europe and Asia is bigger than those within Europe or Asia, and it deserves explicit emphasis in order to understand the complexity of legal translation.

Starting point

English is now such a common language in global market that business meetings between Japanese and Portuguese companies are also frequently conducted in English. If both parties decide to enter into a contract, they may prefer to draft it in English, as is increasingly customary in international business practice. Preparing a contract in English is preferred in some countries, as it is a 'neutral' language, i.e. a foreign language for both parties. Even if both companies decide not to adopt English as a language to write the contract and choose one of the languages to draft it, it is still very likely that English will interfere in the process. The probable scenario in these cases is that the contract will be drafted in one of the languages of the parties concerned and translated into another language in order to achieve the mutual consent of both parties. For example, in the present context, it would be written in Portuguese and translated into Japanese. Ideally, the translation is conducted directly from Portuguese to Japanese. However, the translator would inevitably have to consult legal terms and expressions in English, since there are few directly translatable Portuguese-Japanese legal terms. English, thus and again, serves as a bridge between the two languages.

Figure 0.1: Relation among theme and languages in the present study



Therefore, regardless of whether it is used directly or indirectly in the process, English is closely related to any translation in legal settings, which brings us to the question: is there any impact or influence on the translation caused by the interference of English?

Legal translation is generally considered as a translation task that requires specific knowledge and skills. It is also considered to have specific characteristics and often to be difficult. Why is it considered such a complex task? This complexity has long been discussed (Mattila, 2006, p. 7). When we take a closer look at possible reasons given in the literature, we find that one of the aspects that originate this sense of difficulty is rooted in the difference of legal systems. Law is the fruit of history, social evolution, and the culture of a specific community (Cao, 2007, p. 23). Each legal system has its own historical and cultural background that makes it unique and different in each society. Translating law is, therefore, in addition to linguistic transference, a task to convert one system to another, taking into account all these historical and cultural contexts, and the social changes they reflect.

There are several legal systems, but the Common Law[1] and the Civil Law[2] families are the two major ones, covering 80% of the legal map of the world (Cao, 2007,

[1] Common Law is a legal system based on judicial precedent rather than statutory laws. It is often contrasted with Civil Law. Common Law originated in England, and later applied to the former British Empire colonies, including the United States.

[2] In the scope of this thesis, the term Civil Law is understood as a legal system which has Roman Law in its basis. Roman Law is also often used as a synonym of Civil Law. It is adopted in most Western European States. Civil Law is organized by statutes, which contrasts with Common Law, which builds upon court decisions.

p. 24). Common Law is predominant mostly in the countries that used to be a part of the former British Empire, and it derives from the accumulation of judicial decisions of judges in courts. Civil Law is the system that is followed mainly by Continental Europe and most of the rest of the world. Common Law and Civil Law are frequently contrasted, because, unlike that of Common Law, the body of Civil Law is organized through the codification of core principles according to each area of law. As legal translation implies the transfer of one legal system to another, theoretically, the translation between the same legal system families should be less complex than translating between the two different legal systems such as between Common Law and Civil Law.

In the case of Japan and Portugal, both national legal systems belong to the Civil Law family. Consequently, despite their linguistic differences, translating legal documents from European Portuguese to Japanese is still expected to produce fewer systematic conflicts. However, things become more complex when we encounter another reality. As explained above, when one conducts the legal translation task between Portuguese and Japanese, it is necessary to consult references. Unfortunately, not many references are available in this specific language pair, and even fewer in the field of legal translation. To overcome this lack of data, one needs to seek information in a language that is familiar in both countries: English.

There are many documents and studies elaborated on legal subjects between Portuguese and English as well as between Japanese and English. This fact, however, brings another concern: English belongs to the Common Law family; so, one cannot but wonder whether the difference of legal system will not affect smooth understanding between Portuguese and Japanese when using English as a bridge.

Kocbek (2006) is among those who direct much attention to the potential risk of using English as a lingua franca in contemporary business communication, especially when it comes to a situation that involves a specific framework of legal systems. The scholar warns that if English is used as a means of communication in a circumstance where the participants are from different legal cultures or systems, communication breakdown can occur, since they may not find any equivalent between the legal systems

of the participants and the legal system of the lingua franca (Kocbek, 2006, p. 241). To put it more precisely, choosing English, whose underlying legal system is Common Law, as a neutral language for mutual interaction between participants whose legal cultures belong to Civil Law can lead to communicative confusion. This is the main question on which this study is based.

Identifying the main issues

Consequently, these topics inspired me to explore two themes: legal translation and English as an intermediary language. On the one hand, as already mentioned, legal translation is often recognized as more complex or difficult when compared with other translation fields, in addition to the simple but reasonable impression that legal language is obscure. On the other hand, English enjoys prominent status as the world language in actual communication and trading (Alcaraz & Hughes, 2014, p. 2). It is a universal language in the legal domain, where it is called legal English. In the current state of globalization, these two situations – legal translation and English as a universal language – cross each other. This interdisciplinarity begs several questions.

The first question is whether there will be any influence when English is used as a bridge language. When the translation is between the Civil Law systems, will there be any influence induced by English as an intermediary language? To what extent can the influence of English as a lingua franca be seen? What is the main reason for the influence and what kind of impact can be inferred?

The second question is whether different types of English impact the translation. There are many varieties of English, not just one. It is also important to highlight this diversity of English. When English is mentioned, does it mean English from England, South Africa, Australia or the United States? The variety of English should be carefully observed as it can also influence the result of translation.

Accordingly, the third question is whether the different varieties of English affect translation when it is used as a bridge language. There is no unified single type of English functioning as a universal language. This means that each party involved in the

communication can use a different variety of English. In this case, will the different type of English cause any confusion, or not?

Therefore, these are the issues that this research project intends to investigate. The details of the research information used to analyze the case and look for possible influences will be given in a later chapter. Before proceeding with an empirical study, it is important to examine the current discussions on the three themes: legal translation, legal terminology, and English as the intermediary language.

Chapter 1. - Literature review

This chapter seeks to provide the background of the present research study, by address each of the areas that this research seeks to approach – while retaining the focus on the influence of English as an intermediary language in legal translation. There are three different domains concerned: legal translation, legal terminology, and English as a lingua franca in legal settings. Firstly, the questions regarding legal translation are dealt with in order to understand the overall peculiarity of legal translation. Secondly, the issues regarding legal terminology will be discussed, in order to expand knowledge of the unique features of terms in this domain. This is followed by a review of the actual status of English used as an intermediary language, with a special focus on the legal sphere. This chapter demonstrates the overview of each of these subjects as a basis for analysing further practical issues that will be dealt with in the latter part of this study.

1.1. Legal translation - why is it considered difficult?

Generally speaking, legal translation, which is a type of technical translation that involves special language use in the context of law (Cao, 2010, p. 78), is considered complex when compared with the translation of other documents such as scientific or literary texts. A legal translator is expected to have special skills and prerequisites (Alcaraz & Hughes, 2014, p. 47). For example, it is commonly recommended that a legal translator should have a certain legal background. Cao (2007, pp. 4-5) believes that the legal translator's job differs from that of lawyers, in the sense that the task required is to facilitate communication through linguistic and cultural transfer, and NOT to interpret the law, provide legal advice, or solve conflicts. Yet, she considers that it is necessary for legal translators, not only to gain linguistic sensitivity and potential, but also to have a certain legal knowledge in order to apprehend how lawyers, judges and lawmakers think and write. Some even stress that legal knowledge is an essential requirement for the profession and that this may be more important than linguistic knowledge. For Jackson (1985), the knowledge of the legal system is critical to

understanding legal texts. He acknowledges that incomprehension of legal language occurs not because one lacks knowledge of individual lexical words, but rather because one fails to understand the system (Jackson, 1985, p. 48, cited in Cao 2007, p.17). In his opinion, the words in a legal text make sense only within the context of the legal system on which the text is based, and, therefore, knowing the legal system is a prerequisite for understanding legal lexicons. These opinions suggest that there are multiple elements intertwined in legal translation, namely the nature of legal language and the legal systems. These factors create the perception of the complexity of legal translation. This section will point to several reasons why this kind of translation is considered challenging.

1.1.1. Difference of the legal systems involved

Translation has been defined as the act of properly understanding the source text and transcribing the message of the source text by producing a target text (Alcaraz & Hughes, 2014, p. 3). Sometimes, however, the task of translation involves not only transferring words linguistically, but also dealing with the systems that are intrinsically connected with the words. One of these cases is legal translation. The first difficulty which one encounters when translating a legal text from one language to another is the difference between two legal systems, and their incompatibility is recognized as the greatest obstacle to the unified interpretation and application of laws in practice (Gémar, 1995, p. 150, cited in Šarčević, 2000, p. 5). This implies that the question of different legal systems is the subject that should be looked at with close attention, as this is one of the reasons why legal translation is considered difficult. It is also why the comparative analysis of laws is a fundamental element of legal translation, as I shall describe in the rest of this study. Among the many legal systems existing in the world, the most well-known are the two major legal systems: Common Law and Civil Law. For those who work in linguistic transfer on legal matters, this combination is almost inevitable because, as previously stated, approximately 80% of the nations in the world adopt one of these two legal systems (Cao, 2007, p. 24). The following table shows the list of some countries that belong to each system (Cao, 2007, p. 24):

Table 1.1: Countries that belong to the Common Law vs. Countries that belong to the Civil Law system

Common Law countries		**Civil Law countries**	
England & Wales	USA	France	Germany
Australia	New Zealand	Italy	Switzerland
Canada	Nigeria	Austria	Latin American countries
Kenya	Singapore	Turkey	Japan
Malaysia	Hong Kong	South Korea	Portugal

Adapted from Cao (2007, pp. 24, 29)

The two legal systems are frequently compared contrastively. Their fundamental approaches to legal concepts are in sharp contrast. The history of Common Law started in England. It has evolved as the English legal tradition since the 11th century and it is based on cases. The legal thinking of Common Law consists of deducing adjudication from the specific situations in question. Furthermore, judicial precedent prevails, which is another characteristic of Common Law (Cao, 2007, p. 25). In other words, Common Law is predominantly based on a compilation of cases, each of which is binding in future similar cases. The decision of the judges will have a direct impact on the practice of law, so it is also called 'judge-made' law (Alcaraz & Hughes, 2014, p. 50). As described in Barron's Law Dictionary (Gifis, 2016), it is "based on judicial precedent rather than statutory laws" (p. 100), which means that it does not have written codes or statutes but its legal principles are demonstrated through the judgements in the past.

Conversely, Civil Law has its origin in ancient Roman Law[3], and was developed in Continental Europe. Its doctrine is marked by abstract legal norms provided in defined areas of law (Cao, 2007, p. 26). Judgements are deduced according to the guidance and the interpretation of the general legal principles, taking into account other factors such as their background, function and legal effects. In other words, Civil Law is a highly codified system, structured by codes and statutes, each of which is organized

[3] Roman Law is the legal system developed in ancient Rome. It gave the basic framework for Civil Law, which is the most used legal system today.

according to well-defined areas of law. The difference of the nature of Common Law and Civil Law systems will be discussed in detail in Chapter 3 – Data and methodology, as it is critical for the purpose of the present research.

If one considers the differences between these two major legal systems, it is not difficult to imagine that, when working with a case that involves Common Law and Civil Law, some sort of distortion can occur at various levels. For example, at the terminological level, the equivalent term to 'equity' (a branch of law that "is applied to certain concepts, principles and remedies that were formally excluded by the Common Law but were gradually recognized, developed and administered in the Middle Ages by the Lord of Chancellor" (Alcaraz & Hughes, 2014, p. 50), see also Chapter 3 section 3.4.) in Common Law cannot really be found in Civil Law, as this is unique to the Common Law system and Civil Law does not possess the same concept. While the act of translation in other areas concentrates on transcribing cultural or linguistic elements from one culture or language into another, legal translation actually handles the transfer of concepts between different legal systems. In this sense, some scholars even presume that there is no relation between legal languages and legal systems and that the translatability of legal concepts may depend on the relatedness of the legal systems rather than the languages involved in the translation (Kocbek, 2008, p. 53).

Beaupré (1987, pp. 741-742) also analyses the question of affinity through the comparison of legal systems. According to him, and contrary to Kocbek's opinion, when the two legal systems involved in the translation are similar, the level of affinity comes to depend on the languages involved. He points out that, if the two legal systems are very close, the major problems in transferring a legal concept may be linguistic. In this case, if the two languages are not substantially different, the translator will have to manage with lexicographical research. On the other hand, if the two legal systems in question are dissimilar, the translation turns into a task of comparative law[4]. He also warns of a tricky case when one legal system, or two closely related ones, are conveyed in more than one language, in which case problems of *faux amis* (false friends) may

[4] Comparative Law is a discipline that consists of studying the different legal systems/families existing in different countries of the world, by analyzing their differences and similarities.

emerge. I assume that the ‘more than one language’ that Beaupré refers to here are mainly the languages with similar linguistic backgrounds. As Cao (2007, p. 58) explains, for European languages with Latin roots such as English, French, Italian and others, *faux amis* are fairly frequent. These languages share words that seem similar linguistically but, on a closer look, they actually have different legal meanings.

De Groot (1987, p. 798) also considers that, in the domain of legal translation, the difference between the legal systems in question matters more significantly than the dissimilarity between the two languages involved. Elsewhere, (de Groot, 1992, pp. 293-297, cited in Kocbek, 2008, pp. 57-58), he argued that there are four potential circumstances regarding the relations between legal systems and language which determine the level of translatability, as follows:

> (1) the legal systems and the languages concerned are closely related, e.g. between Spain and France, or between Slovenia and Croatia, therefore translating will be relatively easy;
> (2) if the legal systems are closely related, but the languages are not, e.g. translating between Dutch laws in the Netherlands and French laws, this task will not involve extreme difficulties;
> (3) if the legal systems are different but the languages are related, e.g. translating German legal texts into Dutch or vice versa, the difficulty will be considerable, especially as this relatedness of languages implies the risk of false friends;
> (4) the most difficult task is translating between unrelated legal systems, as well as languages, e.g. translating Common Law texts from English into Slovene. (de Groot, 1992, pp. 293-297, cited in Kocbek, 2008, pp. 57-58)

The following table illustrates the relationship between legal systems and languages, and the consequence of difficulties corresponding to each combination according to the aforementioned information by de Groot (1992, cited in Kocbek, 2008, pp. 57-58):

Table 1.2: Relationship between legal systems and language

Scenarios	**Legal systems**	**Languages**	**Difficulties**	**Examples**
1	≒	≒	◎ Relatively easy	Spain/France, Denmark/ Norway
2	≒	≠	△ Not very difficult	Translating Dutch laws in the Netherlands and French laws
3	≠	≒	△＋ Considerably difficult	Translating German legal texts into Dutch and vice versa
4	≠	≠	× The most difficult	Translating the Common Law in English into Chinese

Adapted from de Groot (1992, pp. 293-297, cited in Kocbek, 2008, pp. 57-58)

In addition to these four combinations that de Groot (1992, pp. 293-297) suggests, there can be other types of situation. Let's take an example from Portugal and Brazil. Although Brazil used to be a Portuguese colony and both countries still share the same language, their actual legal systems are fairly dissimilar. From the global viewpoint of legal family, they both belong to the Civil Law family, but differences can be seen in details when the two systems are compared, and they are visible at various levels, one of which is how the judicial system is organized. This difference in judicial organization, which was pointed out by Pimentel (2014), will be presented below. However, Portugal's old legal system and philosophy were maintained in Brazil for a long time (佐藤, 2014, p. 34), and the differences can only be explained from a historical point of

view.

After the colonization of Brazil by Portugal in the 17th century, Portugal was temporarily incorporated into the Spanish empire, and the law applied in both Portugal and Brazil was the Philippine Codes (*Ordenações Filipinas* or *Código Filipino*), promulgated by Philip I of Portugal (Philip II of Spain) in 1603. However, the legal frameworks of Portugal and Brazil started to take separate paths after the independence of Brazil. In Brazil, after the proclamation of independence in 1822, a new constitution was established, but it was declared that the Philippine Codes should continue to be in force while a new Civil Code was being organized (Atheniense, 1985, p. 6). A study suggests that, along with Mexico (1928), pre-Communist China (1931), and Peru (1936), the legal system of Brazil (1916) was influenced by the combined legislations of French, German and Swiss Codes (Tetley, 2000). Meanwhile, in Portugal, conversely, the new wave of European laws came and replaced the Philippine Codes with the new Civil Code of 1867, which led to the Portuguese and Brazilian legal systems going separate ways (佐藤, 2014, p. 34).

This difference in legal systems is still visible today. In a contrastive study of judgements of the Supreme Court of Justice (*Supremo Tribunal de Justiça*, STJ) in Portugal and the Federal Supreme Court of Brazil (*Supremo Tribunal Federal do Brasil*, STF), Pimentel (2014, p. 43) draws the conclusion that there are significant differences between the judgements of STJ and STF. She claims that, in addition to a difference of textual and stylistic characteristics, there are systematic distinctions such as the institutional function of the Courts and the roles of judges. The author argues that the fact that the two legal systems are not organized in the same way may affect translation, especially at the level of terminology (Pimentel, 2014, p. 42). In this case, the situation looks quite similar to de Groot's third category (legal systems are different and languages are similar). In fact, the major concern presented in the aforementioned study is terminology, which would force a translator to be highly sensitive regarding the interpretation and selection of the terms. In this case, translators would need to resort to the dictionaries, glossaries or data banks which include various subdomains of law (Pimentel, 2014, p. 42). However, in a narrow sense, it is still different from the third

category as the language is in fact the same. It can be said that the comparison of the Portuguese and Brazilian legal systems is a unique situation that is worth exploring. Further discussion on this theme will be left for another time, because to follow up this matter would be beyond the scope of the present research.

Rendering legal concepts from one system to another is the principal challenge of legal translation, and in addition to what will be discussed in the following sections, the importance of comparative legal knowledge for the legal profession has been widely claimed (Bogdan, 1994; Cao, 2007; de Groot, 1987; Goddard, 2009; Kocbek, 2008). In Beaupré's (1987, p. 744) opinion, for the legal translator, knowledge of comparative law is essential, while the linguistic ability is required for the legal drafting task. Comparative law is a discipline that studies difference and similarity between two legal cultures, in order to "provide tools for global governance of the legal field in today's world" (Monateri, 2012, pp. 7-8). It aims to broaden knowledge and provide various ways to understand law, so that one can deepen one's own legal system or "search for principles common to a number of legal systems" (Glendon, Gordon, & Wright-Carozza, 1999, pp. 4-5). The study of the differences and similarities between the laws in different countries is becoming increasingly important in the present globalized world. It is also useful to deepen one's understanding of law as well as to expand one's knowledge of law (Smits, 2012, pp. 66-67). De Groot (1987, p. 811) also considers that the exercise of legal translation is in fact the analysis of comparative law, insisting that the training in comparative law, and especially comparative legal terminology, is the most important knowledge for legal translation work.

1.1.2. The socio-cultural aspect of legal language

Another feature of legal translation is its socio-cultural aspect. Since legal matters have developed together with our daily life, they are strongly connected with the social structure and the values of each community. Therefore, it is essential to be familiar not only with the legal system but also with the cultural system of the languages involved (Cao, 1997, p. 668).

However, some scholars do not acknowledge the relationship between language

and system in the context of jurisprudence. Kocbek (2008, p. 53), as referred to above, denies the relatedness between legal languages and legal systems. One has to at least partly agree with her that the possibility of translating one legal concept into another has more to do with how closely the legal systems in question are related, and less with the languages involved themselves. The degree of relatedness between two legal structures has a critical impact on transferring one legal concept to another, the impact of which may be bigger than other translation problems that can arise. However, if the question of translatability in legal translation is only influenced by the similarity of the legal systems, as she proposes, then there should be no problem when transferring one legal concept into another within one legal system.

Let's take the United Kingdom and the United States of America as an example. Both nations adopt the Common Law system and their native language is English. Yet, there are still several conceptual differences between the two countries. Although there is a degree of similarity, differences exist that are similar to the aforementioned case of Portugal and Brazil, especially in relation to the conceptual gaps between the two nations, even though they share the same legal system and language. One of the well-known differences is the concept of the legal professions: 'solicitors' and 'barristers'. In the United Kingdom, the terms 'solicitor' and 'barrister' refer to two distinct categories of lawyers. A solicitor acts as a general legal practitioner, giving legal advice to clients and preparing legal documents. On the other hand, a barrister argues and defends clients in a British court as a legal representative.

In the United States, in contrast, there is no differentiation between these two professions. Once they have passed the bar examination, all lawyers "may argue in the courts of the state in which they are admitted, although some state appellate courts require attorneys to obtain a separate certificate of admission to plead and practice in the appellate court" (Cao, 2007, p. 61). In the United Kingdom, the term 'attorney' is no longer used and instead 'solicitor' is generally applied, while in the United States, 'attorney (at law)' is globally in use to mean a lawyer (長谷川, 2009, p. 163).

This suggests that even if the legal systems and even the languages are the same, translation challenges still exist. These challenges arise from the cultural background of

the language. Therefore, in my opinion, language is an important element in legal translation, and its cultural, social and historical aspect should not be ignored. As Cao claims, "law is an expression of the culture, and it is expressed through legal language" (Cao, 2007, p. 31).

Cao (1997, p. 667) points out sociolinguistic problems in English<>Chinese legal translation. These problems come mainly from the difference of cultural attitude toward legal convention. For example, in Chinese culture, contracts are regarded as testimonials of good intention. Therefore, instead of stipulating what will happen in the case of breach of contract, they prefer not to mention it in the contract and solve the problem when it occurs. For Chinese people, contracts are acknowledgements of the beginning of a long-term friendly partnership between the persons involved. As a result, it is customary for Chinese business-related documents to be characterized by deliberate uncertainty and vagueness. As the author confirms (Cao, 1997, p. 667), the linguistic phenomenon reflects the attitude of Chinese people towards contracts, their way of thinking, and their understanding of this type of document. The Japanese have a similar attitude towards contracts (千代田, 2004, p. 14; 長谷川, 2009, pp. 8-9).

Therefore, one can conclude that there are many factors that can influence the process of rendering texts in legal settings. The systematic relatedness of the legal framework involved surely leaves a great impact; however, the historical, social and cultural factors that exist behind the languages involved are also inseparable from the legal systems.

To sum up, the act of translation involves all the factors of difficulty that were listed in this section. Therefore, legal translation can be considered difficult because it involves these challenges, some of which require an interdisciplinary approach – involving legal knowledge, linguistic ability, and historical and socio-cultural knowledge.

1.1.3. High levels of expertise

Another characteristic of legal translation is mentioned by Weisflog (1987), which

is its specific nature, that requires high levels of expertise. This is especially visible in legal terminology. Law emerged in order to resolve problems that occur in our everyday life. Since lawsuits involve all fields of human activity, the resources of the language of the law coexist with the language of the common tongue (Alcaraz & Hughes, 2014, p. 153). Thus, legal terminology has been derived from everyday speech (de Groot, 1987, p. 796; Lane, 1970; Lauzière, 1982). Due to this historical background, the same term can frequently be used in different areas of law with different meanings. The term 'warranty' in English law is one of the examples (de Groot & Rayar, 1995, p. 206). The following description was made by Lord Denning LJ in a contract trial in England, Oscar Chess Ltd v Williams [1957] 1 WLR 370 at 374 (English Court of Appeal) (Cao, 2007, pp. 68-69):

> I use the word 'warranty' in its ordinary English meaning to denote a binding promise. Everyone knows what a man means when he says 'I guarantee it' or 'I warrant it' or 'I give you my word on it'. He means that he binds himself to it. That is the meaning it has borne in English law for 300 years. . . . During the last 50 years, however, some lawyers have come to use the word 'warranty' in another sense. They use it to denote a subsidiary term in a contract as distinct from a vital term which they call a 'condition'. In so doing they depart from the ordinary meaning, not only of the word 'warranty' but also of the word condition'. There is no harm in their doing this, so long as they confine this technical use to its proper sphere, namely to distinguish between a vital term, the breach of which gives the right to treat the contract as at an end, and a subsidiary term which does not. But the trouble comes when one person uses the word 'warranty' in its ordinary meaning and another uses it in its technical meaning. When Holt CJ, in Crosse v Gardner [1689] Carth 90; 90 ER 656 . . . made his famous ruling that an affirmation at the time of a sale is a warranty, provided it appears on evidence to be so intended, he used the word 'warranty' in its ordinary English meaning of a binding promise, and when Lord Haldane LC and Lord Moulton in 1913 . . . adopted his ruling, they used it likewise in its ordinary meaning. These different uses of the word seem to have been the source of confusion in the present case.

In another study, de Groot (1987) gives an example of the discrepancy that exists between Dutch and Belgian with regards to legal terms. Although Dutch is the common legal language both in the Netherlands and in Belgium, interestingly its legal contents

are not the same. As a result, there are some expressions and terms that do not correspond in the same language, which ultimately requires an 'intralinguistic translation' so that Dutch and Belgian legal matters can be mutually understandable (de Groot, 1987, p. 797). This happens because, despite being the same language, the Dutch used in the Netherlands has been adapted to the life and culture of people in the Netherlands and the Dutch in Belgium has been adjusted to those of Belgian people.

According to Beaupré (1987, p. 740), in order to perform an effective legal translation, two conditions are desirable: (1) familiarity with legal approaches of interpretation, and (2) knowledge of the general laws that exist behind the source and target texts. He draws attention to the fact that, accompanying the way technical legal terminology is employed in a specific legal setting is an action that itself implies a whole body of doctrine and case-law, and this is the aspect which a translator or draftsman ignores at his peril.

From this point of view, Goddard (2009, p. 195) stresses the importance of acknowledging the legal method, i.e. how law is practiced in reality. He claims that it is important for a legal translator to have knowledge of a particular subject, as well as the ability to recognize the attitude of a legal professional, i.e. how a lawyer thinks on the matter. This view is reinforced by Šarčević (1997), who also claims that legal translators need to have the capacity to solve legal problems and analyse legal texts.

Therefore, legal translation requires high specialization not only in translation science, but also in other fields. Knowledge of translation studies is essential, but legal translation deals with legal science. Special attention should be paid to the findings of comparative law, and to research by contrastive linguists into features of legal language, such as legal discourse and legal terminology. In other words, legal translators are expected to be specialized in a realm which combines translation science, comparative legal science and contrastive linguistics (Kocbek, 2008, pp. 69-70). For instance, legal communication always involves a determined legal system. It often involves two or - sometimes more than - three systems. However, in this case, comparative legal science is necessary to analyse and contrast these legal systems so that the 'cultural foundation – i.e. legal system – of the text' can be understood and consequently the same 'cultural'

reference can be reached between the source and the target text (Kocbek, 2008, p. 55).

In addition to the comparative analysis of the legal systems in question, another issue which should be handled during translation is the specific linguistic characteristics of each legal language, such as the syntactic, pragmatic, and stylistic levels, although there are universal features in the legal language (Kocbek, 2008, pp. 58-59). Some examples of this are formal and impersonal style, long sentences and complex structures, qualities by which legal language is distinguished in general (Mattila, 2006, pp. 90-92). Therefore, as Harvey (2002) explains, "legal translation stands at the crossroads of three areas of inquiry – legal theory, language theory and translation theory" (p. 182).

Legal translation should combine all these scientific aspects, i.e. it should transfer information from one language into another using translation strategies and techniques, and simultaneously take into consideration information from a comparative legal point of view as well as from a contrastive linguistic point of view. Here, too, Šarčević (1997) supports the importance of the two points described above, saying that "drafting skills and a basic knowledge of comparative law and comparative methods" are necessary for translators (p. 114). One study suggests a certain need for knowledge and skills – mainly legal and linguistic ones – of lawyers and translators who are non-native English speakers. When they produce legal texts or translate them using English, they are challenged to have the following knowledge and skills (Goddard, 2009, pp. 193-197):

Table 1.3: Necessary knowledge and skills for lawyers and translators

Knowledge/Skill	**Essential (++) for**	**Required (+) for**
Comparative law	Lawyers	Legal translators
Legal systems and specialisms	Lawyers	Legal translators
Comparative legal cultures	Legal translators	Lawyers
Legal methods (Analytical and interpretation skills)	Lawyers	Legal translators
Legal English	Lawyers	Legal translators
Translation skills		Legal translators
Legal linguistic skills	Lawyers	Legal translators
Legal writing and drafting	Lawyers	Legal translators
Concepts and terminology	Lawyers	Legal translators
Legal informatics	Lawyers	Legal translators

Adapted from Goddard (2009, pp. 193-197)

Furthermore, whether they are lawyers or translators, people who perform legal translation tasks are expected to have advanced interdisciplinary expertise. This is because, generally speaking, "all LSP (language for special purposes) translation is interdisciplinary in nature" (Šarčević, 1997, p. 113). Therefore, specialized translators are required to have not only translation skills, but also a certain level of expertise in the specific subject matter (Šarčević, 1997, p. 113). Additionally, Harvey (2002, p. 182) refers to the fact that law itself is wholly interdisciplinary, since it reflects its function to regulate most areas of human activity (Gémar, 1979; Pelage, 2000, cited in Harvey,

2002, p. 182). Therefore, in addition to mastering a basic knowledge of legal concepts and terminology, the legal translator needs to acquire the concepts and terminology of the field to which the law is being applied. Harvey (2002, p. 182) reaffirms that, although interdisciplinarity can be found in other areas such as information technology and statistics, these characteristics of law are especially significant. This is another way in which legal translation differs from other scientific disciplines (de Groot & Laer, 2007, p. 179) and thus one of the reasons why legal translation is considered difficult.

1.1.4. Lack of universal standards established and shared within the field

When one translates a report on a surgical method in contemporary medicine from Japanese into English, the translator should be able to find the equivalent terms of organs and surgical instruments in English easily. Although it is necessary to have a certain knowledge of modern medicine, the corresponding terms of organs and surgical instruments can be found by comparing drawings, pictures and other visual aids. This common perception of materials all over the world facilitates the transfer of terms from one language to another and thus is considered as one of the advantages of scientific information. Furthermore, in the same context at an international level, for instance in an international conference, even if the report is presented in English, its translated content should be relatively easily understood by doctors from various countries. This is for one reason; the human body structure is common throughout the world and modern-day medical science is based on the same system worldwide – Western medicine.

In addition to this shared cognitive perception, another reason that contributes to feasible communication among professionals is the existence of specialized language. Much of the feasibility of communication of this kind is due to the characteristics of the language in scientific areas: its extensive specific terminology. The specific terminology and wording in a certain discipline is called language for special purposes (LSP). In fact, the language of law is considered to be a LSP in the context of law, or language for legal purposes (Cao, 2010, p. 78). It is a system-bound language, depending on a certain legal system (de Groot & Laer, 2007, p. 173; de Groot & Rayar, 1995, p. 205). According to van Essen (2002, p. 13), when English is used as a lingua franca, it is not

used with the intention of socializing with native speakers of the language, but rather as part of an international community of experts (such as business people and lawyers in this case) so that they can interact with the group members in the same language. It is therefore important to see English not merely as a lingua franca, but also to understand it in a context of LSP at the same time (Kocbek, 2006, p. 239). As English today is used as the common language in specialized fields such as communication, trade and law, the specific English used on these occasions is often called 'English for special (or specific) purposes' (ESP), or 'English for professional purposes'.

Some scholars (Hutchinson & Waters, 1987; Nagy, 2014; Paltridge & Starfield, 2012) argue that ESP has been developed to satisfy the necessity of learners who use English in specific professional contexts and for certain purposes. In this context, ESP can be considered to consist of two strands: one is ESP within the scope of language teaching, and the other is ESP as the specialized language of a specific field (Nagy, 2014, p. 261). ESP emerged because of a didactic demand of English teaching around the 1960s, especially when an argument started to develop that there is a need for English learners to practice and learn to employ English with certain features in a certain field (Celce-Murcia, 1991, p. 67). The best known ESPs were English for Science and Technology, and English for Business and Economics, the two leading examples. Then, other versions followed, such as English for Information Technology, English for Internet, English for Tourism and English for Medicine (Nagy, 2014, p. 272). The focus is on specialized lexicons, terminology and specific grammatical structures (Nagy, 2014, p. 272). For instance, the English used in science is found to have the following specific characteristics: the employment of technical vocabulary which can be of Latin or Greek origin, many cases of compounds of those words which result in long lexicons that are inevitably abbreviated for practical use, long sentences using many noun phrases, and the use of passive structures (Crystal, 1997, p. 384).

Therefore, LSP is strikingly different from general language (Cao, 2007, p. 8). General language, or language for general purposes (LGP), refers to the language used by most social classes in everyday society in general, including subcategories such as regiolects and sociolects (Picht & Draskau, 1985, p. 4). LSP, however, exists regardless

of social classes. Special languages enable mutual communication within certain groups beyond social hierarchy, and according to Picht and Draskau (1985) this is the social aspect of LSP (p.14). LSP - also referred to as 'technical language', 'special language', 'specialized language', 'professional language', and more recently 'Academic and Professional Language' (Nagy, 2014, p. 264) - means "the types of language used by specific knowledge communities or groups of professionals, such as chemists, lawyers, physicians, etc. that share similar values, and institutions that use the same genres and terminology to communicate" (Motos, 2013, p. 4). For example, the language of science is identified as precise, explicit and not vague. Its style is standardized with impersonal statements, logical, clear and accurate descriptions without room for metaphors, humor or affective expressions (Nagy, 2014, p. 265). In fact, LSP can be a great help for communication among people who work within the same discipline. As mentioned above, it helps professionals in a certain technical area to communicate with each other in a meeting without needing a translator, even if they are from different nationalities and not good at foreign languages. It is possible, and in fact it frequently happens, that an expert, for instance, an engineer successfully makes himself/herself understood in a technical meeting but he/she needs a translator's help for general or ordinary conversations.

The same does not apply to legal translation. One of the reasons comes from the nature of law – its abstractness. Legal translation is considered to be different from other genres of technical translation because it does not convey universal information (Cao, 2007, p. 28). Unlike other scientific disciplines such as medicine or physics, law is largely based on abstract concepts, i.e. immaterial elements. These intangible notions are more abstract and ambiguous, and it is more difficult to find the corresponding idea compared with the visual matching of concrete objects, such as human organs. As White (1982) accurately pointed out, the fact that legal discourse is 'invisible' is one of the most problematic aspects of legal language, suggesting that most critical problems in understanding it come from "the unstated conventions by which language operates" (White, 1982, p. 423, cited in Cao, 2007, p.28) and NOT due to the terms and grammatical structure in law. It is not clearly written anywhere but a certain form of

anticipation is generally expected about the way language should operate in legal situations (Bhatia, 1997, p. 208). Therefore, despite historical attempts to establish a universal standard of legal language, it has been difficult to achieve one, partly due to these intangible features of 'invisibility' and 'abstractness'.

De Groot (1987, pp. 795-796) points out that translation in other scientific disciplines is comparatively easy, if there are international standardizations established in relation to the terminology in the scientific field. In fact, international terminology can be found in most scientific areas, since science has generally similar schemes and patterns to express and work with concepts that are shared all over the world. However, there is no international jargon in the sphere of law (de Groot, 1987, p. 796). Legal terms are related to a particular legal system and "because legal systems differ from state to state, legal terminology also differs from country to country" (de Groot, 1987, p. 796). In the view of de Groot and Rayar (1995, p. 205), international legal language becomes technical when a specific legal subject becomes 'internationalized'. In this connection, in the domain of international law and European Community law, the authors suggest that such language should gradually be developed (de Groot & Rayar, 1995, p. 205). Having said that, they claim that international terminology will not exist in other areas of law, such as constitutional, administrative, criminal and civil law, because these laws are peculiar to a certain type of legal systems (de Groot & Rayar, 1995, p. 205). Regarding this aspect, however, we can find some states that have adopted bilingual statutory systems. One of the most outstanding examples is Canada. What makes Canada unique in this regard is that Canada is not only a bilingual (having English and French as official languages) but also a bijural state. This means that Canada shares two legal traditions within the same territory – i.e. English Common Law and French Civil Law coexist within the federal state (Cao, 2007, p. 125). Gémar (2014) explains that since 1763, through three hundred years, attitudes toward translation in Canada have passed through three phases: first in the British colonial era to the 20th century, translation was literal; then around 1969 Eugene Nida's 'functional equivalence' approach was adopted; and finally, in 1970, a co-drafting system with two teams of legal experts – for French and English respectively – was introduced. Today,

Canadian laws at federal level are prepared with both English and French drafts worked simultaneously, and then legislative texts are co-drafted (Mattila, 2006, p. 195). This method of legal linguistics, together with "solid, impressive linguistic knowledge and experience acquired by translators" (Gémar, 2014, p. 68) has spread to other countries in the same situation in the world (Mattila, 2006, p. 9).

One of the Canadian federations' efforts is the Harmonization Program was undertaken in order to harmonize the federal law with Quebec Civil Law. There, "commonly used Common Law and Civil Law legal terms are compared and the relevant Canadian legal provisions where the words appear are cited", in addition to the description of differences between the two legal systems as well as the problems and solutions (Cao, 2007, p. 126). It should not be overlooked, however, that the product from the Canadian efforts was, as Cao suggests, 'harmonization' and not 'international' or 'interlingual terminology'. The question of the cultural aspect of the legal system still remains even in Canada's case, as both French and English versions enjoy the same legal effect only at the federal level (Mattila, 2006, pp. 194-195), and not necessarily in each state level, where cultural elements have a stronger influence. In this respect, Gémar (2014) also expresses doubt as follows:

> Yet it is open to doubt if Canada has finally resolved the issue of interpreting its bilingual statutes, whether translated or co-drafted. Canadians have at least acquired pioneering experience that has resulted in the field called jurilinguistics. This fact demonstrates the rare and natural ability translation possesses to cross-pollinate the disciplines with which it is associated: legal translation + linguistics = 'jurilinguistics' (or 'legal linguistics' in the European Union). Jurilinguistics challenges the status of translation as a discipline. It asks if translation should be looked upon as a science, as an art, or as sheer practical know-how.

Weisflog (1987, cited in Cao, 1997, p. 661) also supports the factor of independent characteristics of legal systems as one of the difficulties of legal translation. In his opinion, there are three main facts which can lead to obstacles when a translator is engaged in a legal translation task: (1) the fact that the legal language is a technical language; (2) the fact that the legal language has a specific nature, and (3) the fact that

this legal language is closely linked to a national legal system and has not been established as a universal technical language. The author (1987, p. 304, cited in Cao, 1997, p. 662) asserts that a translation of legal texts does not only account for a linguistic transfer from one language into another, but also a shift from one technical language into another technical language.

In this connection, Cao (1997, p. 662) observes the absence of universal legal language from a different point of view. She points out the gap among legal languages in their degree of development, giving an example between English and Chinese. She argues that with respect to legal language, English has more developed and sophisticated terminology and systems than Chinese ones, and this disparity often causes the translation problems of not being able to find equivalent or corresponding terms in Chinese (Cao, 1997, p. 662). Although the three aspects of legal language presented above are to be discussed in detail later, it should be noted that a lack of a common standard language shared at a global level accentuates the difficulty of legal translation.

1.1.5. Intentional ambiguity

Harvey (2002, p. 179) challenges the general observation that legal translation has a special status, at least from the point of view of the nature of legal discourse. Furthermore, he states that legal translation is not extremely difficult when compared to other special purpose translation categories. However, he acknowledges some difficulties in this genre of translation in certain cases. According to him, if obstacles in legal translation exist, it is as a result of the cumulative effect of the multiple difficulties. Firstly, the nature of legal discourse can vary according to the function of documents, which sometimes mislead translators. For instance, a contract celebrated between the two parties has a legally restricting function for these parties, but its function becomes a mere source of information to someone who is consulting the document as a third-party observer for future reference. Here, Harvey (2002, p. 179) recommends that the function of a document should be considered from the point of view of its communicative purpose, suggesting that pragmatic considerations are the most dependable way of

determining it. Secondly, there is a lack of universal signs in legal language due to its system-bound nature, as explained above. Admitting that this system-bound nature of law is peculiar to law, however, the author gives examples from religion and political science, other fields that are related to systems or schemes; thus, Law is not the only case. Thirdly, the issue of fidelity arises as to whether the translator should be faithful to the original text (i.e. source-oriented translation) or to the objective of the target text (i.e. target-oriented translation). Furthermore, in addition to these three factors, what Harvey points out as the fourth element of a potential source of difficulty is another unique characteristic of legal text – intentional ambiguity (2002, pp. 179-182).

Very often, laws and the legal documents produced are the fruit of political compromise. Consequently, in some legal documents some parts are left vague intentionally for tactical reasons. Unlike other scientific subjects such as mathematics or physics, which are based on an empirical approach and in which communication is intended to be unambiguous, law belongs to a category of science that employs the rhetorical approach. This means that, for lawyers, language is not only the vehicle of analysis, but also is itself the 'raw-material' – i.e. the object that is studied or worked (Cao, 2007, p. 81; Harvey, 2002, p. 181). Language is, by its nature, ambiguous, vague and general, and its indeterminate feature is especially characterized in the language of Law (Cao, 2007, p. 19). Added to this, ambiguity is an important element that can be deliberately employed in legal documents. Some expressions can be left ambiguous on purpose during negotiations of international treaties as a diplomatic tactic (Gémar, 1979, p. 47, cited in Harvey, 2002, p. 181). Ambiguity can also be used in a contract to facilitate a compromise between both parties (Doonan, 1995, pp. 95-96, cited in Harvey, 2002, p. 181), or so that one of the parties can eventually exploit the situation in the future (Cornu, 1990, p. 90, cited in Harvey, 2002, p. 181). On the one hand, this can bring 'openness' to the text with more flexibility and room for interpretation. Conversely, this imprecision can lead to disagreement, as the law calls for exactness and precision (Cao, 2007, p. 19). Besides, ambiguity and imprecision bring translation problems, such as whether they should be retained in the target text, in addition to the question of interpretation. This is a characteristic peculiar to legal language, which is

not common to communication for other special purposes.

The nature of legal communication is thus based on two opposing poles: a tendency for ambiguity and the fiction of univocal interpretation (Harvey, 2002, p. 181). Therefore, in the act of translation, it is important to distinguish first the nature of the ambiguities and whether they are intentional or not. In this context, Cao (2007) advises that it is important to "distinguish linguistic uncertainty and legal indeterminacy" (p. 75). In her view, linguistic uncertainty is the vagueness of language itself, derived from unclear linguistic expressions applied in the legal text that may induce legal indeterminacy. Legal indeterminacy refers to the situation when there is no one solution as to how the law should be applied (Cao, 2007, p. 75). After having identified the ambiguities, the translator is then challenged by the dilemma of how to interpret them. The difficulty here lies in the degree of the interpretation. One can argue that the ability to identify deliberate ambiguity, evaluate it, and take a decision on whether to leave it is another requirement of a legal translator.

There are other views on the nature of ambiguity of legal language. Another observation is proposed by Bhatia (2010, p. 38), who prefers to consider that ambiguity is one of the essential characteristics of legal discourse. The scholar calls for 'all-inclusiveness' of legislative discourse, claiming that it should be clear, precise and unambiguous, but simultaneously all-inclusive so that it can allow for flexibility and discretion. He further explains that if it is derived from a linguistic root, it is sometimes called 'vagueness' or 'indeterminacy', and if it is derived from the characteristics of the law itself, when it allows multiple interpretations according to the context of explicitly described cases, it is called 'ambiguity' (Bhatia, 2010, pp. 39-40).

1.2. Legal terminology as one of the main difficulties in legal translation

It is said that most misunderstandings are caused by vocabulary. According to Eversheds (2011, p. 27), most habitual problems can be avoided if attention is focused on vocabulary, because lexical problems are to blame for as much as 80-85% of

confusion due to misunderstandings of certain words and phrases. Compared to the issues caused by vocabulary, grammar and syntax problems present only 10% of confusion, and the remaining problematic elements such as spelling, plurals, pronouns, genders, conjugations and prepositions account for merely 5%. The difficulty seems to correlate especially to cultural aspect, as affimed by Newmark (1973) as following:

> A word denoting an object, an institution or, if such exists, a psychological characteristic peculiar to the source-language culture is always more or less untranslatable – everything else is more or less translatable. (p.12)

Alcaraz and Hughes (2014, p. 16) admit that the unfamiliarity of the characteristics of vocabulary in legal discourse is the greatest single difficulty initially faced by legal translators. The authors suggest that the lexical items of any kind of language can be classified into two groups: functional items and symbolic (or representational) items (Alcaraz & Hughes, 2014, p. 16). The functional items are grammatical words and phrases that give the structure of the text. They do not directly influence referential meanings, but connect and order those referents. In legal texts, the examples are ‘subject to’, ‘inasmuch as’, ‘hereinafter’, including complex wording such as ‘unless otherwise stated’, ‘as in section 2 above’, as well as deictics, articles, auxiliaries, modals and other syntactic and morphological markers. The symbolic or representational items are, as opposed to the functional ones, those that refer to things or ideas that exist in reality or in the universe of concepts. Examples of legal terms are one-word units such as ‘tort’, ‘court’, ‘law’, ‘right’, ‘contract’, and compound units such as ‘serve proceedings’, ‘bring in a verdict’, and ‘evidence in rebuttal’. They further classify this group into three subcategories: purely technical vocabulary, semi-technical vocabulary, and shared, common or ‘unmarked’ vocabulary (Alcaraz & Hughes, 2014, p. 16). Based on their definition, the first subcategory, i.e. purely technical vocabulary, refers to the terms exclusively used in the legal domain and have no application outside its sphere. Examples are ‘solicitor’, ‘estoppel’, ‘mortgage’, and ‘breach of official duty’. They are monosemic and have maintained their application within a particular field for a long period of time. Those can be, therefore, the terms which cause least trouble to a translator. Translations for terms that lack counterparts in the TL culture are commonly

sought but if the search is not successful, they should be transcribed and/or explained (Weston, 1991, p. 10). The second group, semi-technical vocabulary, includes words and phrases in general use that have gained supplementary meanings when used in the specialized context of the legal sphere. These terms are therefore polysemic and much more numerous compared with the first subcategory terms. Examples of the terms that have an ordinary meaning and a technical meaning in legal context, especially in the domain of Contract Law, are: 'offer', 'consideration', 'performance', 'remedy', and 'assignment' (Cao, 2007, p. 67).

> In English contract law, 'offer' refers to a promise which when accepted constitutes an agreement. 'Consideration' refers to the price paid, not 'thought' or 'thinking' in ordinary usage. 'Performance' especially refers to the doing of that which is required by a contract or condition. A contract is discharged by 'performance'. The expression 'specific performance' in contract law is not literally what it says. It actually means where damages would be inadequate compensation for the breach of an agreement, the contracting parties may be compelled to perform what was agreed to be done by a decree of specific performance, e.g. the sale, purchase or lease of land, or recovery of unique chattels. The word 'remedy' is not just a way of solving a problem but a legal means whereby breach of a right is prevented or redress is given, e.g. damages and/or injunction. 'Assignment' in contract law means transfer of property or right. (Cao, 2007, pp. 67-68)

The terms that belong to the third group are from everyday vocabulary, but frequently applied in legal texts. They are applied both in general use and contexts, as well as in legal texts. The difference of the third category in relation to the first and the second subcategories is that they still maintain their everyday meanings and also are free from additional meanings despite contact with the specialized contexts. Examples of this subcategory are too numerous to list exhaustively, since they are those of any non-technical term, for instance 'subject-matter', as in 'the subject-matter of the contract', or 'paragraph' as in 'Section 2, subsection 12, paragraph (b) of the Act'(Alcaraz & Hughes, 2014, pp. 16-18).

The analysis of Alcaraz and Hughes (2014), however, does not seem to distinguish the lexicon from terminology. Their discussion is mainly based on vocabulary and the lexicon, although expression such as 'technical terms' can be

frequently seen in the analysis. In the studies of legal translation, however, more attention seems to be focused on the issues of 'terminology' and they are more widely discussed. In fact, terminology is distinct from vocabulary or the lexicon. A fuller discussion will be presented later in this chapter, but the difference can be briefly summarized in the following way: terminologies are "the lexical components of specialized languages" (Geeraerts, 2015, p. xvii). In other words, terminology is a compilation of specialized terms (Cabré, 1999, p. 1) and it is based upon concepts, focusing on the relationship between the term and the concept, while lexicography is a compilation of a lexicon (such as a dictionary) and it is focused on a word, followed then by the process of seeking for its function and semantic role in communication (Cabré, 1999, pp. 7-8). In short, terminology is different from lexicology in the sense that it deals with specialized terms and starts with concepts. In translation, questions on terminology seem to be discussed much more than those on lexicology.

The issue of terminology is probably the biggest challenge that a translator encounters during legal translation. In addition to the opinions of Eversheds (2011) and Alcaraz and Hughes (2014) stated above, which are focused on characteristics at the vocabulary level, many agree with this terminological point of view. Meredith (1979), for example, offers some considerations on English legal translation, to reach the conclusion that "(i)n any translation for the Gazette, terminological research is all-important" (p. 67). In his article on translation of various types of legal texts for the Québec Government, including legislation, juridical acts, and the Gazette, he points out that many English expressions found in Québec law are strained (Meredith, 1979, p. 54) and leaves some suggestions for natural, yet accurate translation. He finds terminological studies especially important in translating the Gazette, since many legal stipulations are created based on specific statutes and the translator should need to pay attention so that the same language is used in translation as is applied in the base law (Meredith, 1979, p. 67). In this case, terminology is an essential key for the consistency of translation.

Cao (2007, p. 53) also advocates that legal terminology is the most evident and outstanding linguistic characteristic of legal language, asserting that it is one of the main

causes of difficulty in the legal translation task. She claims that each language has unique, yet extensive legal vocabulary as a reflection of the law of the particular legal system, and this very systematic difference in law often hinders translators in finding ready equivalences in another language, originating complications at both the linguistic and the legal levels (Cao, 2007, p. 53). She also suggests that in most languages terminological problems in legal translation can be concentrated into only four major terminological areas, which can be classified into the following:

> (1) legal conceptual issues and the question of equivalence and non-equivalence of legal concepts in translation; (2) legal terms that are bound to law and legal institutions; (3) legal language as a technical language in terms of ordinary vs. legal meanings, and legal synonyms; and (4) terminological difficulties arising from linguistic uncertainty such as vagueness and ambiguity. (Cao, 2007, p. 54)

The terminological complication is also reasserted by Šarčević (2000, p. 7), who views most discussions concerning textual diversity as leading to terminological questions. It is important thus for translators to pay special attention when selecting equivalents, not favouring a certain type of them. Favouritism of a certain type of equivalent can transmit a signal regarding how, or according to which legal system, the term should be interpreted, and confusion can be caused, especially when the signal is unclear or imprecise (Šarčević, 2000, p. 7). While the difficulties are demonstrated by many academics, this difficulty at the term level, unfortunately, can be solved only by a conscious process of learning, according to Alcaraz and Hughes (2014, p. 16), a perspective which can apparently be applied to both lexicological and terminological points of view.

Why terminology has always been the main translation issue is most likely because it is closely bound to the specificity of the legal system, i.e. the core theme of legal translation itself as we have seen previously. As referred to above, the act of translation usually does not consist of handling cultural or linguistic transfer in the fields such as science or industrial technology. In legal translation, however, translators need to focus, not just on the cultural or linguistic component, but also on legal concepts, since the task has to do with the transfer of concepts between different legal systems.

From this viewpoint, the issue of terminology will be addressed in this section from the standpoint of the relations among terminology, lexicology, terminography and lexicography, as well as their connection with legal language, equivalence, and dictionaries. An examination of these four disciplines will be presented in the following sections in order to make a distinction between them, especially as they frequently tend to be confused or used ambiguously. It is essential to understand the differences between them and accurately differentiate each concept so that one can be aware of the issues underlying terminology, which is the main focus of this investigation. Before turning to examine these subjects, however, it is worth looking more closely at some of the more important features of terminology, especially focusing on its difference from lexicology and lexicography.

1.2.1. Language for general purposes, language for special purposes and terminology

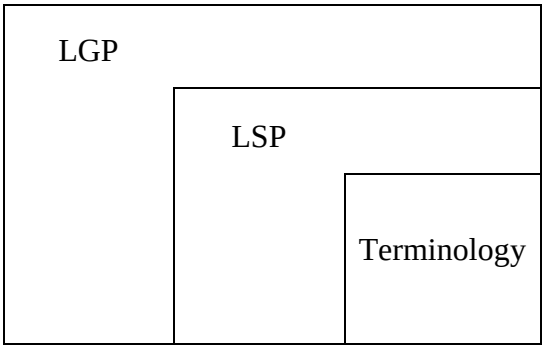
Before proceeding to questions of terminology, lexicology, and lexicography, it is useful to consider the position of terminology in relation to general language and language for special purposes – or special language. General language – or natural language as Sager (1984) explains – has adapted and been subject to change for historical and cultural reasons. It consequently developed characteristics such as "homonymy, synonymy, quasi-synonymy and polysemy" (p.316). Special language, which is used in communication among specialists, on the contrary, aims to restrict itself to a precise meaning, reducing the obscurity of natural language "by fixing the relation between a concept and its associated term (definition) and by particular techniques of word-formation" (Sager, 1984, p. 316). He continues by stating that special-subject languages, therefore, can be considered as subsets of natural language and they can even acquire elements such as new meanings, words or formations rules, that do not exist in general language.

This dynamic interface between general language and special language is also supported by Picht and Draskau (1985), who also attempt to see the relations among language for general purposes (LGP), language for special purposes (LSP), and terminology. According to the authors, LSP refers to "a formalized and codified variety

of language, used for special purposes and in a legitimate context" (Picht & Draskau, 1985, p. 3). They suggest that terminology is part of LSP, and can be analysed as follows:

1. The language of a given language community as a whole;
2. – within which may be distinguished the area covered by LGP and LSP varieties;
3. – and one section of LSP comprises special lexis – this is the central domain of terminology. (Picht & Draskau, 1985, pp. 21-22)

Figure 1.1: Relationship among LGP, LSP, and Terminology



Adapted from Picht and Draskau (1985, p. 22)

1.2.2. Terminology, lexicology and lexicography

The question of distinction between terminology and vocabulary – i.e. lexicology and eventually lexicography as the practical application of lexicology (Ginzburg, Khidekel, Knyazeva, & Sankin, 1979, p. 12) – is linked to something mentioned in the preceding section. These two groups of fields of study – terminology and lexicology (including lexicography) – have at least one big feature in common: they both deal with words, which can be confusing. However, terminology and lexicology (and lexicography) differ fundamentally on various points and multiple levels, such as principles, bases, objectives, and methodology.

First of all, let us look at lexicology. Lexicology deals with words, in a sense of

lexical units – i.e. the basic components of any language. Lexicology sees words as units of reference in the real world. It studies the regularities of the lexicon, which is "the set of lexical units containing phonological, morphological, syntactic and semantic information, the appropriate set of word formation and readjustment rules, the set of possible projections on syntactic structures and a set of restrictions on rule application" (Cabré, 1999, p. 29). It investigates scientifically the lexicon of a language from the viewpoint of how it has developed historically, to which social layer it belongs, as well as its quantitative composition, and how some subfield is encoded in it (Klein, 2015, p. 937). Therefore, the ultimate goals of lexicology are as follows: (1) to construct a pattern of the lexical unit of a language; (2) in the pattern, to provide the indispensable knowledge about words and how to use them; (3) to build systematic and proper mechanisms to link the lexical component with the other grammatical components (Cabré, 1999, p. 30). In short, "lexicology deals with the analysis and description of the lexical competence of speakers" (Cabré, 1999, p. 35). In order to measure the speaker's competence, the following conditions are presupposed: all speakers share (1) an accumulation of words, so that they can exchange information with others using the same language; (2) a series of rules regarding word-formation, in order to allow them to form new words; (3) linguistic and encyclopaedic information about each word, so that they can know how to use them in a correct, precise and adequate way, depending on each communicative circumstance (Cabré, 1999, p. 35).

Lexicography, on the other hand, is related to the compilation of dictionaries, i.e. it is based on the principles and methods of writing dictionaries. General dictionaries collect and offer a diversity of linguistic aspects and information, as a product of lexicographical research. One of the descriptions of a dictionary considered excellent by many scholars (Hakala, 2016; Zgusta, 1971) is the one defined by Berg (1960):

> A dictionary is a systematically arranged list of socialised linguistic forms compiled from the speech-habits of a given speech-community and commented on by the author (*lexicographer*) in such a way that the qualified reader (*dictionary user*) understand the meaning … of each separate form, and is informed of the relevant facts concerning the function of that form in its community. (p.4)

Hacken (2009) claims that dictionaries should serve as tools for users that are seeking information to solve a problem, and not be considered as descriptions of a language. Accordingly, it can be said that lexicography is a tool that evokes a certain prototype of an object (Hacken, 2015, p. 5).

Then there is the question of what terminology is. To quote Sager (1990) terminology is "the study of and the field of activity concerned with the collection, description, processing and presentation of terms, i.e. lexical items belonging to specialised areas of usage of one or more languages" (p. 2). Like lexicology, terminology also deals with words, but in the sense of terms. This means that terminology focuses, not on words in general, but exclusively on the specialized words with particular applications in specific domains of usage. As Motos (2013) states, they are the "lexical units exclusively used by a given knowledge community in a specific domain" (p. 9). Terminology is closely connected to specific subject domains, since it deals with technical words that are used only in technical or/and professional circumstances in fields such as civil engineering, chemistry, and physics. It is therefore essential to analyse the connection between the terms and concepts, by trying to "understand how terms relate to concepts or units of understanding or categories and objects or realia" (Temmerman, 2007, p. 30). Consequently, the emphasis is on concepts in a specific domain, and on giving a name to these concepts (Alberts, 2001, p. 80), or as Sager (1990) explains, the terms are "the linguistic representation of concepts" (p. 57). The priority of terminology, thus, is the concept, not the name or word that describes it. It starts from the concept and then moves to the designation. As a consequence, a term must designate that particular concept (Cabré, 1999, p. 34). This is the reason why one of the outstanding features of terminology – or a specialized lexicon – is to be univocal and restricted. As Aléson (2013) states, "there is one word (or lexical unit) per concept and a discourse community that prescribes that relation as such" (p.16).

In relation to its objectives, terminology also differs from other linguistic approaches. One of its goals is to establish standardized forms, providing a set of universal standard reference of concepts in the real world in order to guarantee professional communication (Picht & Draskau, 1985) so that it can facilitate

communication among the people involved. There are several interpretations of 'terminology' but the most important perspectives are the following:

a. For linguistics terminology is a part of the special lexicon that is characterized by subject and pragmatic criteria;
b. For scientific-technical disciplines terminology is the formal reflection of their conceptual organization and thus an essential means of expression and communication;
c. For the user (either direct or intermediate), terminology is a set of useful communicative units which must be evaluated from the point of view of economy, precision and suitability of expression. (Cabré, 1999, p. 33)

The three areas of study can therefore be described as follows: lexicology studies the description of the words of a language and demonstrates how speakers of that language operate them lexically; lexicography is all about writing dictionaries, including its principles and methods; terminology only focuses on specialized words in specific subject fields that occur in natural language. It is worth devoting a little more space to examining the relations of these three areas of study, focusing on terminology vs. lexicology and terminography vs. lexicography.

1.2.3. Terminology vs. lexicology

Terminology and lexicology share several characteristics, the most important of which are the following: both of them deal with words; both have their own theoretical principles and applications; and both are related to dictionaries. There is an opinion that terms are not essentially distinct from words from the viewpoint that they are both based on prototypes ["meaning the best or clearest examples" (Bajčić, 2017, p. 158)] (Temmerman, 2000). Despite this opinion, clear differences between terminology and lexicology can be found especially in the following points: (1) their domain, (2) the basic unit with which they deal, (3) their purpose, and (4) their methodology (Cabré, 1999, p. 35).

The first distinction among them can be established in the domain. As was explained above, lexicology analyses and describes the lexical ability of speakers. Its

object of study is thus all the words of a language. It seeks a set of word-formation rules, and linguistic and encyclopaedic data about each word, in order to illustrate how speakers use them in accurate ways according to each communicative circumstance. On the contrary, terminology's object of study is limited to the words in a specific field (such as medicine, dentistry, geography, law, etc.) or used in a professional activity (such as tourism, technology, marketing business, sports, etc.). Wersig (1976) defines terminology as follows: "the designations of special-subject language which are differently fixed from the vocabulary of general language, i.e. a subset of the lexicon which contains elements not contained in the general vocabulary" (cited in Sager, 1984, p.316). In this sense, therefore, terminology can be considered a part of lexicology (Cabré, 1999, p. 35; Sager, 1990, p. 55).

Lexicology handles words, while terminology manages terms. Words and terms are often used as synonyms; however, they differ in a strict point of view, as Cabré (1999) explains:

> A word is a unit described by a set of systematic linguistic characteristics and has the property of referring to an element in reality. A term is a unit with similar linguistic characteristics used in a special domain. From this standpoint, a word of a special subject field would be a term. (p. 35)

Sager (1990) defines terms as "the linguistic representation of concepts" (p.57). According to him, the concepts of whatever field can be explained in the following three ways: "(a) by definition, (b) by their relationships to other concepts, and (c) by the linguistic forms, the terms, phrases, or expressions by which they are realized in any one language" (Sager, 1984, p. 319). He further demonstrates the difference between general language (words) and special language (terms) as follows:

> Unlike in general language, where the arbitrariness of the sign is accepted, the special languages strive to systematise principles of designation and to name concepts according to pre-specified rules or general principles. General language fully exploits polysemy, metaphor, and adjectival determination; genuine word creation is relatively rare. Where it occurs it is based on the experience of every-day life and thus represents a pre-scientific approach of knowledge. The process of scientific observation

> and description includes designation of concepts and this in turn involves re-examining the meaning of words, changing designations and coining new ones. This concern with manipulating lexical forms leads to an attempt of reflecting elements of thought and perception in language. Designation in special languages therefore aims at transparency and consistency; often attempts are made to make designations reflect in their structure major conceptual features or characteristics of the concepts they represent. (Sager, 1990, p. 57)

Bearing this in mind, Alberts (2001) summarises the contrasting relation between 'terms' and 'words' by borrowing expressions of Sager (1990): "The items which are characterised by special reference within a discipline are the 'terms' of that discipline, and collectively they form its 'terminology'; those which function in general reference works are called 'words' and their totality the 'vocabulary'" (p.19).

Another difference is the fact that grammar plays an essential role in lexicology, as dictionary entries often describe how they are used in a certain context (Alberts, 2001, p. 80). Therefore, in order to create a general language dictionary, a lexicographer collects 'all' kinds of words with all grammatical categories from "nouns, verbs, adjectives, adverbs, determiners, pronouns, prepositions, conjunctions" (Cabré, 1999, p. 36) and even to interjections, and then they are sorted in multiple ways, so that the dictionary "covers all the words and all their meanings" (Alberts, 2001, p. 78). On the contrary, terminological dictionaries predominantly contain nouns, and sometimes adjectives and verbs in certain technical languages are converted into corresponding nouns, partly under an influence that "some theorists deny the existence of adjective and verb concepts" (Sager, 1990, p. 58).

Lexicology and terminology do not share the same objectives, i.e. the final product. The aim of lexicology is to explore the words from the perspectives of form, meaning and behaviour. Its main goal is to identify the lexical units of a language and describe them according to the framework of theoretical linguistics or how they are applied in a pragmatic and conventional way.

Terminology, on the other hand, aims to identify lexical segments used in reality of specialized profession. Its goal is to identify and designate the concepts which belong to a specific domain, and ultimately by doing so, attempt to provide a set of reference of

concepts existing in the real world (Cabré, 1999, pp. 36-37). In short, lexicology's interest is to present how each word should be linguistically and conventionally used, whereas terminology often looks to establish principles of standardization, in order to contribute "to efficient communication among domain experts in languages for special purposes, or even when proposing terms and definitions formed on the basis of a generally agreed consensus in international standard bodies" (Kockaert & Steurs, 2015, p. ix).

Viewed from the perspective of LSP, terminology also contributes to psycholinguistic studies (to understand e.g. how a new term is created and is accepted by the LSP community), in language planning (Picht & Draskau, 1985, pp. 16-21), as well as for didactic purposes such as "initiation, and instruction, training and development at a lower level of abstraction and specialization (Picht & Draskau, 1985, p. 21).

Furthermore, Hacken (2015) argues that the difference between terms (in narrow meaning) and specialized vocabulary lies in the need to resolve conflicts. According to this opinion, a term is created when it is necessary to distinguish clear boundaries, because, otherwise, using prototype conception, "which correspond to the natural state of concepts", is sufficient. The need to draw boundaries is evoked by legal or scientific conflicts (Hacken, 2015, p. 7).

Lexicology and terminology have separate points of view in terms of the methodology used to pursue their aims. Lexicology's materials of study are inextricably linked with human behaviour and samples of discourse. On the contrary, terminology rather "looks for terms to fill in a previously established conceptual grid" (Cabré, 1999, p. 37).

1.2.4. Terminography vs. lexicography

Lexicography is the pragmatic application of lexicology, which is related to the production of dictionaries. In the same way that lexicography can be considered as the pragmatic side of lexicology, the same could be said of terminology; as Bajčić (2017) states, terminography, which "deals with the practice of making terminological

resources like databases and dictionaries", is "the applied sister discipline of terminology" (p. 142). Therefore, both lexicography and terminography aim to create an output in the common form: a dictionary or database. Although they share the same objectives on this point, lexicography and terminography still differ from each other on others.

The first difference is the goals they pursue. As has been already presented above, the ultimate end of the study of lexicology is to describe the function of each lexeme in order to measure the lexical capacity of speakers. Terminology, on the contrary, looks to establish the common references in the chosen domain by naming and standardization. These differences of goals are reflected in the product of the study and lead to the second difference: material.

In the process of compilation, the inventory conducted by lexicographers will be focused on all the words of all grammatical categories. This is because the ideal dictionary for lexicographers is the one that covers "all the words and all their meanings" (Alberts, 2001, p. 78). The inventory conducted by terminographers, conversely, is focused on terms and they are selected as a function of a certain subject. In addition, in the process of compilation, those lexical units which are considered to be general and part of common language dictionaries will be excluded (Cabré, 1999, p. 37). Consequently, the source material that terminology is predominantly concerned with is written language (Sager, 1984, p. 316) in specialized domains.

The difference of the goals also contributes to the purpose of the final product. In lexicographical work, the purpose is to present information on correct application of lexical terms. Therefore, the words listed in general language dictionaries, for example, are those academically accepted by the issuing institution of the dictionary as the correct form (Cabré, 1999, p. 38). The aim of terminographic work, in contrast, is not merely to collect terms for informative or explanatory purposes. By compiling specialized lexicons, teminographers seek to present certain terminological units as reference models in specific subject fields. The 'true' meaning can be fixed only when a concept in the determined subject field or domain is precisely defined (Alberts, 2001, p. 80). Even when there are variations of the term for the same concept, they should be

eliminated, since the ultimate objective of terminographic work is to establish standardized forms in order to achieve "precise and unambiguous professional communication" (Cabré, 1999, p. 38). As Alberts (2001) explains, a "term should have only one meaning – one concept: one term" (p. 80). It is worth pointing out that the recent tendency, however, shows the opposite attitude on this point. As Sager (1990) states, recent terminographers agree that a term may have more than one meaning:

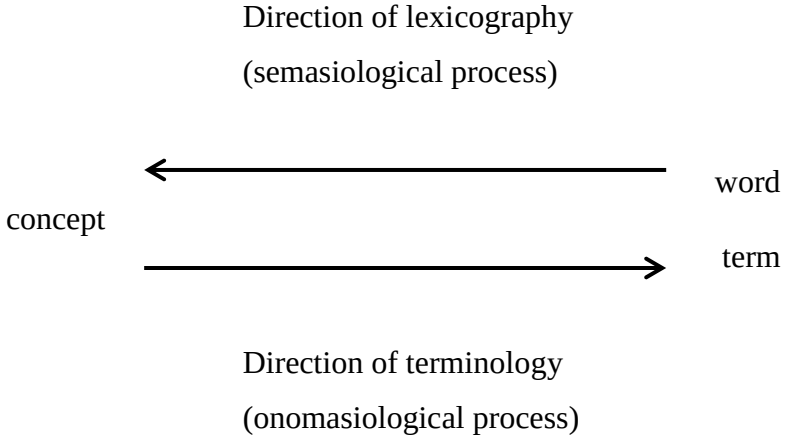
> Modern terminological theory accepts the occurrence of synonymic expressions and variants of terms and rejects the narrowly prescriptive attitude of the past which associated one concept with only one term. It is recognised that one concept can have as many linguistic representations as there are distinct communicative situations which require different linguistic forms. Terminology now adopts a corpus-based approach to lexical data collection. By being studied in the context of communicative situations, terms are no longer seen as separate items in dictionaries or part of a semi-artificial language deliberately devoid of any of the functions of other lexical items. The increasing tendency to analyse terminology in its communicative, i.e. linguistic context, leads to a number of new theoretical assumptions and also to new methods of compilation and representation. (p. 58)

Finally, the biggest difference between lexicography and terminology can probably be seen in their working process (Bajčić, 2017, p. 142). As mentioned above, the approach of lexicography starts from the word and goes toward the concept looking for its meaning, i.e. following a semasiological process (Alberts, 2001, p. 80). Editing a general language dictionary normally takes the following steps: lexicographers first start by collecting words so as to make a list of the dictionary entries. The entries in the inventory are then characterized and described functionally and semantically and a definition is prepared. Thus, the process moves from the form to the meaning (Cabré, 1999, p. 38).

The procedure of terminology is exactly the opposite. Its approach starts from the concept and goes toward the term, creating names for the concepts, i.e. taking an onomasiological process (Alberts, 2001, p. 80). Terminological work first starts with making the list of concepts that constitute a domain, and then they are associated with terms (Sager, 1984, p. 316), since the first approach taken by terminologists is "the

nature of concepts, conceptual relations, the relations between terms and concepts" (Cabré, 1999, p. 7). Depending on the subject domain, the list can be limited, and the whole structure constituting the list composes the conceptual system of a specialized domain activity or a discipline. The objective of terminographers is to assign a certain name to each concept, but the designation should be the one that is commonly used by specialists when they mention the concept. They pursue the goal to settle solid relationships between concepts and designations, through establishing which designations should go with each concept and how they should be employed (Sager, 1984, pp. 316-317). In addition, when more than one designation exists for a single concept, there are two options: only one of them is selected and all the rest of the designations are cast away; or several denominations are accepted with a condition that one prevails over the others (Cabré, 1999, p. 38). The following scheme demonstrates how the two systems operate in terms of the working process:

Figure 1.2 : Diagram of lexicography and terminology



Adapted from Cabré (1999, p. 38)

1.2.5. Legal language and terminology

It was observed in the preceding section that the approach of terminology is focused on specialized domains and terms are words applied in the special context of

the specific language of the discipline. Turning now to the main subject and attempting to extend the observation into legal translation, the words that are dealt with by legal translators are not merely lexical units but rather terms in a specialized field called legal language. This leads us now to the issue of the relation between terminology and legal language. The question of legal terminology has a close link to the nature of legal language itself. Its complex and distinctive vocabulary is commonly acknowledged as one of the unique characteristics as well as the most evident and prominent linguistic features of legal language (Cao, 2007, p. 53). For that reason, it is necessary to narrow the subject and look more closely at the relativity between legal language and terminology at this point, especially focusing on some of the more important peculiarities of legal language.

It is widely recognized that the language of law has a special function, due to its distinctive use of terms and expressions coming from ordinary language (Mattila, 2006, p. 1). However, in fact, there have been discussions about whether the category of 'legal language' actually exists and whether it can be classified as a 'technical language'. The debates are derived from two opposite opinions. One is the opinion that advocates the existence of legal language (e.g. Hart, 1954, 2012). This is supported by those who believe that legal language is a technical language with specific characteristics and thus it should be differentiated from ordinary language, being "autonomous of the ordinary language" (Jackson, 1985, p. 47). The other view does not totally agree with this position (e.g. Caton, 1963). Those who disagree with the first view believe that a legal language does not exist, or, even if it is assumed that it exists, it is only as part of ordinary language (Cao, 2007, p. 15). For those who believe that there is no legal language, the so-called legal language is merely a set of ordinary language used in specialized situations, such as legal circumstances. Those who partially agree with the peculiar status of legal language, such as Caton (1963), are sceptical about the nature of technical language. The linguistic philosopher believes that legal language is in fact a technical language but considers that technical language itself is a complement of ordinary language by its nature (Caton, 1963, p. viii), arguing that it uses the same syntax and speech operation, and the only difference is vocabulary. Another legal

philosopher, Schauer (1987, p. 571) also argues that legal language relies on ordinary language because the meanings of legal terms are, after all, those assumed in ordinary language and only the context they are used in separates the meaning as legal terms from the non-legal ones.

However, it is now broadly accepted that legal language is a linguistic phenomenon and it is generally considered as a technical language (Cao, 2007, p. 15). For instance, Jackson (1985) argues that legal language is peculiar because it exists only in a legal system. It is therefore distinct from ordinary language and thus the knowledge of the legal system is critical for understanding legal language (Cao, 2007, p. 17).

Given that legal language is a technical language, Cao (2007, p. 8) considers that legal translation is recognized as a type of translation which involves LSP in a legal context, or LLP (language for legal purposes). According to her definition, LLP follows the special rules of legal language. Legal language, in this context, refers to the language employed in communications "between legal specialists, such as judges, lawyers and law professors" as well as in communicative situations "between lawyers and the layperson or the general public" (Cao, 2007, p. 28). It represents a particular register in language use (Cao, 1997, p. 662).

Hart (1954, cited in Cao, 1997, pp. 663-664) argues that there are two unique features in legal language when compared to others: (1) it relies on presupposition of the existence of a specific law; and (2) the meaning of its terms depends on the context of a certain rule of law. Firstly, legal language exists on a basis of a legal system. Legal language identifies itself within a legal system and within specific rules of law in the legal system. This background as well as the particular characteristics of rules of law as rules give legal language its meaningfulness and specific meaning (Hart, 1954, pp. 41-45). Secondly, the use of its terms presupposes the relevant rules of law in order to gain contextual meaning. Legal terms make sense only when they are used in the context of a legal system which actually exists and applied under the specific rule of law (Hart, 1954, pp. 41-47). This implies a potential risk of translation that certain legal concepts and terms may lose their meanings when they are translated into the language of a country where there is no equivalent legal system (Cao, 1997, p. 664).

As mentioned above, one of the leading elements of difficulty in legal translation is ambiguity, which is also an outstanding characteristic of legal language. In the previous section, the argument was more focused on the 'deliberate ambiguity' aspect of legal language. Intentional obscurity that is employed tactically accounts for one of its features. However, the important point to note here is that legal language itself is also fundamentally indeterminate because it relies on general language (Joseph, 1995, p. 14). This indeterminacy is derived from the nature of law. To borrow Harvey's words, "law is a notoriously unstable discipline" (2002, p. 182).

As explained earlier, law relies on and makes use of the very linguistic nature of generality and vagueness (Cao, 2007, p. 75). Any language is inherently indeterminate (Cao, 2007, p. 81), thus law, the domain which relies wholly on language, is always subject to interpretation (Morris, 1995, p. 14). That is the reason why lawyers are called for and therefore language is an additional medium for lawyers to discuss their case (Cao, 2007, p. 81). Also, unlike other 'hard' scientific subjects such as mathematics, chemistry or physics (Morris, 1995, p. 15), law cannot be described or analysed, or subdivided into a list of clearly defined basic elements (Harvey, 2002, p. 182). Instead it relies on the flexibility of language to employ expressions such as 'reasonable doubt' or 'due process' (Mellinkoff, 2004, p. 394). It can therefore be said that legal discourse is always in a state of flux (Harvey, 2002, p. 182; Joseph, 1995, p. 14). Its meaning is flexible and never fixed, and according to Joseph (1995, p. 14), the notion that it is 'carved in stone' or the kind of accuracy that the law stipulates for language is based on an illusion of human linguistic behaviour.

Although vagueness, generality and uncertainty exist at various linguistic levels, such as syntax or structure, lexical uncertainty will be highlighted in this section, as it is apparent that more legal disputes originate from lexical vagueness than syntactical ambiguity (Cao, 2007, pp. 73-74), and in addition, it is these lexical problems that lead us to the question of terminology.

1.2.6. Equivalence

The mission of finding legal terminology consists, at least in part, of searching for

equivalence. Does equivalence exist in legal translation? If so, what kind of equivalence shall we deal with?

There is a general notion that it is extremely difficult to find exact equivalences of terms in legal translation. Šarčević (1991, pp. 615-616) argues that, as opposed to specialized terminology in other fields of natural sciences and technology, in legal language it is only viable to achieve partial equivalence due to systematic, linguistic and cultural differences**.**

Accordingly, for de Groot and Rayar (1995, p. 207), full equivalence rarely exists. It can only be feasible if both the source language (SL) term and the target language (TL) term refer to the same legal system. In their opinion, this is only observable in limited countries such as Belgium, Finland, Switzerland, and – to some degree – Canada, where a bilingual or multilingual legal system is adopted (de Groot, 1996, pp. 13-14; 1999, p. 20; Gémar, 1988; Herbots, 1987). On the other hand, for historical reasons, when the concept, and the related term, in a certain legal system has been adopted in a country and remained there with the same meaning, it may turn out to be a near full equivalent. This is probably because the imported concept penetrates the system of the new territory, maintaining the same concept as the exported one. According to Cao (2007), "(b)orrowing and neologism are much more common in legal systems that are in the process of establishment or developing than in more mature or established systems" (p. 57). The best way to keep the original meaning of a term, it will be argued, is to 'borrow' the term or expression from the SL i.e. – not to translate, followed by 'neologism' (Ng, 2014, p. 55). In this way, the term and expression retain the original concept of the SL. One of the examples is the Japanese/German combination in the field of private law (de Groot & Laer, 2007, pp. 174-175). Kitamura (2003) gives an example of a concept borrowed from German to Japanese in private law:

> There is something quite similar to this Japanese moral feeling in the legal rules of good faith and loyalty (Treu und Glauben) borrowed from the Germans. These principles have received many applications in the courts. The rules of good faith have almost come to occupy a place of general principle in private law, and what is more, they have had a

> privileged legislative position in article 1 of the Japanese Civil Code since 1947. This is one of the rare successes of transplantation of law in private law matters. (p.740)

When terminological equivalence is not easily achievable, one of the points that the translator needs to be aware of is the semantic gap, i.e. the lack of semantic equivalence (Cao, 1997, pp. 662-663). It is especially important for legal translation, as the peculiarity of the national legal language will be different in the target legal language.

For instance, the term 'divorce' seems to refer to the same concept in the world. However, when it is closely analyzed from a legal perspective, the system and concept of divorce can differ from nation to nation. In fact, the same is applied to 'matrimony', the legal base that leads to the action of 'divorce'. As de Groot and Rayar (1995, p. 207) point out, it is questionable whether the term 'divorce' and its so-called correspondent term in German '*Ehescheidung*', in French '*divorce*' and in Italian '*divorzio*', can be considered as equivalent, since there are fundamental dissimilarities in the system and the concepts of matrimony and divorce in these three national legal systems. Nevertheless, they are generally accepted in translation, as these are the most suitable terms that demonstrate the general idea of 'divorce', despite the systematic and conceptual differences. The authors call these terms 'acceptable equivalents' or later 'near equivalents'. They claim that all we need is to find a conceptual 'approximate equivalence'. Admitting that this 'approximate equivalence' itself is an obscure scheme which is difficult to determine, they conclude that it depends on pragmatic circumstances that "are the availability of alternatives, the specific purpose of the translation and the user category" (de Groot & Rayar, 1995, p. 207). Additionally, the degree of ease in finding these equivalents depends on how closely the concepts of the legal systems of the SL and TL relate to each other (de Groot & Rayar, 1995, pp. 207-208).

As for translatability, Kisch (1973 cited in de Groot & Laer, 2007, pp. 175) refers to the 'near equivalent' if the terms correspond in essence. Furthermore, he states that whether the terms correspond or not is a question of pragmatic order, the idea from

which de Groot and Rayar (1995) drew the conclusion mentioned above. In other words, translatability has something to do with finding an equivalent term in the TL that offers the same function as in SL. This functional equivalent can be explained as "a corresponding term in the TL designating a concept or institution, the function or usage of which is the same as that of the source term" (Šarčević, 1991, p. 615). In order for a term in the TL to be recognized to serve as an equivalent in the SL, it is necessary that, in addition to the identical function, they also have "a similar systematic and structural embedding" (de Groot & Laer, 2007, p. 175) in terms of legal context.

The tremendous amount of French technical vocabulary borrowed and introduced into English legal language centuries ago offer several examples, such as *agreement, arrest, arson, assault, crime, damage, easement, felony, heir, larceny, marriage, misdemeanor, money, profit, property, slander, tort,* and *trespass* (Tiersma, 1999, p. 31). If restricted to the time when these words were imported, we can say that these terms could serve as equivalents, since, as Tiersma (1999) states, one can find many French words translated, borrowed or Anglicised in legal English, including even some syntactical structures and usage. Furthermore, it should be noted that acceptable equivalence may vary depending on the context and purpose. When the translation needs to be explicit, one specific term should be chosen and on other occasions where the objective of the translation is of a broader scope, probably another term with encompassing meaning should be selected. For that reason, de Groot and Rayar (1995, p. 208) state that the concept of 'acceptable equivalence' is relative and stress the utmost importance to ensure the linguistic and extra-linguistic context, i.e. the context and purpose of the translation.

Therefore, as long as the legal system of the TL and that of the SL share a close systematic and structural base, the task to find functional equivalents is facilitated, even if not altogether resolved. However, in most cases, this kind of happy circumstance does not happen. When no approximate equivalent is found, we should look for alternative equivalents. There are generally four choices for alternative solutions: 1) borrowings; 2) literal equivalents; 3) descriptive equivalents; and 4) neologisms (Šarčević, 1991, pp. 619-622).

1) Borrowings

The technique of borrowing is frequently used when there is no approximate concept in the TL. In this case, the SL term is simply borrowed, i.e. used as it is in the SL in the TL text. On the one hand, if the user of the translation is not accustomed to the context or background knowledge, the term is no more than a strange word to the reader (Šarčević, 1991, p. 620); on the other hand, however, this method is effective to distinguish clearly the SL concept from that of the TL. Šarčević (2000, p. 9) also points out the fact that the use of borrowing has been playing an effective role in the sense that national courts introduce and apply the foreign legal concept. In this sense, Cao (1997, p. 664) gives an example of the Common Law term '*force majeure*' in Chinese. '*Force majeure*' is a legal concept of Common Law and there was no direct equivalent concept in the Chinese legal system. The term was translated into Chinese characters *buke kangli* (which literally means 'irresistible force') and now it is widely recognized and used in Chinese contracts in the same way of that of Common Law. Although the term was transferred into Chinese characters, it can be said that this is a good example of the borrowed concept being accepted and a semantic equivalent being eventually born.

In contrast, however, the term 'equity' was not as successful as '*force majeure*' in China. 'Equity' is a particular concept in Common Law. It is a specific legal frame developed under Common Law in order to cover its insufficiencies. Again, there is no legal corresponding term in Chinese law. A term was translated into Chinese characters but this borrowed term does not have a corresponding meaning in the Chinese legal system. Therefore it has not been recognized and a long explanatory note should be provided after the term (Cao, 1997, p. 664). Interestingly, in the case of both '*force majeure*' and 'equity', the same phenomena are seen in Japanese.

Borrowing is a frequently used technique. However, it should not be abused. It is the opinion of de Groot and Rayar (1995, p. 207) that, in principle, "terms should be translated by the legal terms of the TL, the terms with which the TL-user is familiar" (1995, p. 207). They also insist that, considering that the objective of translation is to facilitate the understanding of the SL text, leaving the original term should be the last

option (de Groot & Rayar, 1995, p. 209). It should be especially avoided when two languages do not share much or any etymological history (de Groot & Laer, 2007, p. 176).

2) Literal equivalents

When there is no acceptable equivalent term in the TL, another way to solve the issue is to substitute elements of the term from the SL in the TL. This is successful when the source term is sufficiently clear in its meaning. Literal translation was considered to be the best solution for the practice of legal translation until recently (Ng, 2014, p. 52). It was considered to be ultimately ideal for legal translation to be as accurate as possible in meaning, even though the readability and function of the target text should be kept in mind (Beaupré, 1987, p. 739).

However, this method is more likely to be avoided these days. Literally translated texts always leave some awkwardness for target language readers. The unnatural syntax of the SL linguistic order emphasizes the 'translated' nature. In this sense, Ng (2014) states that literalism "is a device that limits the interpretive input of the target language", arguing that "literalism is an attempt by the source language community to exert control over that of the target language" (p. 56). For this reason, it is a recent practice that, in principle "a literal equivalent should be used only if the term in question does not already have a specific meaning in the legal reality of the TL", as Šarčević (1991, p. 620) argues.

3) Descriptive equivalents

Another option for translating a term is by resorting to paraphrasing (de Groot and Laer (2007, p. 177). This consists of providing an explanatory description of the term alongside it, in order to facilitate minimum comprehension by the TL readers, especially when there is a big gap in the elements such as legal systems, cultures, languages between the SL and TL (Šarčević, 1991, p. 621). Furthermore, Šarčević (1991, p. 621) points out an interesting aspect of some languages, stating that the Sino-Tibetan languages, especially Chinese, have far more descriptive characteristics due to their

symbols. Chinese characters – as well as one of the three types of Japanese characters in this case – are not syllable signs but ideograms. From the standpoint that Chinese characters themselves symbolize the idea, she considers that equivalents in Chinese characters are descriptive. For example, the aforementioned Common Law term 'equity' cannot be found in the Chinese legal system. As a solution, a lexical item consisting of three characters was created in Chinese: *hengping fa* (*heng* literally means 'weighing' or 'measuring', *ping* means 'fair' or 'equal' and *fa* is for 'law')" (Cao, 1997, p. 664). This new term can be considered descriptive, since the three characters provide explanatory information. Nevertheless, it would be necessary to provide a long description to explain the original meaning, as the new Chinese term still is not semantically equivalent. Other examples regarding Chinese characters are provided by Cao and Zhao (2008):

> For instance, the English words 'liability' and 'responsibility' have to be translated by the single French word 'responsabilité'. This is true with the Chinese language where there is no equivalent for 'liability', and 责任 (zeren) are often used for both words. If a distinction has to be made, an extra word 赔 偿 (peichang) has to be added to indicate liability. Similarly, the words 'boundary' and 'frontier' are rendered as 'frontière' in French. In this case the Chinese language is rich in equivalents: 边界 (bianjie) and 界线 (jiexian) can both refer to 'boundary', and 边境 (bianjing) and 边疆 (bianjiang) can both mean 'frontier'. Chinese translators have to consider the context to choose the right word. (pp. 46-47)

4) Neologisms

Neologisms, as Nagy (2014, p. 265) explains, are in close relation to the evolution of language, and therefore are also strongly linked to special languages. According to de Groot and Laer (2007), who apply neologism in an extensive meaning, all terms that do not exist in the TL legal system, but are transferred to it, are neologisms. They highlight that in the legal translation context, transference of legal information must be achieved not at the language level, but at the terminological level, i.e. "from the terminology of the SL legal system into the terminology of the TL legal system" (de Groot & Laer, 2007, p. 177). Therefore, "each term not belonging to the TL legal system has to be

considered a neologism" (de Groot & Laer, 2007, p. 177).

In order to avoid possible confusion, it is indispensable to guarantee that the term is not used in the legal system of the TL. Before introducing neologisms, therefore, a careful research of all the terms used in the TL legal system should be carried out. For example, the expression '*droit commun*' can never be an equivalent term of 'Common Law' in French, as it is used in French with a distinct meaning from the general definition of 'Common Law' (de Groot & Laer, 2007, p. 177). In addition, when neologisms already being used by the target text users are found, it is recommended that they should be adopted in order to avoid possible misunderstandings (de Groot & Laer, 2007, p. 178).

Another important point is consistency. Once the translator has decided to use the terminology of system A, its usage should be maintained, and the terminology of legal system B should not be used in the middle of the process (de Groot & Laer, 2007, p. 178). After deciding to follow the terminology of system A, if the translator needs to find some acceptable equivalents in another legal system, this should be allowed as long as the translator provides a proper explanation and description of which terms were borrowed.

One extreme example is mentioned in a report by Kitamura (1987), cited by Beaupré (1987, pp. 739-740), which analyses the present state of Japan's legal system as a result of systematic neologism:

> (t)he resultant mystification of the positive law, devaluation of the cultural content of Japanese law as a whole and confusion inserted into basic legal notions appear to have led to excessive elitism in the expression of the law. The dramatic schism between ancient culture and modern legal institutions, which have been inadequately transposed and translated from abroad, seems inevitably destined to lead to popular disaffection with public institutions and the rule of law as we know it in the West. (cited in Beaupré 1987, pp. 739-740)

As can be seen in the aforementioned descriptions, the borders between the four strategies for alternative equivalents for languages that have their own characters such as Japanese or Chinese, tend to be blurred. If the translation is from English into Japanese, for example, instead of leaving the directly untranslatable term as it is in the Roman alphabet, it should be at least phonetically transferred into *katakana* (one of

Japanese writing systems which is used for transcription of foreign language words) or, if possible, corresponding Chinese characters (*kanji*: Japanese language has three writing characters – *hiragana*, *katakana*, and *kanji* (Chinese characters)) are applied. This process can be understood as either literal transference (if it is seen that each term is substituted by each corresponding Chinese character) or descriptive substitution (if it is understood that the Chinese character itself is descriptive, as Šarčević underlines (1991, p. 621)). In addition to this, the term will effectively have the same consequence of borrowing, as the concept itself is new to the Japanese legal context. Therefore, it should be noted that as far as the techniques of alternative equivalents previously mentioned are concerned, the border lines which separate them are not always visible in all languages.

1.2.7. Legal terminology and dictionaries

When translating a legal document, legal dictionaries are undoubtedly of great help to translators. However, there have been many discussions regarding the quality of legal dictionaries. In this section, the difficulty of dealing with legal terminology will be analyzed by identifying and discussing the issues underlying legal dictionaries.

De Groot and Rayar raise a doubt with respect to the quality and the conditions of bilingual legal dictionaries (1995, p. 205). In their study, they point out the difficulties of finding equivalence in legal terminology regarding its choice – whether it should be translated by the legal terms of the TL or on the basis of the legal systems of the SL – and obstacles to find 'full-equivalence' due to systematic and conceptual dissimilarities, among others. They ultimately suggest some prerequisites that legal dictionaries should provide, such as including a separate section explaining the legal systems involved, entries and proposed translations accompanied by linguistic context, encyclopedic and bibliographic references, and idenficiation of neologisms as such in order to avoid confusion. They stress the system-dependent feature of legal language and thus claim that comparative law is an essential element for legal dictionaries. They assume that "finding the right criteria for establishing equivalence is not easy (1995, p. 211)" but stress the importance of the work of search and analysis of equivalents, suggesting that

the degree of equivalence should also be indicated in legal dictionaries.

In a subsequent study, de Groot and Laer (2007) reaffirm the importance of comparative law for legal dictionaries. The article explores again the dubious quality of legal dictionaries and the authors conclude that most legal dictionaries are, in fact, no more than mere "lexicons" (de Groot & Laer, 2007, p. 173). Furthermore, they strongly advocate that dictionaries that offer useful information for professional legal translators are the ones which are elaborated on a basis of comparative legal research.

Therefore, it seems that comparative law is the key for establishing good legal dictionaries and eventually for finding adequate equivalents. As far as comparative law is concerned, Bogdan (1994, pp. 85-86, cited in Goddard, 2009, p. 193) argues that lawyers need to have a grasp of basic comparative principles such as "hierarchies of sources of law, legal methods and an understanding of legal concepts and terminology " (p. 193).

From this point of view, Šarčević (1991, pp. 616-619) suggests the following strategies in order to improve the reliability of legal dictionaries: including short definitions of the source institutions, concepts and explanatory notes on comparative law; organizing the content into subdivisions; assorting meaning in context; stipulating the diversity of geographical usage and acceptability of functional equivalents.

As far as the equivalents in legal translation are concerned, however, the selection of equivalents is not linear. In addition to the difficulties that are system-bound, there are also some jurisprudential characteristics hampering the task, such as the following: even general legal concepts can be misleading, legal language is often polysemous, and there is often geographical diversity in legal terminology, as it happens, for example between the USA and the UK.

1.3. English as a lingua franca in legal settings

In this section, the status of English as an intermediary language in legal contexts, especially legal translation, is discussed. English has become a global language in almost all categories of human activity, and the legal field is no exception. As business

intensifies on an international scale, a demand for legal translation grows. One outstanding example is that of the European Union (EU). Due to its linguistic policy, the EU has to work with enormous amounts of legal translation. As observed above, however, legal translation is very sensitive and perplexing as it consists of complex elements with specific socio-cultural fundamentals. The following sections discuss the role of English in legal settings and the complications that English can bring as a lingua franca, but first it is worth exploring the reason why English has become a global lingua franca.

1.3.1. English as a global language

Today English is the 'magical' language that connects the world. English facilitates one's life, whether in business scenarios or travelling abroad. In the late 1990s, approximately one quarter of the world's population was already using English. It was estimated that by the early 2000s around 1.5 billion people would be speaking English (Crystal, 2003, p. 6). By 2013, the number of English speakers at a useful level had increased to up to 1.75 billion and it is expected to continue growing to up to 2 billion by 2020 (British Council, 2013, p. 2).

If one considers the population of so-called 'native' speakers of English in countries such as the USA, the UK, Canada, Australia and New Zealand, this number shows how much (and how quickly) they are now outnumbered by non-native speakers. There are more people using English as a medium of international communication than just its native speakers (Kirkpatrick, 2007, p. 1). More and more non-native speakers have been choosing English as their second language. Kachru (1992a, pp. 2-3) suggests that this phenomenon contributed to making English an international language. Unsurprisingly, therefore, English is now recognized as the world's common language.

1.3.2. Why is English so widespread?

One of the major reasons why English is used worldwide is that it is a key language in economic development at an international level. English opens the doors to

indispensable areas for our modern life like technology, science, trade and diplomacy (Kachru, 1992a, p. 4). English has in fact penetrated almost all the areas that are essential for our lives. This phenomenon is especially visible in international business, where English is a crucial key. If one wishes to take part directly in business across borders, one inevitably has to use it or come to grips with it (Ostler, 2010, p. 8). As mentioned in a British Council report (2013, p. 3), English enhances stability, employability and wealth in developing and emerging economies, as it is acting as the global language. It is now used as the lingua franca of "international scientific publications / of the global market place / of world communication / of an increasingly interdependent and globalized world / of business and politics from Berlin to Bangkok" (Ostler, 2010, pp. 3-4). Ostler (2010) also gives another outstanding example that indicates the predominance of English: he suggests that the amount of translation with English as TL (i.e. translating from another language into English) has been decreasing, representing only 2-3 percent of all translated texts published in the world, or as little as half of that a few years ago. In contrast, the demand of translation with English as SL (i.e. translating from English into other languages) has remained constant, and accounts for most published translation texts at a global level and even up to 60-70 percent in the European market, where it is considered as the largest translation market. Academic research reveals that this number is double when compared with the total number of all the other source languages (Ostler, 2010, p. 8). This demonstrates how powerful English is as medium of information transmission.

Kirkpatrick (2007) sees this prosperity of English as a fruit of imperialism or linguicism[5], and implies that this is one of the possible reasons why English is spread all over the world. Additionally, he raises another doubt: is the spread of English "due to a genuine desire of people to learn English because it has become so useful and because it can be adapted to suit the cultural norms of the people who speak it?" (Kirkpatrick, 2007, p. 35). Several sources express the view that people who recognize its value have been taking an active part in learning English around the world (Brutt-Griffler, 2002;

[5] "*Linguicism* involves representation of the dominant language, to which desiable characteristics are attributed, for purposes of inclusion, and the opposite for doinated langugages, for purpose of exclusion" (Phillipson, 1992, p. 55).

Conrad, 1996; Davies, 1996; Li, 2002). English has been voluntarily chosen as a medium of communication by a considerable number of people, resulting in fruitage of new varieties of English, which, eventually, "shows how English can be adapted by its speakers to reflect their cultural norms" (Kirkpatrick, 2007, p. 36). Kirkpatrick (2007) also points out that many non-Anglo or non-Western cultures and traditions have become known through English: for example, "three examples from Chinese culture, traditional Chinese medicine, the writings on the Art of War Sun Zi and the tenets of Confucianism are now much better known in the West than in the past, precisely because this Chinese cultural knowledge and these Chinese ways of thinking have been disseminated through English" (Kirkpatrick, 2007, pp. 36-37). This suggests that English has become a global language for at least two reasons: as the heritage of imperialism, and the willingness of people who learn it.

Crystal (2003) suggests the following definition of a global language: "its usage is not restricted by countries or (as in the case of some artificial languages) by governing bodies" (p. 141). If one considers the number of non-native speakers that today far surpasses that of native speakers, British or American citizens cannot say that they 'own' the language. English has arrived at a stage at which it is the most used language in the world. Moreover, the role that it is expected to assume has also diversified. In addition to its status as a mother tongue, it can also be appointed as an official language in order to facilitate communication among multiple communities with different linguistic backgrounds within one nation (such as Malaysia, India or Canada), or as a substantial lingua franca used to smooth international mutual understanding among non-native speakers (Ostler, 2010, p. 32). Hence, it is possible to say that English is used at three different levels: as a first language – i.e. as a mother tongue –, as a second language and as a foreign language. This means that English is expected to develop in a three-pronged dimension (Crystal, 2003, p. 6). It has been suggested that there are three main varieties in English:

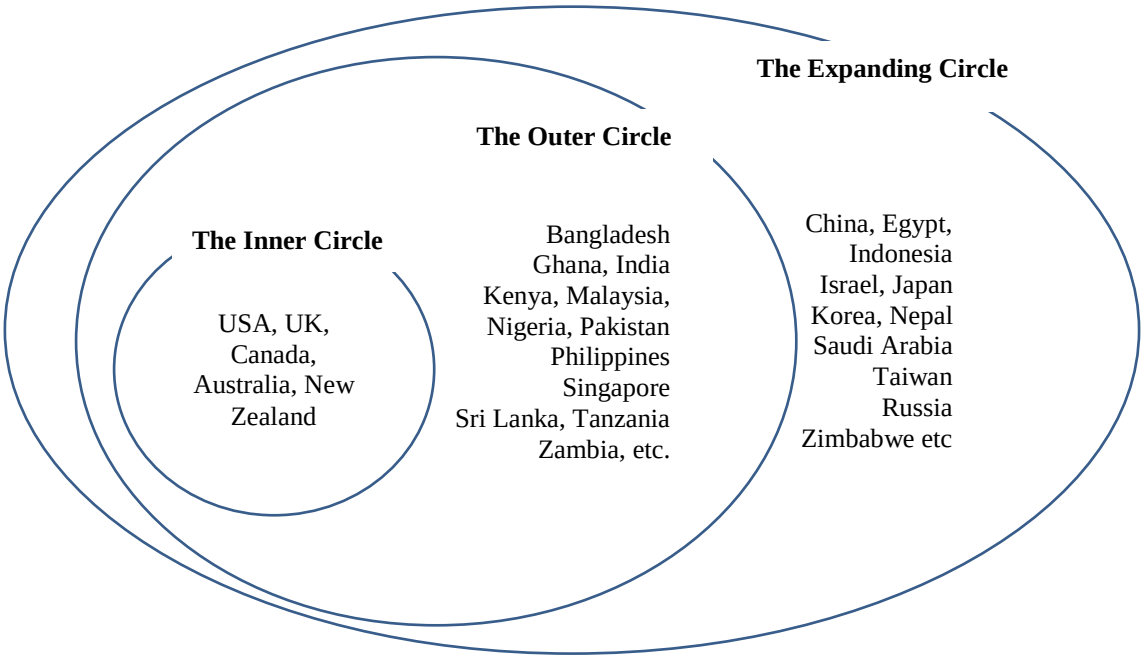
(1) those that are used as the primary language of the majority population of a country, such as American and British;
(2) varieties that are used as an additional language for *intra*national as well as

*inter*national communication in communities that are multilingual, such as India, Nigeria, and Singapore;

(3) varieties that are used almost exclusively for international communication, such as China and Germany (Kachru & Smith, 2008, p. 2)

Kachru (1985) described these three varieties of the language using three concentric circles, respectively: the Inner Circle, which characterizes the nations where English is used as a primary language; the Outer Circle, which includes former colonies of the UK and the USA that adopted English as a medium of national governance; and the Expanding Circle, in which all the regions where English serves as a language for international communication are included. According to Kachru's definition, the three circles are represented as follows (Gilsdorf, 2002, p. 369):

Figure 1.3 : Kachru's model of world Englishes



Adapted from Gilsdorf (2002, p. 369)

However, English was not the global language in the past. Greek used to be a medium of international communication around AD 100, being spoken from Europe to the western part of the Himalayas. Arabic also enjoyed its influence as the language that

flourished with the expansion of Islam. Then since around the 11th century, Latin emerged as a world language in the West, serving as the language that symbolizes the Christian way of life and governance, substituting the traditional use of Christian Greek (Ostler, 2010, p. 162). Although it already had a history of more than two millennia (Ostler, 2010, p. xvi), Latin enjoyed its predominant status as an international language for hundreds of years in Europe, including as a language of instruction in law. On the other hand, French had already started to replace Latin in France in approximately the 13th century and gradually increased its influence. It was being used in England as a legal language already in the 14th century and only lost this status in 1731 (Tiersma, 1999, pp. 35-36). However, French assumed the role as a language to elaborate treaties and international political negotiations mainly during the 18th and 19th centuries (Tiersma & Solan, 2012, p. 18), and was recognized as a diplomatic medium of communication until recently.

Global languages have changed throughout history. Ostler (2010) claims that a lingua franca arises as a result of conquest, as a requirement for imperial administration, and through commerce and religious missions. Crystal (2003, p. 7) also suggests that a language gains the status of dominance through economic, technological, and cultural supremacy. According to him, English was "in the right place at the right time" (Crystal, 2003, p. 120). During the 17th and 18th centuries English spread around the globe as Britain expanded its colonies and trading connections.

The first and the biggest step was the series of English settlements in America. It opened the door for English to develop eventually as a global language. It is believed that, before the massive emigration to the New World, the number of people in the world who spoke English as a native tongue was between 5 million and 7 million, most of whom resided in the British Isles (Crystal, 2003, p. 30). The majority of settlers initially came from Britain; however, many immigrants also arrived from Europe and then from Africa due to the notorious slave policy at that time. It is said that even within the limited area of Manhattan Island, presently a part of New York, there were eighteen languages being used in 1644 (Dillard, 1992, p. 22). One could say that it was in America that English evolved as a major language, as it was the 'contact point' with

many other European and African languages (Kirkpatrick, 2007, p. 56). English in America therefore started to develop separately from British English, reflecting the influence of these other languages. Along with the linguistic fusion, America rapidly came to thrive economically with a multicultural background. This also contributed to the expansion of English. America achieved independence from Great Britain in 1776, becoming officially denominated as the USA. By 1952, approximately 320 years after the famous immigration of English Puritans on the *Mayflower* in 1621, the number of English speakers grew to 250 million, mostly consisting of Americans (Crystal, 2003, p. 31).

The spread of English, however, cannot be explained solely by the development of the USA. Much is also owed to British colonial development, as a result of pioneering exploration that continued up to the 19th century. The colonies that the British Empire developed extended over every continent, including America, Asia, Oceania, Africa and the South Pacific. Later, when these colonies claimed political independence in the 1960s, English ended up being the language used by the governments of these new nations, since it had already gained a special status that no other language could substitute. This fact led to the growing number of countries that belong to the aforementioned Outer Circle. Kachru (1992b, cited in Y. Kachru & Smith, 2008, p. 5) also considers that former British colonies played an essential role in the expansion of the English language. He argues that there were two diasporas of this language: the first diaspora took place when people in the Inner Circle emigrated to new frontiers such as Australia and New Zealand, countries that eventually became members of the Inner Circle; the second diaspora occurred when the speakers of the Inner Circle moved to the Outer Circle and the Expanding Circle nations and transplanted English to these new places.

It should be also noted that English has arrived at this predominant position in a relatively short period of time. It began expanding four hundred years ago, but the expansion has accelerated particularly in the last three centuries. The 18th and 19th centuries saw the industrial revolution in Britain. This enabled Britain to be the world's leader in industry and trading, and develop the large colonial empire which promoted

the spread of English to all territories (Kocbek, 2006, p. 237). From the late 19th to the 20th century, as British influence declined after the Second World War, the USA emerged and strengthened its power instead, to then become the leading nation in new technologies and industries. The USA took over the British leadership in the world as a military power after the Second World War, but soon consolidated its influence through its flourishing economy, especially through the development of new technologies. The electronic revolution of the 1970s led to its language – English – becoming part of our lives, as it penetrated all aspects of society. English is currently the medium of communication used, not only for business and trading, but also for science, academic research, and entertainment. This can be considered as very rapid development if we consider the history of one hundred thousand years since the phenomenon of language started (Ostler, 2010, p. xvi). This phenomenon has led more members to join the Expanding Circle.

For Strevens (1992, pp. 29-30), it is clear that there were some major changes that affected English throughout history. He describes three main events between 1750 and the 1900s. The first stage was due to an increase in the population of native speakers in their colonies and settlements. The second stage happened when these colonies decided to be independent from Britain, which resulted in accentuating the multiple linguistic varieties of English spoken in each nation. After independence, the nation came to enjoy political stability and affluence. In the third stage, a large number of non-native speakers of English – namely indigenous people and immigrants – started to master English so that they could be successful in society or simply to survive. Then, according to the author, the fourth stage took place between around 1900 and 1950, when the colonies started to offer education in English to indigenous peoples and immigrants.

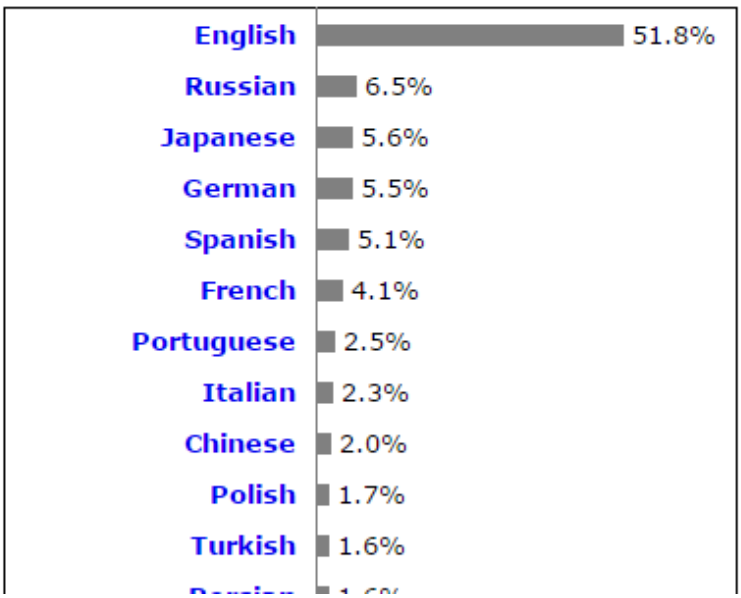
However, the fact that English has spread all over the world is not the only reason why this language has become the global language. Some infer that the grammatical simplicity of English compared to many other languages contributes to its wide use as a language. Although it possesses a huge vocabulary and some irregularity of word spelling as a result of the failure of attempts at spelling reform and the many borrowings from other languages, English has a simpler grammatical structure than that of other

languages (Gilsdorf, 2002, p. 373). As a medium of communication, i.e. to achieve an objective to make oneself understood to a certain extent, English requires only a limited vocabulary and uncomplicated grammatical structures, so it is relatively easy and quick for a learner to acquire basic English. This point is stressed by an academic of UCLA, a specialist in Slavic literatures and a multilingual translator, M. H. Heim, who said in an interview: "English is much easier to learn poorly and to communicate in poorly than any other language. I'm sure that if Hungary were the leader of the world, Hungarian would not be the world language. To communicate on a day-to-day basis – to order a meal, to book a room – there's no language as simple as English" (Wallraff, 2000, p. 58).

Strevens (1992, p. 30) further points out that the English language is now facing a new stage of evolution. Since around 1945, English has found a different role and function. It has become the predominant language of new activities and phenomena, such as telecommunications, air-traffic control, space science and computing technology. With the help of globalization, English has become recognized as the language that offered a 'window on the world of science and technology'. For example, data in 2002 revealed that already about 75 percent of web pages were written in English (Gilsdorf, 2002, p. 367). Interestingly, this number has been decreasing. Another reference shows that in 1998 the percentage of websites in English was 75 percent but it dropped to 45 percent in 2005 (Pimienta, Prado, & Blanco, 2009, p. 33). The authors consider that this number is still overestimated, due to the new bias of search engines which prefer to index English content rather than the real language of the page, not reflecting the true picture of the linguistic topology of the web. Accordingly, they presume that the percentage of the English presence on the web probably was below 40 percent, but in 2007 it recovered to above 40 percent on account of an extensive growth of Chinese internet users (Pimienta *et al.*, 2009, p. 33). Another recent statistic demonstrates that, as of 13 March 2017, pages in English occupy nearly 52 percent of all websites; the number of which has been reduced from 57.6% since 2011 (W3Techs, 2017). As the aforementioned United Nations Educational, Science and Cultural Organization (UNESCO) report (which was based on the statistics of

W3Techs) points out, the rate is likely to be biased. The tendency is, hence, the decrease of the percentage of web pages written in English. However, usage of English is still dominant when compared to other languages, as shown in the graphic below.

Figure 1.4 : Usage of content of language for websites



Adapted from W3Techs (2017)

As Crystal (2003, p. 9) points out, languages with dominant political and military power have historically become global languages. It is said that "(a) language is a dialect with an army" (Kirkpatrick, 2007, p. 55). When a nation with political and military power overwhelms another nation, the more powerful language takes over from the other and, whether it is imposed or not, the language of the dominant nation becomes the language of communication. From this point of view, some even consider that if the result of the Second World War had been the opposite, i.e. if the Allies, including English speaking states, had lost the war, the world languages today could have been German and Japanese (van Essen, 2002, p. 12, cited in Kocbek, 2006, p. 238). On the other hand, even if a language gains dominance, of course, economic power is fundamental in order to preserve its power after stabilization. However, throughout the 19th and 20th centuries, thanks to the communication and other technological revolutions,

economic expansion started to act on a global scale. Eventually, economic power became a great driving force with international influence and replaced political power. The new information and communication technologies that boosted the global economy were developed in the USA, which was at the top of the world's economy and technology throughout the 20th century. Today's predominance of English – namely that of American English – was led by the USA through its political power, together with its influence on culture and the media, as well as the rapid technological advance and the growth of communication technology (Kirkpatrick, 2007, p. 55). This could be one of the principal reasons why English has become the global language.

1.3.3. English as a lingua franca or bridge language

While English has been expanding its boundaries through its prevailing political, economic and cultural power, the world has started to look for a language that can serve as a 'bridge' to help international mutual communication in areas such as business, trading, science, politics and others. Since the establishment of the United Nations (UN) in 1945, the creation of international institutions has accelerated. The UN-related bodies such as UNESCO and UNICEF (United Nations Children's Fund) were born in 1946, and in the meantime institutions that aim to maintain a stable international order system such as the World Bank (1945) and the World Health Organization (1948) were also founded. These organizations include nations from all over the world and they require interpretation and translation in order to achieve mutual understanding.

This has resulted in enormous translation costs for these international institutions. The UN, for example, have 'reduced multilingualism' to six official languages, and try to maintain a balance of efficiency of communication (Coulmas, 2018, p. 111), while in the most complex multilingual regime, the European Union, the burden of translation is born either by the EU or by the Member States, depending on the situation (DGT/European Commission, 2012, p. 7). The total cost is no less than 1 billion Euros annually, of which about 500 million Euros are attributed to the European Commission, one of the EU institutions that possesses the largest language service in the world (Coulmas, 2018, p. 116).

Apart from the financial issue, there was a dilemma in choosing certain languages for communication, a politically sensitive subject. The solution eventually proposed was to find a single language to serve as a 'bridge' – the so-called lingua franca, or otherwise 'common language' or 'pivot language'. This solution, by the way, was not new. Historically, finding a lingua franca has been a key to addressing this need (Crystal, 2003, p. 11). English was there at the right time when the world started seeking for a bridge language.

The expression 'lingua franca' can be vaguely described by dictionaries as "(a) language that is adopted as a common language between speakers whose native languages are different" (Oxford University Press, 2017). More accurately, Kirkpatrick (2007) defines a lingua franca as "the common language used by people of different language backgrounds to communicate with each other. A lingua franca can be used both within countries and internationally" (p. 7), and recognizes that one of the phenomena related to the expanding international use of English is 'English as a Lingua Franca (ELF)' (Kirkpatrick, 2007, p. 3). The term 'bridge language', on the other hand, can have the same meaning as lingua franca, but is also used in the translation industry today as a 'pivot' language – i.e. a language that plays a central role between two different languages, or a language through which a translation of two different languages is processed.

The system of using a single lingua franca for mutual communication is valued especially in communities such as international business and academia (Crystal, 2003, p. 13). English is already being used as a bridge language, and not only in business and academic settings. It also serves that purpose in Europe and Asia, especially in ASEAN – the Association of South-East Asian Nations – as the *de facto lingua franca* (Kirkpatrick, 2007, p. 2).

The solution of using a lingua franca appears ideal; however, we should not ignore two features that a language provides – mutual intelligibility and the national/cultural identity of the speaker. A language plays a crucial role in mutual understanding as well as fulfilling the speaker's sense of belonging to a certain social community. Chinese and Scandinavian languages are a good example of the contrast.

Although they share the same written characters, Cantonese and Mandarin are quite dissimilar. Yet, they are grouped as 'Chinese' precisely because they both belong to China. On the other hand, despite the excellent mutual understanding among Norwegian, Danish, Swedish, Icelandic and Faroese, the question of national and political identity separate these similar languages, classifying them as different languages (Edwards, 2009, p. 64).

Another interesting case of conflict between mutual understanding and social identity was suggested by Wolff (1959). There were some dialects of Urhobo in south-western Nigeria which were apparently recognized as mutually understandable. However, when one of the ethnic groups called Isoko started to gain supremacy and political autonomy, they started to claim that their 'language' differed from the others. However, another ethnic group called Okpe, whose dialect is almost the same as that of Isoko, maintained its relationship with Urhobo since they did not demand political recognition.

These examples demonstrate the two contradictory aspects of languages, or the need for mutual intelligibility as well as social self-cognition. Crystal (2003, p. 22) asserts that this dilemma can be solved. In his view, bilingualism is one of the good examples. He states that when the speaker is bilingual in the global language and a local language, both intelligibility and identity elements can happily exist together, as the two languages do not conflict with each other in this way. The global language opens a window to the international community and the local language guarantees regional access. Since these two different languages have dissimilar functions, they can be considered simply complementary.

However, one question emerges from these discussions. When English is mentioned as a lingua franca, is it referring to British English, American English or English of another kind? As pointed out by Kachru and Smith (2008, p. 2), although English is recognized as a lingua franca and seems to describe its global roles, English has started to develop different characteristics compared to those of 'standard' English due to the increase in the numbers of people who speak it as a foreign language. These variations happen because English, like any other language, is influenced by

environmental and cultural aspects. Therefore, Kachru and Smith (2008, p. 3) refuse to lump these varieties together as ‘world English’. From the point of view of linguistic and cultural diversity, there is no single ‘world English’ but many varieties of the language – referred to as ‘world Englishes’. Furthermore, in the present context, in which the population in the Outer and Expanding Circles is growing, the term lingua franca possibly denotes world Englishes. So, what exactly are these world Englishes?

1.3.4. World Englishes

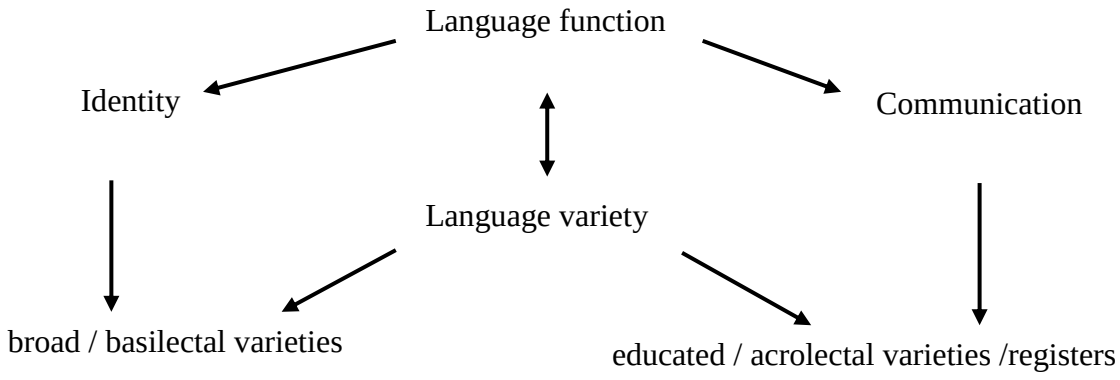
When the word ‘English’ is mentioned, the first concept that comes to one’s mind is likely to be either American English and British English. However, there are many types of the language, some of which are described below (Gilsdorf, 2002, pp. 367-368):

Australian English	New Zealand English
British English	Nigerian English
Canadian English	Philippine English
Caribbean English	Scots English
Hong Kong English	Singaporean English
Indian English	South African English
Irish English	U.S./American English
Malaysian English	Zambian English

In fact, there is no authority that determines the norm of the English language (Strevens, 1992, p. 39). Therefore, it is not meaningful to discuss what ‘standard’ English is, since all types of English are considered ‘valid’. As Gilsdorf (2002, p. 367) states, “English is, of course, multiple English*es*” (p. 367). As has often been observed, the two principal variants – British and American English – have developed in different ways. With the spread of English with globalization, the variants started to gain more visibility, especially since the 1960s, and started being called ‘new Englishes’ by some scholars (Crystal, 2003).

The reason why these varieties emerge has a close link to the functions of language. According to Kirkpatrick (2007, p. 10), language has three major functions: 1) communication, 2) identity and 3) culture. For example, when people use a language for the communicative function, they will choose the language that is most suitable for communicating in a specific context. Therefore, it is likely that cultural – or local – specific elements of the language will be avoided as much as possible. On the contrary, if the speaker wishes to highlight his/her identity and cultural functions in order to express where he/she belongs, the speech will include various local-specific references and cultural elements. The following figure shows how the functions of language co-relate to the language variety:

Figure 1.5 : The identity-communication continuum



Adapted from Kirkpatrick (2007)

Therefore, when English is used to serve as the language of identity and culture in a certain location, English will develop in an independent way compared to that in other regions. It is still English, but it will reflect the cultures and backgrounds of the place. This tendency is especially evident in the use of different vocabulary within Englishes, which often brings misunderstanding among speakers of different varieties (Kirkpatrick, 2007, p. 21).

Kirkpatrick defines ‘world Englishes’ as follows: “those indigenous, nativised varieties that have developed around the world and that reflect the cultural and

pragmatic norms of their speakers" (2007, p. 2).

Furthermore, when discussing the distinction between native and nativised English, the author concludes that all Englishes, including the so-called 'native' ones, are nativised Englishes (Kirkpatrick, 2007, p. 7). Those variants considered as native – British English, American English, Australian English, etc. – are also influenced by local cultures and contexts. Therefore, according to his definition, all Englishes are nativised.

The new varieties of English that have been recently recognized are thus similar to regional dialects and are considered equal in value to other 'traditional' types of English. However, the impact that they have today is on an international scale, influencing millions of people. This shows the consequences of expansion of English used on a global scale (Crystal, 2003, p. 144). Therefore, it can be said that English now belongs to all its speakers and there are many centres in the world to develop its features (British Council, 2013, p. 4).

1.3.5. English as lingua franca in legal contexts

English is thus currently recognized as a lingua franca in transnational organizations, especially in the European and Asian regions (Kirkpatrick, 2007, p. 2). Additionally, the language is acknowledged as a lingua franca, not only in international organizations, but also in the legal arena on a global scale. The development of information and communication technologies has enabled businesses to find new markets to expand their activity outside their home country. As business is globalized, the demand for international legal services also grows in order to solve transnational disputes. Since the common medium of communication in global business is English, it naturally becomes the language of communication in legal contexts. In addition to the fact that English had become the common language for communication, it should be also noted that Anglo-Saxon commercial institutions have played an important role in the process of establishment of the global order – particularly investment banks, accounting firms and law firms (Flood, 2011, p. 5).

Goddard (2009, p. 171) stresses the importance of legal English, pointing out that,

even with the existence of national laws in the national language, it is through legal English that many companies carry out international commercial activities, such as elaborating cross-border commercial contracts and international legal transactions. In fact, with the quick expansion of globalization through the second half of the 20th century to the 21st century, with the Anglo-Saxon commercial order and English as the business communication medium, Western Common Law became predominant in business. The big law firms of New York State thrived quickly since they were experts at drafting Common Law style contracts, which are complex, detailed, and extensive (Flood, 2011, p. 5). As globalization spread, so did the legal practice of Common Law and eventually legal English.

Cao (2007) also recognizes that English occupies a special place in the area, stating that:

> …the English language is now the dominant language in many translations of law, as in the case of multilingual international instruments such as those formulated under the auspices of the United Nations (UN) and also in bilateral agreements. In the latter case, even when the official languages of the two countries concerned do not include English, in many bilateral agreements, the English text is often included as an authentic text. English is also the language used in most international trade documents. (p. 4)

Drolshammer and Vogt (2003) also claim that English is now the global language for communication in legal contexts, asserting that "for the legal practitioners, the function of professional legal English has fundamentally changed in recent years: English has become their lingua franca" (p. 1, cited in Goddard, 2009, p.172). English is therefore recognized as the global language of legal communication in the context of globalization of the law and legal practice (Goddard, 2009, p. 193).

1.3.6. Characteristics of legal English

We have seen in the previous section that many of the difficulties of legal translation are due to the specific characteristics of legal language. Legal English is no exception. Like other legal languages, notwithstanding the fact that legal language still

functions according to general English language rules, the English used in legal contexts has its own particular nature, technical terms and expressions that are clearly different from the usage of daily speech. Tiersma (1999, p. 49) considers that legal English is one of the varieties of English, and not a separate language type, but, at the same time, he also recognizes that it expressly differs from the English of normal usage, probably more than most other technical languages in other fields. In this regard, Mellinkoff (2004) points out that legal English presents nine distinctive features:

(1) Frequent use of common words with uncommon meanings;
(2) Frequent use of Old English and Middle English words once in common use, but now rare;
(3) Frequent use of Latin words and phrases;
(4) Use of Old French and Anglo-Norman words which have not been taken into the general vocabulary;
(5) Use of terms of art;
(6) Use of argot;
(7) Frequent use of formal words;
(8) Deliberate use of words and expressions with flexible meanings;
(9) Attempts at extreme precision of expression. (p. 11)

Among these nine characteristics, Cao (1997) extracts the following five points that cause particular problems in English-Chinese translation:

(1) The frequent use of common words with uncommon meanings;
(2) The frequent use of Old and Middle English words, of Latin and old French words;
(3) The use of terms used in the arts and the use of argot or slang;
(4) The frequent use of formal words;
(5) The deliberate use of words with flexible meanings and attempts at times at extreme precision. (pp.665-666)

It is also the opinion of Mattila (2006, p. 65) that legal language has many distinctive characteristics compared to normal language. He further advocates that the nature of legal language is widely seen in all languages. Legal texts tend to have intricate and meaningless expressions which impede understanding of their message but this is an international feature (Mattila, 2006, p. 91). In Japan, laws have long been

expressed in traditional Chinese legal writing style. Many Chinese characters and writing styles were peculiar and very archaic until things started to change after the Second World War (Adler, 2012, p. 69).

Even so, some scholars point to some outstanding features of legal English. Alcaraz and Hughes (2014, pp. 4-14) assert that legal English has the following characteristics: Latinisms, terms of French or Norman origin, formal register and archaic diction, archaic adverbs and prepositional redundancy, frequency of performative verbs and change of registers. Cao (1997) especially warns that one of the difficulties of legal English is that commonly used terms may have different meanings in legal contexts. For example, the term 'consideration' is explained by the online Cambridge Dictionary (2016) as "the act of thinking about something carefully", in general meaning. However, when this term is used in legal contexts, especially in contract law, its meaning totally changes as follows (according to the same dictionary): "something with financial value that is given in exchange for something else, for example, a bank loan that is made in exchange for the borrower's promise to repay it" or simply "the price paid for a promise" (Cao, 1997, p. 666). Another example listed by Cao is the use of 'shall'. She writes: "In legal English, 'shall' is a legal performative and carries the sense of compulsory obligation, meaning 'must' as required by the rule of law as opposed to the common usage of everyday English" (Cao, 1997, p. 666). Additionally, Mellinkoff (2004, p. 12) provides an extensive list of day-to-day English words used in legal context with different meanings as follows:

Table 1.4 : The list of daily English words used in legal context

General meaning	Legal meaning
Action	law suit
alien	Transfer
assigns	Assignees
avoid	Cancel
consideration	benefit to promisor or detriment to promise
counterpart	duplicate of a document
covenant	sealed contract
demise	to lease
demur	to file a demurrer
executed	signed and delivered
hand	Signature
instrument	legal document
letters	document authorizing one to act
master	Employer
motion	formal request for action by a court
of course	as a matter of right
party	person contracting or litigating
plead	file pleadings
prayer	form of pleading request addressed to court
presents	this legal document
procided	word of introduction to a proviso
purchase	to acquire realty by means other than descent
said	mentioned before
save	Except
serve	deliver legal papers
specialty	sealed contract
tenement	estate in land

virtue	force or authority, as in ‘by virtue of’
without prejudice	without loss of any rights

Adapted by Mellinkoff (2004, p. 12)

These examples, although they are merely a sample, show that careful attention is sought in legal English and prior knowledge is essential for legal translation.

Another key characteristic of legal English is its drafting style. As far as private legal documents are concerned, most of the Common Law countries have followed the drafting style of the United Kingdom, which has been followed over the last two to three centuries (Cao, 2010, pp. 82-83). It maintains an archaic style and is often criticised as lengthy and detailed, compared to the styles of other legal systems. One of the outstanding features at a lexical level is the usage of word strings such as ‘authorise and direct’, ‘deemed and considered’, ‘final and conclusive’, ‘full and complete’ among others (Cao, 2010, p. 84). Mattila (2006, pp. 90-91) also considers that this is mainly influenced by a tradition as a language for special purposes rooted in antique Medieval Latin. According to him, the tendency of legal documents to include complicated and unnecessary expressions is international. For instance, a traditional Finnish judgement used to consist of huge sentences that sometimes occupied one whole page without clear textual organization (Mattila, 2006, p. 90). Although it can be observed in other languages as just demonstrated, at a syntactic level private legal documents, especially in Common Law, are famous for being long and complex, and the use of passive structures is frequent. Another example of an American company and Belgian company shows this contrast: when these two companies drafted a contract of share exchange transaction, the American company’s draft consisted of 100,000 words, while that of the Belgian company contained only 1,400 words – yet, it covered all the elements that the American side thought to be necessary (van Hecke, 1962, cited in Cao, 2007, p. 98).

There is a movement to try to reform legal English and drafting style so that they can be more accessible and easily understood by ordinary people. The ‘Plain English Campaign’, which aims to simplify their writing style, was born as a reaction to the complex and obscure legal language. It advocates the usage of more direct and

straightforward language so that the message can be delivered in a clear and effective way (Ferreri, 2013, p. 31). The movement can bring various advantages. Adler (2012, pp. 71-72) finds six beneficial aspects of implementing plain legal language. The first advantage is precision: a text written in plain language is more precise. Supporters of the movement claim that it is even possible to express the intended complexity much more simply. Secondly, as the text is written with fewer words, the possibility of making errors is reduced. Thirdly, it is cost-effective since the lawyers need less time to elaborate / interpret the legally 'encoded' document. Fourthly, if the document is easier to read, the client / counterpart will read and understand it with ease; therefore it can be more persuasive. Fifthly, the plain language method is more democratic in the sense that it gives wide accessibility to the public. Sixthly, it is simply more comfortable to use compared to complex and uninteresting traditional legal language.

However, some scholars are not totally convinced of this approach. There is still considerable doubt as to whether this movement brings radical changes to English legal language. Alcaraz and Hughes (2014, p. 15) are sceptical if this simplification is "more than a cosmetic operation" (2014, p. 15). They explain three reasons as follows: first, as in any profession, it is the lawyers' practice to keep the secrecy of their business and to follow the language in which they were educated. Secondly, the law is an accumulation of humanity's steady effort of rulemaking through words throughout history. Therefore, it is not realistic to ask the lawyers to ignore the historical background and basis with which the profession was developed. Thirdly – and the authors stress this point the most –, traditional terminology is actually more clear and accurate. In addition, the authors further suggest that the main reason why some legal professionals are reluctant to adopt plain legal language is due more to a tactical point of view than to technical aspects; it is better for them to keep their client far from the information.

Despite the controversy on this movement, the efforts by the legal professions to improve the syntax and style and provide simpler and clearer versions seem to be welcome as they increase the accessibility of legal matters for laypersons.

The plain language movement is now spread all over the world and its area of activity is not only in the legal domain. Plain language is currently applied to medicine,

government, technical writing, finance, and academic presentations, among others (Adler, 2012, p. 70).

1.3.7. English as an intermediary language in legal contexts – the case of the EU

The fact that English is used as a medium of communication in legal settings does not happen only at a linguistic level. It also influences other levels, such as drafting style. When an international contract needs to be drawn up between two parties of non-native speakers of English, it is very likely that they choose English as a working language. The ideal situation is that, even when the contract is elaborated in English, the concept and structure upon which it is based should be those of the laws governing each party and not Common Law (Goddard, 2009, p. 175). However, adopting the Common Law legal drafting model is observed very widely and so are its concept and terms. When a legal document is written in Common Law style, the legal system also influences the content of the document. The document ends up in not only following the Common Law style, but also in containing legal terms and expressions specific to Common Law. This is because adapting the Common Law legal drafting model uses the concepts and language associated with Common Law. However, Goddard (2009, p. 176) sees that the example of the EU is different. He makes two points about EU legal English:

1) it has apparently been developed by non-native speakers of English;
2) there is more than one type of legal English involved.

As Šarčević (2013) stresses, the EU is "the only 'international' organization to confer the status of official language on the major language of all of its Member States" (pp. 1-2). Currently there are 28 Member States, and 24 languages are recognized as official languages. From the beginning of its foundation, the EU has upheld the principle of equal authenticity of regulations among official languages. Šarčević writes: "The ultimate goal of EU multilingual law-making is to preserve the unity of the single instrument in all authentic texts with the aim of promoting the uniform interpretation

and application of EU legislation by the national courts in all Member States" (Šarčević, 2012, pp. 86-87).

In reality, the multilingual law-making process in the EU is roughly explained as follows: it consists of making drafts in English or French and translating them into other official languages. Both French and English were officially acknowledged as legal drafting languages in the beginning. However, most drafts are prepared in English these days (Šarčević, 2013, p. 8). As pointed out by Pozzo (2012, pp. 185-201), English has already gained the status of quasi lingua franca in the EU. In fact, the demand of French in EU law-making scenes is in decline. This tendency is reflected in the number of dictionaries: de Groot and Laer (2007, pp. 181-182) studied the distribution of legal dictionaries in the main EU-languages (English, French, German and Spanish). The research revealed that the number of legal French dictionaries published had its peak between 1976 and 1993, and it has been shrinking since 1994, leading to the conclusion that the importance of legal French is becoming reduced. These tendencies show once again the notable predominance of English in the legal area. On the other hand, we should also be aware that we might be facing a situation where this trend might be forced to change. The recent decision of Brexit may impact the influence of English as the intermediary language. Now that Great Britain – one of the most influential EU Member States where English is spoken as a mother tongue – has decided to leave the EU, a new question arises: will English still continue to be the *quasi* lingua franca in the EU? Future developments should be analysed carefully, but, for practical reasons, this emerging situation of Brexit will not be considered in this investigation.

As referred to above, the role of English as a leading intermediary language has hitherto been widely accepted in the EU. The organization has tried to solve the problem of the multiple official language policy by using English as a bridge language. English is therefore recognised as a "reliable interlingual mediator (Breidbach, 2003, p. 22)", along with other languages, that satisfies the European citizens' willingness to engage in political participation.

However, the authenticity of the EU's multilingual law-making policy is still controversial. The policy to involve all official languages in the law-making process is

often criticised as unrealistic. The critics are sceptical that it is a mere fiction, and claim that there is a big gap between its linguistic ideal and shared legal scheme. A common legal superstructure, which was based on the Civil Law system – the tradition shared among most of the European nations – was created and adopted by the Member States. However, they soon recognised that, despite the shared legal heritage, translating from one legal language to another encounters many difficulties (Tiersma, 2012, p. 25). As the historical and social backgrounds of each nation vary, the understanding of a legal concept may differ slightly from one nation to another. The EU is facing a dilemma that, on the one hand, they are strictly committed to the multilingual principle and, on the other, they are racking their brains to obtain the uniformity of legal understanding, as it may become subtly changed though the course of translation, the process which is essential to respect and preserve the multilingual policy.

There are many cases of confusion especially over legal terms and their interpretation. Several reasons can be found for these confusions. One of the aspects to highlight is that technical experts involved in the process of drafting in English or French are usually non-native speakers of these languages (Šarčević, 2013, p. 8). However, the major part of the complications seems to be derived from the incompatibility of existing legal schemes among the EU Member States.

In this respect, Kocbek (2008, pp. 63-64) gives the example of *bona fide*. The term *bona fide* in Civil Law is most frequently translated as *good faith* in English. Nevertheless, the legal notion and concept of these terms do not entirely correspond to each other. The term used to describe the concept in English does not cover negligence, whereas the continental concept includes a notion of gross negligence.

Šarčević (2013, p. 10) argues that the real difficulty in the EU is not the multiplicity of 24 languages, but rather the diversity of more than 28 national legal systems and cultures of the Member States. In her view, EU law is still reliant on the national legal systems of each Member State and thus its translation is being done not in a single law system, but actually across multiple legal systems. Therefore, some academics claim that an independent cross-discipline is needed in order to understand the unique situation in the EU that presents special conditions between language and

law. They estimate that theories and categories customarily applied in translation studies do not work in the legal framework of the EU (Kjær, 2016, p. 92).

It is also true that this enhanced use of English in the EU brought some positive outcomes, an outstanding example of which is the development of databases: the development of databases for EU terminology such as IATE, Termsciences, and EUR-Lex (EU legal and public documents database) is remarkable, and these sources have become essential tools for translators today. For the purpose of the present study, however, English used in the EU is excluded essentially due to three reasons. The first is its inconsistency; as was mentioned, the English used in the EU is diverse, not necessarily representative of English usage, as the users are mainly non-native speakers of English. The second reason is the lack of data in Japanese; the database naturally includes only the official languages of the Member States of the EU. Consequently, for the purposes of this study, the reference of Japanese is essential for comparison. The third reason is the influence of the use of English on EU law. As was explained above, due to its use as a common language in legal domains, the EU English is most likely influenced by the EU legal concepts, which are unique and even distinct from Civil Law and Common Law. This may bring even further confusion to the research. EU English was therefore not considered in this research, although it is a unique field that is worth exploring separately.

1.3.8. Status of English in legal translation – the implications

As we have seen, English acts as an intermediary language in most global institutions in the world. In the EU, the draft of a legislative proposal is initially prepared in either English or French. The draft is normally written only in one language (Robinson, 2005, cited in Cao, 2010, p. 88) , and the language chosen in most cases is English. English has also a vital role in the UN, where international treaties are initially drafted in English and/or French, and then subsequently translated into other official languages (Cao, 2010, p. 88). The practice at the World Trade Organization (WTO) is different to some extent. While in the EU and the UN all the legislation translated into other official languages has equal force, in the WTO only the original versions in

English and French enjoy authenticity (Cao, 2010, p. 81). Considering the fact that the translations in other languages of the 'original' English and French texts serve as reference only, it is clear that English enjoys a special status in the international organization, together with French.

However, some complications have been identified concerning the status of English in legal translation. The conclusion of the study by de Groot and Laer (2007, p. 181) is that English is not acting as an intermediary language to translate into a third language. During their investigation, they analysed a corpus of 159 legal dictionaries in the main EU languages available. The number of valid English dictionaries where English was the target language was 16, the biggest number compared with other main EU languages (French: 10, German: 14, Spanish: 4), but less than the number of other existing EU languages, which is 24. They conclude: "(t)his implies that there is a lack of dictionaries for some minor EU-languages that have to be translated into English. Due to this shortage, English cannot always function as source language after being used as target language" (de Groot & Laer, 2007).

Šarčević (1991) refers to another implication of legal English: its geographical diversity. As she writes: "(a)lthough English is the major language of the Common Law countries, they do not have a uniform legal terminology" (p.616). There is not one legal English. For example, its legal terms and expressions differ between the UK and the USA and even within the UK there is a wide range of variation. For example, Scotland has a different legal system. Its system belongs to a Civil Law jurisdiction, derived from Roman Law (Tiersma, 2012, p. 24), while it is also influenced by Common Law after the union with England (Robinson, Fergus, & Gordon, 2000, pp. 228-248, cited in Tiersma, 2012, p. 24). Therefore, it is necessary to focus on one variety of legal English whenever possible when legal English is subject to analysis.

Another impact that can be caused by English being an intermediary language in legal translation is a tendency not to differentiate the meanings of terms in the texts of different legal systems. Drolshammer and Vogt (2003) claim that "the predominant use of English as a legal language blurs the conceptual and institutional differences between the various legal systems and cultures of the world" (p. 27). Some Common Law terms

are already used in Civil Law systems as general practice. The aforementioned *force majeure* in Chinese legal language, which is originally a non-existing concept but has currently been accepted and acknowledged in the Chinese legal system and culture (Cao, 1997, p. 664) is one of the good examples. The case of the use of Common Law term 'breach of contract' in the Civil Law legal system is also reported (Drolshammer & Vogt, 2003, p. 57). This trend can be observed, too, in the cases where an international contract is produced in a local legal system but in Common Law style (Goddard, 2009, p. 175).

From the situations described above, a fundamental question arises. There is no doubt that English has become the global intermediary language but, although it contributes to mutual understanding, does it also contribute to global misunderstanding (Goddard, 2009, p. 173)? This is the central question that this thesis aims to explore, based on the empirical analysis of legal terminology applied in a specific domain of law, comparing English and two other languages which belong to Civil Law system.

Chapter 2. - Key research questions

In the previous chapter, three different points of view were discussed: 1) the general framework of legal translation; 2) Legal terminology and 3) English acting as a global language and its status in legal settings. These discussions lead to one principal question: when these three phenomena are combined, what kind of consequences can be expected? Nowadays, since English is used as an intermediary language in legal communication on a global scale, this question is very relevant.

Let us recall the relationship between the similarities and differences of legal systems and their relation to languages in legal translation suggested by de Groot (1987). He states that "the degree of difficulty is not primarily determined by linguistic differences, but by the extent of affinity of the legal system" (p. 798). He thus identifies the four cases that one can possibly encounter in legal translation when considering the two elements in question: legal systems and languages. The table of the relationship of the four cases is presented in the section 1.1.1.

The scenario (1) represents the situation when both legal systems and the languages involved in the translation in question are closely related. Denmark and Norway (de Groot, 1987, p. 798) is a good example of this scenario, as they share the same legal and linguistic basis due to historical reasons. The degree of difficulty of legal translation in this combination is the easiest, when compared to other categories.

The next scenario that poses fewer translation problems is (2), when there are relatively common legal concepts between the two legal systems but the language families to which the two languages belong are fairly distant. In this case, the difficulty grows compared to scenario (1), but not that much. Sweden and Finland fit in this category because, although Swedish and Finnish are very different languages, their legal systems are very close, mainly because Finland was a part of the Kingdom of Sweden for more than six hundred years (Mattila, 2006, p. 105). For historical reasons, therefore, the degree of difficulty of legal translation in this combination is easier, when compared to other categories. Legal translation between French and Dutch represents this case as the Dutch legal system and French legal system are closely related, although

the Netherlands' recent tendency is more inclined to follow the German system (de Groot, 1987, p. 799).

The situation of Japanese and German is another good example. The two languages are distant but they share close legal concepts since Japan 'imported' the German Civil Law system in the late 19th century. It is also pointed out that this scenario can be applied to translation within a uniform legal system, namely in a bilingual or multilingual legislation, such as the case of Belgium, Canada, Finland, Switzerland and others (de Groot, 1987, p. 799). From a global point of view and to some extent, the EU also fits in this combination.

The next scenario is (3), i.e. the two languages in question are closely related but their legal systems have little to do with one another. In this case, the degree of difficulty increases. This is the case of translation of legal texts between the Anglo-American legal system and Dutch. Here, it is observed that systematic differences always cause big translation problems. Moreover, legal translation from German to Dutch and vice versa is also pointed out to be dangerous because it causes a great deal of translation errors. Despite the high level of affinity between the two languages, there are several differences between the German and Dutch legal systems. The linguistic similarity seems to facilitate the linguistic transfer at first glance; however, it actually makes it difficult since it can induce misleading translation errors to a considerable degree, especially through legal *faux amis*.

The last and the most difficult scenario is (4), when translation is conducted between legal systems that have no or little relation to each other, and between two unrelated languages. This is the case of legal translation from Russian to Chinese and vice versa (de Groot, 1987, p. 799), or between Common Law English and Chinese (Cao, 2007, p. 31). Translation of Common Law texts in English into Japanese is also in this situation. This is the category that demands the most effort of translators, since linguistic challenge is added to the task of finding systematic equivalences.

According to de Groot's scenarios, the case of legal translation between Japanese and Portuguese seems to fit into scenario (2), as the two languages are different but both legal systems belong to the Civil Law family. Therefore, as long as legal translation

directly performed between Japanese and Portuguese is concerned, its degree should not be extremely difficult.

However, this scheme is forced to change when English comes between Japanese and Portuguese as a 'bridge' between the two languages. This is exactly what Kocbek (2008, p. 58) points out: in addition to the four conditions suggested, there is another case involving another element, i.e. translating between reasonably related legal systems, while using a lingua franca which belongs to a legal system that is completely unrelated to the two legal systems involved in the translation. As she suggests, and as we have seen in the previous chapter, the language of communication used as a lingua franca in most cases is English, especially in international business communications (Kocbek, 2006, p. 237). With Japanese and English, the scenario shifts to (4), where there is extreme translatability difficulty, as both language and legal systems belong to different families. If we apply this theory to Japanese and Portuguese translation of legal documents, as long as the translation is performed directly from Japanese to Portuguese and vice versa, the scenario is (2), which does not imply great difficulty. However, when the translation needs to go through English for some reason, the scheme changes and it will be affected by the factors of scenario (4), which brings more complex translation problems for a translator to solve. This circumstance can be seen quite commonly, partly because of a lack of direct references between the two legal languages, as is the case between Japanese and Portuguese, and partly because of practical reasons that English needs to serve as lingua franca, as is the case with the EU (Tiersma, 2012, p. 25). It is easy to imagine that some specific implications can emerge when English comes to serve as a lingua franca in legal communication between two non-English languages.

English is today widely recognized as a lingua franca in legal settings and its role appears to be gaining prominence since international legal practice started to grow alongside the globalization of the world's economies more than 40 years ago (Drolshammer & Vogt, 2003, p. 10). There is an urgent need to examine and explore the impact that this language, which is spoken in a country that belongs to the Common Law system, can bring when used as an intermediary language in communication

between two Civil Law legal systems. To what extent do the differences in these two levels – language and legal system – brought by the English language affect the translation and possibly cause some confusion? I shall present specific examples to contribute to this discussion, i.e. translation with interference of English as a bridge language in legal settings.

In addition, another aspect of English should not be ignored. As cited by Kachru and Smith (2008, pp. 3-4) above, there is no single universal English which is common to the whole world. USA English and UK English are the two main versions and it depends on a nation's educational policy or the choice of an individual which type of English is to be adopted. In the case of Japan and Portugal, for example, USA English is widely used in Japan, while in Portugal the variety of English more widely taught is UK English. In the case of communication between Japanese and Portuguese in legal matters, and if both countries use a variety of English that is familiar to each part as an intermediary language (USA English for Japanese and UK English for Portuguese), will there be any confusion caused by the use of different varieties of English?

Therefore, this research globally aims to investigate these questions from the following two points of view: firstly, it aims to examine the influence of English as a lingua franca in translation between Civil Law family legal systems; and secondly, it investigates whether this may bring problems of any kind to translation, especially in legal settings. Based on this goal, four fundamental questions are proposed, as follows:

Question 1: What are the implications of using two different Civil Law systems in translation?

In order to find out if English as a lingua franca significantly impacts translation between two Civil Law systems, firstly, the similarity between the two systems should be studied. As we have seen above, the affinity of legal systems has a great influence on the degree of difficulty of legal translation. From the aforementioned theories, we can presume that, between the two legal systems that belong to the same legal family, there are generally fewer conflicts. This being said, there are still some disparities between the two systems within the Civil Law structure. The translation task is still challenging,

since the legal customs reflect the cultural, historical, social and structural elements of each nation. Therefore, it is first necessary to clarify the differences between the two Civil Law systems, i.e. the degree of affinity of legal concepts and degree of correspondence of legal languages, before going on to analyze to what extent a different legal system reaches into the two closely related ones.

Before analyzing the influence of English, the possible implications of the differences between the Portuguese and Japanese legal systems should be observed so that the impact of English can be evaluated accurately.

Question 2: What are the implications of using English as a bridge language in translation between two Civil Law systems?

This is the main focus of this investigation. If a translation of a legal text is performed directly from Japanese into Portuguese or vice versa, according to the theories discussed above, the difficulty should be moderate, as the problems would be linguistic ones. In reality, however, the direct translation between Japanese and Portuguese is rarely feasible, as there are very few direct sources of information, such as glossaries, dictionaries and terminology databases. On the other hand, there are many studies on Japanese and English, as well as Portuguese and English. Thus, what the translator inevitably needs to do in order to collect information is to consult references of Japanese-English and Portuguese-English. By consulting such sources, will the results of information in English coincide at the end? Does the fact that English is burdened by the Common Law tradition affect the process of translation?

Question 3: What are the implications of using UK and USA English in legal settings?

UK English and USA English are the ‘big branches’ of English varieties. There are two main reasons for this: the first is the historical heritage of the British Empire and the second is the dominance of the United States after the Second World War. UK

English and USA English share a lot and the two nations also share the same Common Law system. English lawyers and American lawyers today can understand each other in their legal language quite well (Tiersma, 1999, pp. 43-47). Nevertheless, there are still some differences between UK legal English and USA legal English. It is widely recognized that legal languages in countries such as Canada, Australia and New Zealand have more terms in common with the legal language of England (Tiersma, 2012, p. 23). These countries separated from their suzerain state much later than the USA. This means that early national independence led the USA to change their legal system, eventually developing their own terminology, even though they maintained the English Common Law system.

What are the differences that exist between UK English and USA English – especially, from the point of view of legal language? Do these differences affect the result of translation?

Question 4: Do different types of English cause any confusion when they are used as a bridge language in legal settings?

When these two different Englishes are simultaneously used as an intermediary language, how much impact can they cause? Do their differences affect the translation when more than one type of English is being involved as a bridge language in a translation process? What kind of confusion can be induced?

Question 5: Are there any terminology-.specific points to which special attention should be paid?

If there is any impact triggered by different types of English as a lingua franca, what other points do we need to pay attention to?

Chapter 3. - Data and methodology

In the previous sections, the recent studies on Englishes as a lingua franca and of legal translation were discussed, and several questions were asked from the perspective of the actual relationship between the two. With the purpose of clarifying the five fundamental questions identified above, I have decided to focus on a certain situation in translation. The respective hypotheses, expected results, working materials and research methodology will be presented in this chapter.

3.1. Hypotheses

Previous research, and in particular that presented in the literature review, has indicated the recent tendency of the English language to increasingly take on the role of lingua franca in the field of legal translation. As a result, there are two important issues that are worth discussing.

The first is the expanding role of English in legal translation. For example, in bilingual and multilingual jurisdictions, a proposal is first produced in language 'A' and then it is translated into language 'B'. Currently, as explained earlier, in international law-making institutions such as the EU and the UN, English is becoming the major drafting language when compared to French, being practically the most powerful language undertaking the role of intermediary language. Although the main ones are British English and American English (Strevens, 1992, p. 32), there are many varieties of English. Within British English, the English spoken in Yorkshire is different from that used in Cornwall, and in the USA, Bostonian English has distinct characteristics when compared with English spoken in Houston (Gilsdorf, 2002, p. 372).

The second issue is related to the legal systems. The difficulty of legal translation is influenced more by the dissimilarity between the two legal systems involved in the translation process than the linguistic differences. For example, translating French legal documents into Japanese should be relatively easy, as the Japanese legal system belongs to the Civil Law family. In fact, there are a considerable number of translations

published concerning German Civil Law in Japan, which demonstrates that the translation between German and Japanese on this issue is relatively straightforward. This is due to the fact that Japan largely adopted German Civil Law as the basis of its modern legal system (de Groot, 1987, p. 799).

However, if the translation is performed with the help of English as a bridge language, the situation will not be the same. English is linguistically distinct, and its legal system belongs in general to Common Law. Common Law, however, is not the only or a unified system among English-speaking countries. Some English-speaking nations use a mixture of Common Law and other legal tradition(s). For example, the foundation of the private law in Quebec in Canada is partly based on principles of Civil Law and partly on principles of Common Law, or a mixed legal system, since the prevailing law is based on more than one legal tradition (Tetley, 2000, p. 684).

Scotland is another example of a mixed legal system. The legal system in Scotland is based on various legal systems, mainly Civil Law and Common Law, but it is also derived partly from feudal law, Canon law and statutes (Tetley, 2000, p. 691). The Republic of South Africa also applies a mixed jurisdiction. It has elements of 'Roman-Dutch law' from the first settlers from the Netherlands, Common Law from the British occupation, as well as 'indigenous law' of African customary law. It thus consists of three different legal systems: Civil Law, Common Law and African tribal customary law (Tetley, 2000, pp. 692-693). Despite these variations in the Common Law family among English-speaking countries, within the scope of this research, I will focus on the Common Law system in the UK – and I will use this term to refer to that of England – and the USA (Mattila, 2006, p. 106). Ironically, there is a hidden possibility that by introducing English as assistance to translation, the difficulty of translation may increase, since the translation turns into the scheme of two distinct legal systems– i.e. Civil Law vs. Common Law – and two or more languages – i.e. source and target language plus English, if neither source nor target language is English. Cao (1997, p. 661) takes an example of legal translation between English and Chinese to show that translation with this combination is the most challenging.

This problem of incoherence can be currently observed in the EU, where English

is widely used as a ‘de facto’ lingua franca (Kjær, 2016, p. 103). Being decisively engaged in the multiple official language principle, the EU has long looked for a key solution to overcome translation problems in order to facilitate the enormous quantity of translation work, as well as to avoid confusions originated by those translations due to the differences among legal systems within the EU Member States. There are various suggestions and one of the feasible options is to employ already existing legal vocabulary used internationally, and currently this vocabulary will be obviously English (Tiersma, 2012, p. 26). Nonetheless, it is not difficult to imagine the implications of the use of English in a Civil Law superstructure – EU law. Therefore, the creation of a common EU legal terminology is expected to be on a basis of so called international legal English, which is not influenced by Common Law – since, as Kocbek (2008, p. 63) points out, many linguistic conflicts and confusions are derived from the discrepancy between Common Law and Civil Law.

As pointed out above, each legal system has its own structure and culture, and legal language is developed for the communication of law in each society. Each legal language and legal system thus varies according to the individual society. Weisflog (1987, cited in Cao, 2007, p. 31) calls this variation ‘system gap’. Linguistic differences are caused by the degree of ‘system gap’ between one legal system and another, and by and large, when there is a wider gap between the systems, the greater the legal linguistic gap (Cao, 2007, p. 31). Therefore, when English is used as a lingua franca in translation within the Civil Law tradition, it will introduce this ‘system gap’, and may have a considerable influence of Common Law at various levels: structure, practice, culture and, most of all, the lexicon. For instance, Cao (2007, p. 60) gives several examples of this gap between Civil Law and Common Law especially at the terminological levels: (1) terms to describe legal professions, (2) terms to define court structures, and (3) terms to express specific legal areas and institutions.

The issues that have been discussed so far can be summarized as follows:

- The English language has been assumed as a bridge language in communication;
- There are several varieties of English and there is no single ‘global’ English;

- The difficulty of legal translation owes more to the difference between the legal systems than to the differences between languages;
- English is acting as a bridge language in international legal settings.

Based on the points described above, the following possibilities can be hypothesized. Firstly, in legal translation with two similar legal systems and two distinct languages, the use of English as an intermediary language can possibly cause confusion and originate discrepancies. Especially when the translation needs to be performed between two Civil Law family systems, the consequence of the use of English as a bridge language should be observed fairly clearly, since the systematic differences between Civil Law and Common Law can be revealed through multiple translation problems. Secondly, it can be hypothesized that the difference of British English and American English can affect the translation. Even though English is spoken in these two nations – the UK and the USA –, both varieties represent two main streams of the language in the world, and both belong to the same Common Law system, laws in the two nations have evolved differently throughout history. This individual evolution should have left some trace behind, resulting in distinct characteristics between the two legal languages. The third hypothesis is that most confusion can be found at the lexical level. It can be easily assumed that systematic differences in the legal field bring questions of equivalence in semantic, syntactic, writing styles, and other levels.

As was previously mentioned in the report by Eversheds (2011, p. 27), more than 80% of the confusion is caused by wrong interpretation of certain words and phrases. Especially within the problems of legal understanding, as Cao (2007, p. 74) presumes, lexical ambiguity originates more legal conflicts than syntax. Furthermore, the lexical issues brought into question here are not derived from vocabulary in ordinary use: they concern terms linked to a specific subject field – law. This means that the major difficulty in legal translation is most probably derived from terminological questions.

3.2. Expected results

Given the key questions identified, the following results are expected: 1) When English is used as an intermediary language in legal translation with two similar legal systems and two different languages, confusion can be induced to some extent, especially at the terminological level. The confusion is derived from the difference of legal systems between that of the languages in question and that of English; 2) Different types of English actually do cause some confusion when they are simultaneously used as a lingua franca in a legal setting; 3) This confusion is also seen between UK English an USA English; 4) Even within the same Civil Law systems, some differences can be found, which eventually may lead to mistranslations; 5) There are other specific points that require a special attention. Therefore, there are some specific points to which special attention should be paid in these circumstances, as will be discussed.

3.3. Working languages: Portuguese, Japanese and English

My point of view is that, in order to observe the linguistic influence of 'Englishes' as an intermediary language, a situation that involves two other languages whose historical and linguistic roots differ completely is particularly interesting. There are two reasons for this. Firstly, if the two other languages are fairly close, there will be little need to ask another language for help, since enough references can be found on a shared cultural and linguistic basis, as well as in the conceptualization of the two languages, and thus equivalence can be easily achieved. Secondly, the implications of using English as an intermediary are more likely to be sharply demonstrated when both of the other languages belong to linguistic groups different from that of English than when at least one of the languages is closely related to English. In addition to the linguistic point of view, the contrast from a legal perspective is also essential in this study. It should be more effective to analyse the implications originated between two different legal systems rather than focusing on issues emerged within one system.

A comparison between two major legal systems in the world is a better option in the framework of this study for the following two reasons: the first reason is that as they

cover the majority of the world's legal systems (hence 'the major legal systems'), there are more cases available for analysis; the second reason is that contrasting the two leading legal systems should make the gap between legal matters clearer, since the dissimilarities encountered should be the ones derived from the nature of each system. They will illustrate the conflicts between the two opposing legal systems, revealing their divergence in philosophy, structure, and concepts, among others. In the following sections, the choice of working languages and legal systems is explained and justified.

Since the objective is to analyze the possible influence of Englishes as an intermediary language in translation, finding a situation where English is inevitably used as a bridge between two languages is crucial. For instance, English is rarely used in translation between Portuguese and Spanish, where translation is usually direct since the two languages are close. One study showed that since they are both Romance languages, a significant level of consistency was found with regard to aspectual interpretations and that invariant aspectual meanings and the contextual information in various levels can be dynamically intertwined (Salaberry & Martins, 2014, p. 335). By sharing so many cultural and linguistic roots, the direct communication between these two languages is quicker and easier than relying on English because they have more in common than with English. On the other hand, when the two languages are distant and each of them belongs to a different language family, English is more likely to be required to help bridge the gap between them. The choice of a pair of languages whose cultural and linguistic characteristics are distinct between each other, such as a European language and an Asian language, seemed ideal. For that reason, three languages were selected for this study: European Portuguese and Japanese as a language pair, and English as an intermediary language.

The language combination European Portuguese and Japanese was chosen for the following reasons:

(1) I have linguistic knowledge of both European Portuguese and Japanese;
(2) European Portuguese, Japanese and English are my working languages;
(3) Very few translation data are available on the combination of Portuguese-Japanese;

(4) Each of the two languages (Portuguese and Japanese) belongs to a different language family;
(5) Both Portugal and Japan belong to the same legal tradition (Civil Law).
(6) Need to develop a new examination in order to contribute for a consistency of translation of this area in the future.

In relation to the variety of English, in order to more precisely address the translation issues, this research focuses on two mainstream varieties of English: UK English and USA English, as they are both adopted in Portugal and Japan. UK English is taught in the Portuguese educational system and USA English is adopted in the Japanese educational system.

3.4. Working legal systems: Civil Law and Common Law

Since the language of the law is closely interconnected with its legal system, each legal language has its specific linguistic characteristics which reflect the legal system at syntactic, pragmatic and stylistic levels (Kocbek, 2008, p. 58). Among the multiple legal systems existing in the world, the two major legal systems – i.e., Civil Law and Common Law – work within entirely distinct frameworks. One of the fundamental differences between Common Law and Civil Law is its systematic structure.

Common Law arose and has developed under the legal tradition in England since the 11th century (Tetley, 2000, p. 684). Being often referred to as 'case-law' or 'judge-made law', it does not possess written codes or statutes, and its legal principles are demonstrated through the judgments of courts in the past (Kocbek, 2006, p. 242). This explains why judges in English courts are still highly respected (Mattila, 2006, p. 107). There is a fairly general agreement that the stipulations of Common Law are effectively far more explicit than those of Civil Law (Tetley, 2000, p. 684). Common Law, however, is only one of legal sources that make up the Anglo-American legal system. In addition to the 'Common Law', the Anglo-American legal system is made up of two other essential sources: 'equity' and 'statute law'. Originally used in the sense of

'evenness', 'fairness' and 'justice' (Williman, 1986, p. 109), equity is a peculiar structure of this legal family, and is a body of rules applied along with Common Law, as a means of compensating for deficiencies in Common Law in terms of justice. There are also laws in written form in this legal family, which is the third element of this legal scheme, referred to as statute law. The Acts of Parliament are such laws. Similar to equity, statutory law is complementary in nature. As most outlines of legal principle are manifested in the adjudication, statute laws help complete them (Tetley, 2000, p. 684). Accordingly, the Anglo-American legal system is based on these three fundamental branches: Common Law, equity and statute law (Kocbek, 2006, p. 242). Yet, the main body, Common Law, is very frequently compared to Civil Law and extensively discussed as a good contrast (Kocbek, 2006, p. 242).

Common Law jurisdictions have been adapted by the USA and the Commonwealth, in addition to former colonies of the British Empire (Cao, 2007, p. 24). Some nations altered their legal system to follow the Common Law institution. These countries include Guyana, the Panama Canal Zone, as well as former Spanish territories such as Florida, California, New Mexico, Arizona, and Texas (Tetley, 2000, p. 684). However, there are several different patterns within the Common Law system, for example, Scotland, Canada and some African countries.

In contrast to Common Law, Civil Law is rooted in ancient Roman Law, and it was developed throughout Continental Europe, spreading meanwhile around the globe. The ancient Roman Law stems from the *Corpus Juris Civilis* of Justinian, and was studied and eventually adopted throughout Europe since approximately the 11th century (Tiersma, 2012, p. 15). This originally Byzantine body of law written in Latin is a common legal heritage shared by all Civil Law countries and, in many cases, Latin terminology is used to express its legal concepts. So the lawyers of Civil Law countries can be said to "speak the same conceptual language, independently of their ordinary languages (e.g. Finnish, German, Portuguese)" (Mattila, 2006, p. 126).

Nevertheless, the influence of Latin can also be observed in Common Law. Alcaraz and Hughes (2014) explain that this is due to the historical background. When English Law emerged in the Middle Ages, Latin was used as the lingua franca all over

Europe both in writing and exchanging culture and knowledge (p. 5). In addition, Mattila (2006) points out that the influence of Roman Law on Common Law is seen, not at the legal concept level, but rather at the language level, because the pioneering English lawyers who first established the Common Law system were educated in Roman Law (p. 126). It is, therefore, for this reason that legal English still possesses Latinisms – one of the leading characteristics of its discourse. With all the differences in systems, it is worth mentioning that Latin-origin terms are the common feature of legal language in general. The governing background is Roman Law, that "has influenced all modern systems of law" (Mattila, 2006, p. 125). It is so common that, according to Mattila (2006), Finnish and Greek are sometimes the only languages that are not influenced by Latin origin terms (p. 120).

Civil Law is a highly codified system, structured by codes and statutes, each of them organized according to well-defined areas of law. It is based on a collection of abstract principles, often theological or philosophical (Mattila, 2006, p. 106), but frequently omitting detailed description of doctrine (Tetley, 2000, p. 683). Countries that are within the Civil Law tradition are Austria, France, Germany, Italy, Japan, Latin American countries, Portugal, Switzerland, South Korea, and Turkey, among others. Civil Law, however, was split into two streams over time: the codified Roman Law, which covers the ones in the nations given above; and uncodified Roman Law, which can be observed in countries such as Scotland and South Africa (Tetley, 2000, p. 683). This means that countries such as these two received the influence of Roman Law, but not under a form of codification, which can be understood to be closer to Common Law in this respect.

The so-called continental Europe, on the other hand, benefitted from the prestige of Roman Law and its codification, due to the influence of Napoleon, and the impact of the French Civil Code, which was compiled later in 1804. The Napoleonic Code was the consolidation of all French Law into one Code, using Roman principles as its basis (Schaffer, Agusti, & Dhooge, 2014, p. 48). For this reason, some scholars point out that the French Civil Code is often appraised as a 'revolutionary Code' to reflect the accomplishment of the French Revolution rather than mere affiliation of existing rules

(Tetley, 2000, p. 687).

It should also be added that French Civil Law penetrated much of Europe during the conquests of Napoleon, but underwent some modification after the fall of the Empire. The French Civil Code left its trace in Europe as it was adopted in a similar form of codification either through its direct translation or by serving as a basis for a nation's Code, adding local amendments. The Code of Portugal (1867) is one of the examples of the latter case, as are other codes such as those of Parma (1820), Sardinia (1837), the Netherlands (1838), Modena (1852), unified Italy (1865), Romania (1864) and Spain (1889) (Tetley, 2000, pp. 687-688). Furthermore, the current of codification method led by the French Civil Code contributed to the establishment of other examples of Civil Law: the German Civil Code and the Swiss Civil Code.

The German Civil Code, another big model of the Civil Law system was elaborated in 1896 and came into force in 1900. It possesses some peculiar characteristics different from those of the French Code in the sense that it defines more precise rules and employs more academic and technical terminology compared to its counterpart. The Swiss Civil Code, which was established in 1912, on the other hand, does not use such technical terms. Its structure is simple and non-specific, and its scope is mainly focused on general principles (Tetley, 2000, p. 688). The German Civil Code served as the main model to follow when Japan was looking to establish a modern legal system in the late 19th century.

In relation to the purpose and style, the legal principle of Common Law is typically described as precise, while that of the Civil Law is characterized as concise. It is in fact no exaggeration to say that Common Law statutes are normally lengthy and descriptive, as, first of all, they consist of detailed definitions. Specific applications or exceptions are enumerated within the description of each rule, making the article redundant. In addition, it continues with a phrase that covers all the circumstances that one can think of, as well as a demurral phrase such as "notwithstanding the generality of the foregoing" (Tetley, 2000, p. 703).

On the contrary, Civil Law statutes only present cores of legal policy through general wording from a broad point of view, and do not provide specific definitions

(Tetley, 2000, p. 703). Some scholars explain that this difference comes down to the basic principles and perspective toward law. Cao (2007, p. 26) advocates that Common Law and Civil Law differ in their function and style of legal doctrine. In fact, the two systems set their focal point at two opposing priorities. In Civil Law, doctrine prevails over jurisprudence, whereas in Common Law priority is given to judicial precedents over doctrine (Tetley, 2000, p. 701).

The center of gravity of Common Law is primarily focused on fact patterns. It goes through the following process: first, cases that involve similar but not identical circumstances are analyzed and distinguished; then the analysis leads to specific rules, on which, through deduction, the narrow scope of each rule is determined, and sometimes even new rules are suggested in order to cover facts that have not yet presented themselves (Tetley, 2000, p. 701).

In contrast, the importance of Civil Law is focused on legal principles. In its process, the Civil Law jurists trace the history of legal principles, identify their function, determine their domain of application, and explain their effects in terms of rights and obligations (Tetley, 2000, p. 702). The role of the judges of Civil Law is principally to find the appropriate law from the legal texts and apply it in court (de Faria, 2010, p. 18). Tetley (2000, p. 701) further explains that this difference of focus may be derived from how the act of law-making is understood in both traditions. In Montesquieu's theory, on which French Civil Law is based, under the theory of separation of powers, the roles of the legislator and courts are separate, as the function of the former is to make laws, while that of the latter is to apply the Law. Common Law, however, finds its judicial core in court precedents made by judges.

On the other hand, these two major legal systems influence each other. Drolshammer and Vogt (2003, p. 57) point out that the term 'breach of contract', originally a Common Law concept, has been introduced to Continental European legal systems. Goddard (2009, p. 175) also highlights the fact that most international contracts written in English are drafted based on Common Law models, even when the governing law chosen by the parties is NOT Common Law. The same point of view is taken by Mattila (2006), who suggests that these two major legal systems are in the

process of convergence. He gives two reasons to support his claims. One is the growing power of the United States. After the Second World War, the USA emerged as a leading power and gained influence over continental Europe. As a result, its legislation had a certain impact in Europe. The other factor is the legal system formed by the European Communities. Their constant efforts to integrate legal disciplines of all the Member States, including that of England, is leading to a situation in which the two systems compromise to some extent, presenting a fusion of legal outcomes (Mattila, 2006, p. 107). In fact, it is entirely fair to say that the legal system of the European Communities is in some measure hybrid, developed as a fruit of intertwining of the European legal traditions – Civil Law and Common Law – side by side (Mattila, 2006, p. 108).

This shows that Civil Law and Common Law have reflected and introduced some of their legal concepts to each other. The impact can already be observed in terms and drafting style, especially in that of Common Law toward Civil Law. Therefore, it is not surprising that this difference in legal approach between these two main legal systems should influence translation significantly.

3.5. Legal systems in Portugal and Japan – Civil Law

Although it successfully avoided being part of the Napoleonic Empire, Portugal adopted the French civil code system. As one of the European nations influenced by the so-called 'revolutionary code', it had a considerable influence on the Portuguese legal system in the 19th century. Portugal took it as a model and modified it to suit national conditions. In the late 19th century, there was another influential change in the legal systems. Germany undertook a reorganization of its Code, following the methodology of Roman Law. The French Code and the German Code have contributed significantly to the penetration of the Civil Law system in the world. Portugal and Brazil, as well as China and Japan, were the nations whose legal system have been primarily influenced by the German civil code, especially in the early 20th century (Schaffer *et al.*, 2014, p. 48).

Japan's adoption of the Civil Law system took place in the late 19th century. After

more than the two centuries of national isolation policy by the feudal military government, Japan was forced to open the country, and to sign Unequal Treaties with foreign military powers, namely with the USA. With these treaties, Japan lost the freedom to set its tariffs and was obliged to introduce extraterritoriality. This means that a sovereign law outside Japan is applied in Japanese territory; in other words, Japan has lost the right to judge crimes committed by foreigners in its own country. One of the conditions demanded by the major Western powers to review these two inequalities was the promulgation of the 'modern judicial system', which presents 'the same legal level of the West' (川口, 2005, p. 3).

In order to recover full rights as a nation, the new government that was formed in the meantime by politicians, following the end of the feudal military government, decided to consult numerous modern European laws, including English, American, French, German, Austrian and Russian. The government sought to implement the laws that widely recognize the strong dominance of the nation, such as the German and Russian laws, and found similarities in some monarchies that coincided with the Imperial system of Japan (川口, 2005, p. 4). Today it is generally agreed that Japan mainly adopted the German Civil Code in 1898 (Tetley, 2000, p. 688). During the compilation, foreign jurists were invited, namely from Civil Law nations such as Germany and France. The compilation operation was conducted in the foreign language with the assistance of invited foreign professionals, but the aim of the project was not to 'copy' the European Law strictly. The purpose was to try to 'domesticate' the European codes within the framework imposed by the great powers (川口, 2005, p. 7). This is why and how Japan adopted the Civil Law system. Although this 'modern judicial system' in Japan went through various alterations later, its systematic basis remains until today.

3.6. Common Law and UK /USA English

As claimed by many scholars such as de Groot and Rayar (1995, p. 207), as well as Cao (1997, p. 665), a term in legal translation must be interpreted after a careful

study of the legal concept in the TL and in the SL, and by establishing a comparison as to whether the term in the TL legal system corresponds to the SL term. This means that, in the present study, such careful study and comparison are to be made between Portuguese and UK English in the translation of legal materials from Portuguese into English, while the same process is encouraged between Japanese and USA English in a parallel situation.

The important aspect is that there is a difference between UK legal English and USA legal English. This shows that several interpretations exist even within one legal system – Common Law – depending on the type of English (regardless of the discussion involving the 'letter' and the 'spirit' of the Law – i.e. whether to be faithful to the particular judicial review decisions or/and to the principles/general purposive standards of law (Halliday, 2004, p. 80). One example is the denomination of the legal profession that is authorized to act in court, as already been described. The legal representative in all continental legal systems generally possesses this role, being called *Rechstanwalt* in German, *avvocato* in Italian, and *advogado* in Portuguese (Kocbek, 2008, p. 242). As explained in 1.1.2, the equivalent of this profession cannot be found in the Anglo-Saxon systems.

In the same context, Mattila (2006) presents more examples as follows:

> For example, in the United States, the appellate court *affirms* or *reverses* a lower court's judgment; in England, the synonyms of these verbs, *allow* and *dismiss*, are used. Correspondingly, the law of companies is called *corporate law* in the United States but *company law* in England.[6] In the field of family law, one example concerns the right of an absent parent in divorce cases to see the child or children of the family: in the United States this is called *visiting rights* and in England *right of access*. American terms are often more transparent (that is, their meaning is clearer) than British terms. This is due to two facts at least: on the one hand, American terms are less burdened by the dead weight of history, while on the other hand they have to be understood by lawyers in 50 states whose legislations sometimes differ considerably. Therefore, American terms cannot be linked to strictly defined legislative solutions – the reverse of British terms. (p. 244)

[6] Tiersma (1999)

The difference between the UK and the USA is also visible in legal education. There is a remarkable difference in pedagogical approaches taken by these two nations. American legal education took the initiative to train legal professionals in order to satisfy the shortage of lawyers. It took the Socratic Method as its main educational tactic, with very interactive and interdisciplinary classes where student participation is encouraged while they are also evaluated through performance. With this background of clinical pedagogy in the USA, the study of law is generally viewed as science (Flood, 2011, p. 17). On the other hand, English legal education, which was reformed later than the USA, took a different path. It adopted a humanistic approach with exegetical lectures and interrogative seminars. This is typical of humanities education and, as Flood (2011) explains, "it would have been difficult in the English context to distinguish a law student from a philosophy one" (p. 18). As a result, it seems reasonable to suppose that there is a fundamental distinction between the UK and the USA approaches in legal matters. The difference between UK legal English and USA legal English will also very likely have an impact on communication between Portuguese and Japanese when English is used as a bridge language.

3.7. Data: Company law

From the practical point of view of this investigation, special attention was paid to the real need for research into this topic. As explained previously, my own professional experience shows that one of the first doubts regarding legal matters is possibly encountered in a business meeting setting, for instance when one tries to explain a company's structure. Statutes regarding a company are fundamental in business and yet they are complex as they involve the historical, social and cultural features of each nation. The same issue is described by Kocbek (2008, p. 242), who draws attention to the pertinent lack of equivalence in the field of company law, especially within the global business communication context. Therefore, company law was found to be particularly relevant for this comparative study. In order to reveal the translation problems induced by the use of English as an intermediary language, the English

translations of company laws offered by governmental institutions in Portugal and Japan are used as data.

The English versions of company laws in Portugal and Japan can be found on the following entities' websites of each country via respective links. The translation of Japanese company law 'Companies Act' is available in the website 'Japanese Law Translation', and a database of translations of Japanese laws offered by the Ministry of Justice of Japan at (http://www.japaneselawtranslation.go.jp/). Most of the data in both Japanese and English, in addition to the parallel version with both languages, can be downloaded from the site in .txt, .docx, .pdf, and .xml files. The version currently available is the Companies Act, numbered as Act No. 86 of 2005, with translation date of March 2, 2015. The original act (*Kaisha-ho*, 会社法) consists of 742 articles, divided into parts, from Part I to Part VIII. According to the downloaded file .docx, the Japanese original text consists of 276,625 characters, while the English translation contains 158,226 words. This, when analysed by the *Corpógrafo*, available on-line as part of the *Linguateca project* (http://labclup.letras.up.pt/corpografo/), revealed a total of 243,490 tokens in English. The data were extracted from the website in April 2015, although the same material is available at the present date.

The equivalent law in Portugal, which defines the structure of companies, rules of shareholders, among others, is the *Código das Sociedades Comerciais*. The English translation of this law, translated as 'Commercial Company Act', can be found on the site of CMVM – Comissão do Mercado de Valores Mobiliários (Portuguese Securities Market Commission) at http://www.cmvm.pt/en/Legislacao/LegislacaoComplementar/EmitentesOfertasInformcaoValoresMobiliarios/Pages/Commercial-Company-Act.aspx?v=. The English translation available is of the version republished by Decree-Law No. 76-A/2006, of March 29 and amended by Decree-Law No. 8/2007, of January 17 and Decree-Law No. 357-A/2007, of October 31. The original Portuguese text of the same last amended version on October 31 consists of 545 articles, with 81,425 words and 109,023 tokens, as computed by the *Corpógrafo*. The English translated version consists of 90,305 words, or 99,326 tokens. The Portuguese original text was ultimately collected in March

2017 from
http://www.pgdlisboa.pt/leis/lei_mostra_articulado.php?tabela=lei_velhas&artigo_id=&nid=524&ficha=101&pagina=&nversao=34&so_miolo=. The English translation was collected in April 2015 from the CMVM site. The publication of the translation on the website had apparently been interrupted for a while; however, it has recently been posted and, as of May 2017, it is available at the link given above.

There is no information regarding who translated the English versions of both the Japanese and Portuguese legislations. Both entities – the Ministry of Justice (MoJ) in Japan and the CMVM in Portugal – do not make the translators' names public. It is also worth pointing out that both clearly express the translations to be provisional. The MoJ site provides the said translation with a description of 'provisional translation', and the CMVM site has an instruction saying "This does not dispense with the need to consult the original Portuguese version published in the Official Gazette" (Comissão do Mercado de Valores Mobiliários, 2015). This implies that both translations are being provided for informative purposes. Although they are not considered 'official' translations, they are more than appropriate to serve as materials for the present investigation, since they are published in the official sites of each entity, and are the versions used anyway. They also apparently demonstrate a certain quality, maintaining coherency in terminology and phraseology, among other elements. Additionally, it is the purpose of this study to observe the validity of these translations themselves.

Table 3.1 : Table of file data: Companies Act (Japan) and Commercial Company Act (Portugal)

		No. of articles	**No. of characters / words**	**No. of tokens**
Companies Act (Japan)	Japanese original text	742	276,625 characters	
	English translation		158,226 words	243,490
Commercial Company Act (Portugal)	Portuguese original text	545	81425 words	109,023
	English translation		90,305 words	99326

3.8. Method: creation of corpora and contrastive analysis

Once the data are collected, corpora are created using these texts. The corpora are useful for extracting and obtaining statistics, and good resources for extracting the 'real-life' information, since they are collections of natural texts (Bennett, 2010, p. 7). The text data were cleaned by eliminating unnecessary elements, so that a more accurate observation is possible. The following corpora were created: the Companies Act, the English translation of the Japanese *Kaisha-ho* (会社法), presumably written in USA English, and the Commercial Company Act, an English translation of the *Código das Sociedades Comerciais* of Portugal, presumably written in UK English. In addition, the original texts in Portuguese and Japanese, i.e. Japanese text of *Kaisha-ho* (会社法) and Portuguese text of the *Código das Sociedades Comerciais*, were also added according to the needs of further analysis. For the convenience of the present study, this set of corpora is denominated as 'Companies Act Corpus – Japanese and Portuguese', and will hereinafter be referred to as CAC-JaPo.

According to Cao, one of the problems that legal translators are frequently faced with is the translation of legal concepts (2007, p. 54). She refers especially to the terminological level, stressing that legal terminology is the most outstanding feature of

legal language as a technical language and “it is also one of the main sources of difficulty in translating legal documents” (Cao, 2007, p. 53). Therefore, it is essential for this study to analyze terminology in the collected materials. In order to examine the data as closely as possible, I decided to adopt a method consisting of a contrastive and qualitative analysis. The data consists of parallel texts that were aligned using the software Align Assist (http://jp.felix-cat.com/tools/align-assist/). Subsequently, the texts of the parallel corpora (i.e., the Japanese Company Law, *Kaisha-ho* (会社法), and its English translation, and the Portuguese Company Law, *Código das Sociedades Comerciais*, and its translation into English) were compared. The contrastive analysis aimed to identify the relevant terms, with the help of my own personal and professional experience. These were then examined in detail by referring to terminological databases, legal dictionaries, related bibliography, and digital information, in an attempt to investigate the degree of equivalence. Careful observation, by contrasting and comparing the texts, was effective in revealing more detailed problems in the context of this research.

The research was based on the data and the method presented above. Relevant issues were discovered and detailed analysis on the specific problems will be discussed in the next chapter.

Chapter 4. - Analysis

Having reviewed the recent studies regarding legal translation as well as English as an intermediary language, and observed the questions surrounding these themes, the present investigation has now come to the point of dealing more deeply and carefully with actual practice in the real world. This chapter observes how concrete real material is handled, in order to examine how the subjects that have been discussed in the previous chapters operate in practice.

Major attention will be paid to what many scholars admit to be one of the biggest sources of difficulty in translating legal documents: legal terminology. One of the supporters of this opinion, Nagy (2014) states that "the greatest divergences between general language and specialized language are found in the vocabulary" (p. 266).

Motos (2013, p. 9) provides three groups of lexemes of special language texts. According to her, in any given specialized sphere, lexical units can be sorted into any of the following three categories: (1) general language lexical units, (2) semi-technical terms that can be in a 'grey zone' between general language and special language, and (3) technical terms which are applied in specific contexts in specialized texts.

General lexical units are common vocabulary words used in texts of specialized domain without losing their initial meaning. Semi-technical terms are specific lexicons that range from general language to special language. They are the words that have obtained other meanings as a result of extension of their original meaning. They "come from the general language but have acquired one or more different meanings when used within a specific area" (Motos, 2013, p. 9). Thus, they are very often polysemous and can be applied both to specific contexts and general contexts, even covering multiple fields. Semi-technical terms are words and expressions that "belong to the given general-core vocabulary of a language but that are frequently employed on a given specialized field with an added specific sense (Aléson, 2013, p. 16). Compared with semi-technical terms, technical terms are lexicon specific to special contexts. Their use is limited to specific contexts and they are univocal as well as precise. They are the terms found in specialized dictionaries or glossaries, implying normalization and

standardization. As Motos (2013) says, "(a)lso known as terminology or subject specific terms, they refer to those lexical units exclusively used by a given knowledge community in a specific domain" (p.9). In short, they can be defined as lexical units that belong to a subject specialty (Aléson, 2013, p. 16). This argument corresponds to the one discussed in the section on terminology in Chapter 1. With these arguments in mind, special attention will be focused on terminology in this chapter – i.e. subject specific lexicons – especially legal terminology.

For Nagy (2014, pp. 267-268), when translating specialized texts, the socio-cultural background should be taken into consideration in addition to the linguistic analysis of the text. The process of translating specialized texts therefore follows two steps: Step1 – decoding the message of the source text as a receptor and; Step 2 – encoding the message received for other receptors (Nagy, 2014, p. 268). For technical translation, more focus is given to Step 1, since it infers the understanding of the distinct features of technical language. This means that the translator should be capable of identifying the terminology of the specific field and of obtaining knowledge about it. Then in Step 2, the translator needs to handle the terminology of the target language adequately, to detect and solve the problems, effects, processes etc., and to work in collaboration with the specialist in the field (Croitoru, 2004, p. 22). Having got this point firmly established, one can then go on to consider what kind of issues actually arise in real materials – i.e. the Companies Act described above.

4.1. Examples of terms that are treated as equivalents but in fact can refer to different contents – Types of company

The first doubt that one encounters when analyzing the laws regarding companies of a country is the types of the company. The Companies Act – and other corresponding laws existing in each nation – defines the business forms that can be legally operated in each country. These often clearly reflect the social and historical background of the nation, especially when the country has had its own culture and models to conduct business throughout its history. In this section, the first focus is on the types of company.

4.1.1. Types of company in Japan: 株式会社、合名会社、合資会社、合同会社 (JP); 'Stock Company', 'General Partnership Company', 'Limited Partnership Company', 'Limited Liability Company' (EN);

The Japanese Companies Act establishes the definitions of terms regarding the scope of Japanese companies and their activities, and the types of company are one of them. Article 2 (i) of the Act defines the types of company as follows:

Table 4.1 : Article 2 of Japanese Companies Act

Japanese (original)	**English (Official provisional translation, hereinafter referred to as 'translation')**
第二条	Article 2
この法律において、次の各号に掲げる用語の意義は、当該各号に定めるところによる。	In this Act, the meanings of the terms listed in the following items shall be as prescribed respectively in those items:
一	(i)
会社　株式会社、合名会社、合資会社又は合同会社をいう。	"Company" means any Stock Company, General Partnership Company, 'Limited Partnership Company' or Limited Liability Company;

Adapted from Ministry of Justice of Japan (2017a)

Two questions now arise regarding the above definition: (1) whether each of these types of company in Japanese culture corresponds to the respective types in English translation in reality, and (2) whether the terms in the English translation lead to the corresponding company types in the Portuguese culture, and whether the Portuguese terms correspond to the Japanese ones. The following table shows the Japanese terms and the respective corresponding English terms in the translation.

Table 4.2 : Comparison of terms used in the original Japanese version and the English translation

Japanese	**English (translation)**
株式会社 *Kabushiki (k)gaisha*	Stock Company
合名会社 *Gōmei gaisha*	General Partnership Company
合資会社 *Gōshi gaisha*	Limited Partnership Company
合同会社 *Gōdō gaisha*	Limited Liability Company

Adapted from Ministry of Justice of Japan (2017a)

In order to compare the English terms with the Japanese ones to analyze their accuracy, one should first look more carefully into the reality of the Japanese terms. From this viewpoint, each type of company in Japan – i.e. 株式会社 *Kabushiki gaisha*, 合名会社 *Gōmei gaisha*, 合資会社 *Gōshi gaisha*, and 合同会社 *Gōdō gaisha* – is discussed below. Before moving on to the detailed examination of each term, let us observe the following table which compares the four terms in question.

Table 4.3 : Comparison of four types of companies in Japan

	合名会社 ***Gōmei gaisha***	合資会社 ***Gōshi gaisha***	合同会社 ***Gōdō gaisha***	株式会社 ***Kabushiki gaisha***
Corresponding English term according to the translation of Companies Act	General Partnership Company	Limited Partnership Company	Limited Liability Company	Stock Company
Capital	No minimum capital required	No minimum capital required	1 yen or more	1 yen or more
Number of investors	two persons or more (Since 2006, changed to 'one person or more')	two persons or more	one person or more	one person or more
Investor's responsibility	Unlimited liability	Unlimited liability and limited liability	Limited liability	Limited liability
Directors	Investor	Investor with unlimited liability	Investor (It is also possible to nominate business executives from among the investors)	One or more directors, or three or more directors and one or more auditors (*kansayaku*) or accounting advisor
Term of office of directors	None	None	2 to 10 years for the directors and 4 to 10 years for the auditors (*kansayaku*)	Within 2 years
Supreme decision-making body	Investor	Investor with unlimited liability	Investor	General meeting of shareholders
Executive agency	Investor	Investor with unlimited liability	Investor (It is also possible to nominate business	Directors or the Board of Directors

			executives from among the investors)	
Representative organization	Each investor	Investor with unlimited liability	Each investor (or executive employee)	Director or Representative Director
Organization change	Organization change is possible to 'Limited Partnership Company', 'Limited Liability Company', or 'Stock Company'	Organization change is possible to 'General Partnership Company', 'Limited Liability Company', or 'Stock Company'	Organization change is possible to 'General Partnership Company', 'Limited Partnership Company', or 'Stock Company'	Organization change is possible to 'General Partnership Company', 'Limited Partnership Company', or 'Limited Liability Company'
Obligation of public notice	No	No	Yes	Yes
Authentication of Articles of Incorporation	Not necessary	Not necessary	Not necessary	Necessary
Establishment registration fee	60,000 yen	60,000 yen	60,000 yen	7/1000 of the capital (however, minimum 150,000 yen required)

Adapted from information obtained at a website of an administrative scrivener office 行政書士とみなが行政法務事務所 (2017)

In addition, it is also worth mentioning that the three types except for 株式会社 *Kabushiki gaisha* – i.e. 合名会社 *Gōmei gaisha*, 合資会社 *Gōshi gaisha*, and 合同会社 *Gōdō gaisha* – belong to a category called 持分会社 *Mochibun kaisha*, as defined in the Article 575 of the Companies Act.

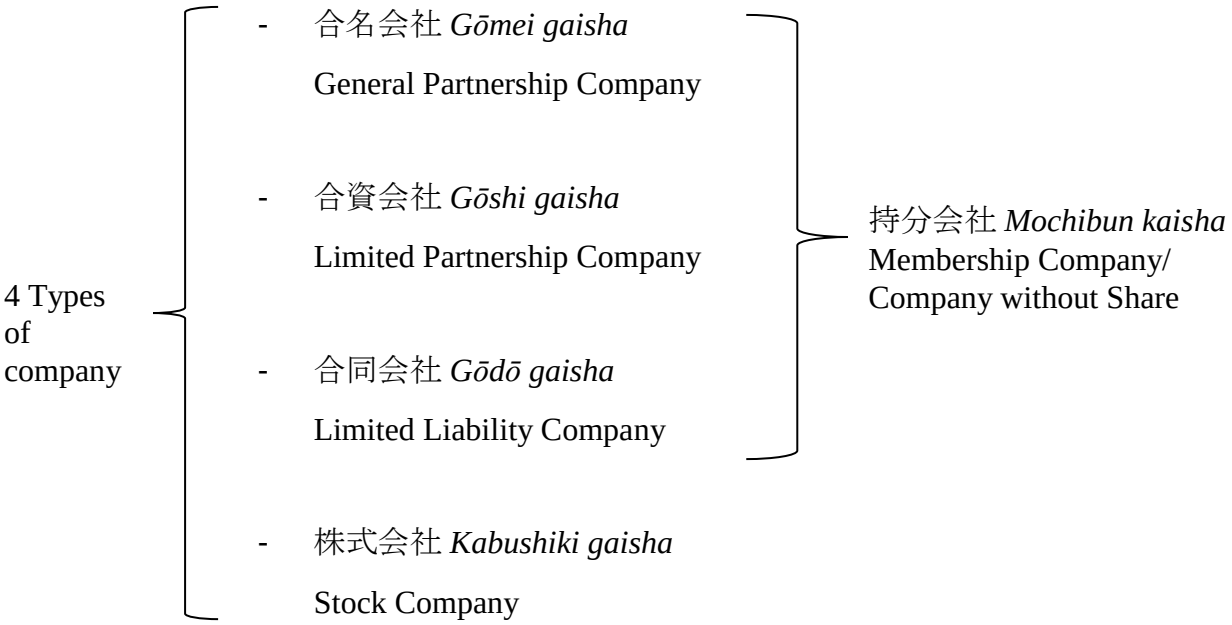
Table 4.4 : Article 575 of Japanese Companies Act

Japanese (original)	**English (translation)**
第三編　**持分会社**	PART III **Companies without Share**
第一章　設立	Chapter I Incorporation
（定款の作成）	(Preparation of Articles of Incorporation)
第五百七十五条　合名会社、合資会社又は合同会社（**以下「持分会社」と総称する。**）を設立するには、その社員になろうとする者が定款を作成し、その全員がこれに署名し、又は記名押印しなければならない。	Article 575　In order to incorporate an General Partnership Company, Limited Partnership Company or Limited Liability Company (**hereinafter collectively referred to as "Membership Company"**), persons who intend to be its partners must prepare articles of incorporation which must be signed by or record the names of and be affixed with the seals, of all partners.

Adapted from Ministry of Justice of Japan (2017a)

As can be seen in the description above, 持分会社 *Mochibun kaisha* is either translated as 'Companies without Share' or 'Membership Company' in this Act. This fact infers that the translation for the term 持分会社 *Mochibun kaisha* has not yet been fully ratified. Furthermore, one of the translated terms, 'Companies without Share', demonstrates that the companies that belong to this category possess characteristics which totally differ from (or are the opposite of) that of 'Stock Company' (株式会社 *Kabushiki gaisha*) – i.e. companies 'with Share'. The term 持分会社 *Mochibun kaisha* can be better interpreted as 'Partnership Company' (Matsui, 2009, p. 121). Based on the explanation of Matsui (2009), unlike 'Stock Companies', 持分会社 *Mochibun kaisha* "do not have shares that determine economic entitlements and participation rights", therefore, they "have greater freedom to determine the respective rights and duties of shareholders and directors" (p. 121). According to this information, the relationship among the four types of company can be expressed in the following way.

Figure 4.1 : Relationship among four company types in japan



Adapted from Matsui (2009)

Having observed the classification of companies in Japan, let us now look closely at how the companies in Portugal are organized in order to compare them against each other.

4.1.2. Types of company in Portugal: *Sociedade em Nome Colectivo, Sociedade por Quotas, Sociedade Anónima, Sociedade em Comandita*

The classification of companies in Portugal is different from that of Japan. Article 1 of *Código das Sociedades Comerciais* (Commercial Company Act) defines five forms of company, namely: *Sociedade em Nome Colectivo*, *Sociedade por Quotas*, *Sociedade Anónima*, *Sociedade em Comandita Simples* e *Sociedade em Comandita por Acções*, as demonstrated below. A set of these forms are generally called ‘the principle of typical

commercial companies' and it is obligatory for a business entity to adopt one of these types provided by law (Maia, Ramos, Martins, & Domingues, 2013, p. 11).

Table 4.5 : General scope of application, Article 1 of Código das Sociedades Comerciais

Portuguese (original)	**English (translation)**
Artigo 1 Nº 2	Article 1 –No.2
São sociedades comerciais aquelas que tenham por objecto a prática de actos de comércio e adoptem o tipo de sociedade em nome colectivo, de sociedade por quotas, de sociedade anónimas, de sociedade em comandita simples ou de sociedade em comandita por acções	Commercial companies are those whose purpose is to exercise commercial activities and which take the legal form of partnerships, private limited companies, public companies, limited partnerships or limited partnerships with share capital.

Adapted from Comissão do Mercado de Valores Mobiliários (2015)

According to the translated version of the material collected from the aforementioned site of CMVM – *Comissão do Mercado de Valores Mobiliários* for the objective of this study, each company type corresponds the following English translation of Article 1 of the Act.

Table 4.6 : Types of company in Portugal and their English translation

Portuguese	**English (translation)**
Sociedade em Nome Colectivo	Partnership
Sociedade por Quotas	Private Limited Company
Sociedade Anónima	Public Company
Sociedade em Comandita Simples	Limited Partnership
Sociedade em Comandita por Acções	Limited Partnership with Share Capital

Adapted from Comissão do Mercado de Valores Mobiliários (2015)

There is no separation between ‘partnership’ and ‘company’ in Portuguese, both of them being denominated as ‘*sociedade*’. As far as can be observed from the translation as well as from the content, however, it can be said that ‘*Sociedade em Nome Colectivo*’ and ‘*Sociedade em Comandita*’ in general are considered to be forms of ‘partnerships’ and others such as ‘*Sociedade por Quotas*’ and ‘*Sociedade Anónima*’ indicate the status of ‘company’. There is, in addition, another type of company included in the ‘*Sociedade por Quotas*’, which is ‘*Sociedade unipessoal por Quotas*’ (‘Single-member Private Limited Companies’), stated in Chapter X under Title III, the section dedicated to *Sociedade por Quotas* in the Act. Despite the description found in Article 1, if one follows the organization of the Act, therefore, there are seven types of companies in Portugal in total, within which there are four major categories: *Sociedade em Nome Colectivo* (‘General Partnership’, as it appears in Title II), *Sociedade por Quotas* (‘Private Limited Company’, Title III), *Sociedade Anónima* (‘Public Company’, Title IV), *Sociedade em Comandita* (‘Limited Partnership’, Title V), and three sub-categories: *Sociedade unipessoal por Quotas* (‘Single-member Private Limited Companies’, Chapter X of Title III), which belongs to a category of *Sociedade por Quotas*, and *Sociedade em Comandita Simples* (‘Limited Partnership’, Chapter II of Title V) and *Sociedade em Comandita por Acções* (‘Limited Partnership with Share Capital’, Chapter III of Title V), as varieties of the *Sociedade em Comandita* category.

There is no apparent separate categorization as observed in Japanese 持分会社 *Mochibun kaisha* (‘Membership Company’). From these remarks suggested by Carvalho (2013, p. 28), and according to the description and organization of the Portuguese legislation, the Commercial Company Act (*Código das Sociedades Comerciais*), the types can be summarized in the table below. Despite the mention of the principle of typicality, the law does not provide any definition regarding the content or what each business form consists of (Maia *et al.*, 2013, p. 14). However, some of the distinctive characteristics can be found in the provisions, from which it is possible to presuppose the essence of each type. The nature of entities will be individually discussed below.

Table 4.7 : Organization of types of company in Portugal and their provisional English translation provided by CMVM

Location	**Portuguese**	**English (translation)**
Title II	*Sociedade em Nome Colectivo*	General Partnership
Title III	*Sociedade por Quotas*	Private Limited Company
Chapter X	*Sociedade unipessoal por Quotas*	Single-member Private Limited Companies
Title IV	*Sociedade Anónima*	Public Company
Title V	*Sociedade em Comandita*	Limited Partnership
Chapter II	*Sociedade em Comandita Simples*	Limited Partnership
Chapter II	*Sociedade em Comandita por Acções*	Limited Partnership with Share Capital

Adapted from Carvalho (2013, p. 28)

4.1.3. Types of company in the USA: 'Partnership', 'Limited Liability Companies' and 'Corporations'

The USA has adopted federalism, in which public powers are shared between the Federal State and the individual Federal states. This means that each Federal state has its own competence in legislating laws under their sphere of power (Mattila, 2006, p. 242). International Business Publications (2009) states that corporate law in the United States is "a collection of 50 different systems of corporate law, or one law for each state" (p. 39). In the USA, businesses are mostly incorporated in each state. Therefore, their forms can vary depending on the individual states. The freedom for incorporation is secured by the USA Constitution, so the State of incorporation can be chosen freely, even though the business activity is not actually performed there, or its headquarter is located in another State. This freedom led to a competition among States to attract businesses. On the other hand, there are some general points shared by the States. For

instance, there is a form of ‘Sole Proprietorship’, which consists of a single business owner.

One of the States that eventually gained the most popularity for incorporation is Delaware, the state where more than half of USA businesses are incorporated under its law (International Business Publications, 2009, p. 39). It is widely recognized that Delaware was the state which proactively eased the restrictiveness of State Corporation Law, especially in the aspect that it “makes the state a hospitable jurisdiction in which to litigate issues of corporate law” (Winter, 1978, p. 8). Consequently, the corporation law and other related laws in Delaware are outstandingly influential, although there is an opinion that, as the other states follow the Delaware code, it does not considerably differ from the codes of other states anymore (Winter, 1978, p. 8).

The Model Business Corporation Act (MBCA), drafted by the American Bar Association, is also influential and its principles are shared by many states (International Business Publications, 2009, p. 39). Having mentioned these laws, however, due to the context of this analysis, no further details will be discussed on this category. In the context of this study, the very basic business entity types, which are generally common to many States in the USA, will be focused on. Other than the ‘Sole Proprietorship’, businesses in the USA can be roughly classified into the following types: ‘Partnerships’, ‘Limited Liability Companies’ and ‘Corporations’.

Four main types of business in the USA

- Sole Proprietorship
- Partnership
- Limited Liability Company
- Corporation

Within these three main types, there are four subcategories in the ‘Partnership’, two subcategories in ‘Limited Liability Companies’, and three subcategories in ‘Corporation’, as listed below (International Business Publications, 2009, pp. 57-58):

Four main types of business in the USA

- Sole Proprietorship
- Partnerships
  - General Partnership
  - Limited Partnership
  - Limited Liability Partnership
  - Limited Liability Limited Partnership
- Limited Liability Companies
  - Limited Liability Company
  - Professional Limited Liability Company
- Corporations
  - Corporation / Incorporated
  - Professional Corporation

4.1.4. Types of company in the UK: 'Partnerships' and Companies

Before going on to the details of types of business structures in the UK, it should be noted that the law that governs this field in the UK is the Companies Act 2006. The territorial extent of this Act covers England, Wales, Scotland, and Northern Ireland (Legislation.gov.uk), which means that, for example, despite the systematic legal difference of Scotland as explained in the section 3.1., this Act is applicable throughout the UK. The explanatory notes of the Act describe as the following: "The Act provides for a single company law regime applying to the whole of the UK, so that companies will be UK companies rather than GB companies or Northern Ireland companies as at present" (Legislation.gov.uk).

There is a slight difference between the types of businesses in the UK and those in the USA. Unlike in the USA, there is no business form called corporation in the UK. On top of that, the explanation on its formation differs depending on the medium of information, such as on the internet or newspapers, and sometimes it differs even among entities. Therefore, here is the list of business entities found in Wikipedia. There are two reasons for this choice, although Wikipedia can be often considered unscientific: first, Wikipedia can be a useful medium for collecting information for translators, as the pages are interlinked in various languages; second, after consulting various references and media concerning this subject, the list on this page seemed the best organized.

According to the information extracted from a Wikipedia page regarding the list of business entities (Wikipedia, 2018b), therefore, the businesses in the UK are classified into one of the following three main categories: ‘Sole Trader’ / ‘Sole Proprietorships’, ‘Partnerships’ or ‘Companies’. Due to the reason mentioned above, ‘Sole Proprietorship’ will not be focused here either. ‘Partnerships’ are further categorized into three subtypes: ‘General Partnership’, ‘Limited Liability Partnership’ and ‘Limited Partnership’. ‘Companies’ have three more subdivisions: ‘Private Limited Companies’, which are further classified into ‘Private Company Limited by Shares’ and ‘Private Company Limited by Guarantee’; ‘Public Limited Company’, and ‘Unlimited Company’.

Types of businesses in the UK

- Sole Proprietorship
- Partnerships
  - General Partnership
  - Limited Liability Partnership
  - Limited Partnership
- Companies
  - Private Limited Companies
    - Private Company Limited by Shares
    - Private Company Limited by Guarantee
  - Public Limited Company
  - Unlimited Company

According to a legal study guide (Roach, 2014, p. 3), however, the business structures in the UK are explained in a more generalized way. They are classified according to the following four principal categories: ‘Sole Proprietorship’, ‘Ordinary Partnership’, ‘Limited Liability Partnership’, and ‘Company’. Roach (2014, p. 5) implies that no mention is given to the ‘Limited Partnership’, as this business form is extremely rare today.

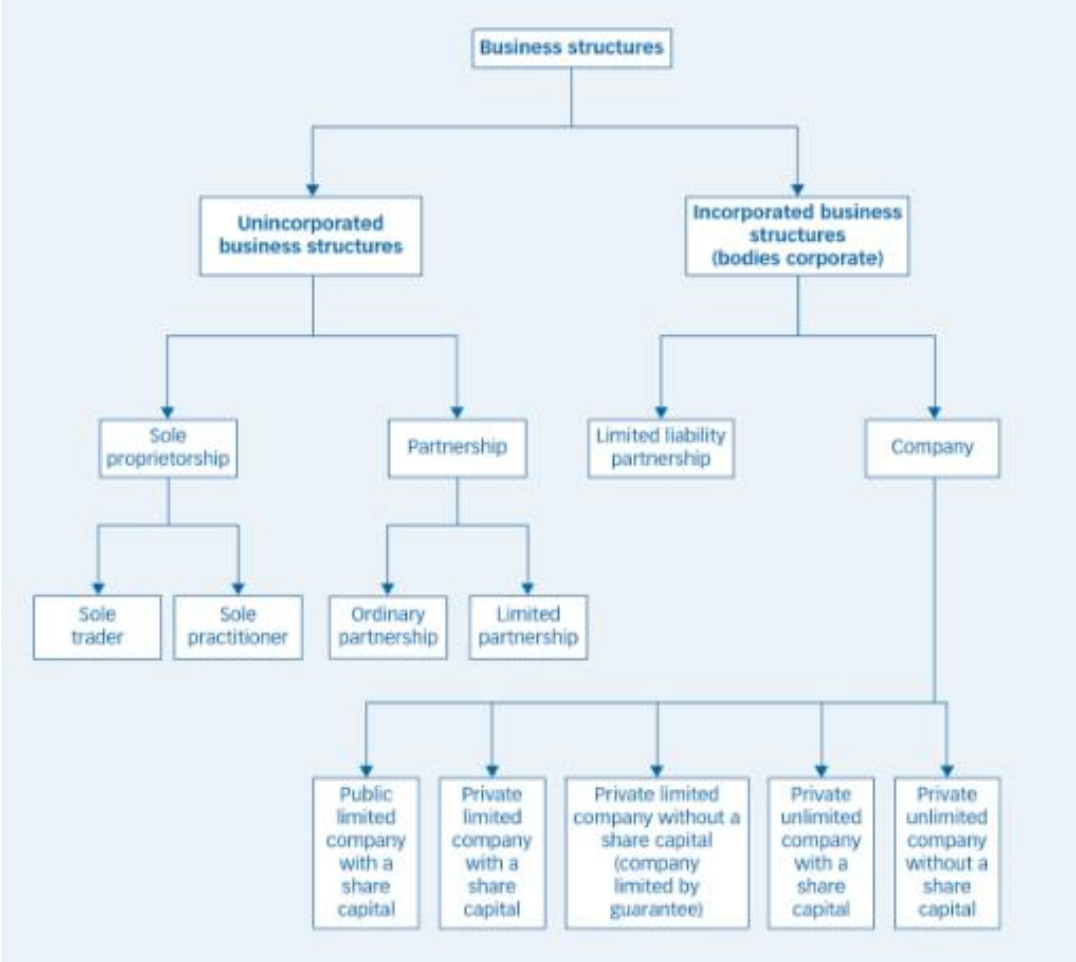
Types of businesses in the UK 2

- Sole Proprietorship
- Ordinary Partnership

- Limited Liability Partnership
- Company

The first two forms, ‘Sole Proprietorship’ and ‘Ordinary Partnership’, are called ‘unincorporated business structures’. These structures do not have the status of ‘body corporate’, since the process of their creation does not go through the one called incorporation. Therefore, these two forms do not have corporate personality (although there are arguments that ‘Ordinary Partnership’ should have corporate personality) (Roach, 2014, p. 3). The other two structures, ‘Limited Liability Partnership’ and ‘Company’, on the other hand, are created via a process of incorporation. Consequently, these two are incorporated business structures and are recognized as ‘body corporate’ (Roach, 2014, p. 3). The structure is explained in the following scheme (Roach, 2014, p. 2), including more detailed forms such as ‘Limited Partnership’ under the category of ‘Partnership’, and the five subcategories under the ‘Company’, which are ‘Public Limited Company with a Share Capital’, ‘Private Limited Company with a Share Capital’, ‘Private Limited Company without a Share Capital’ (‘Company Limited by Guarantee’), ‘Private Unlimited Company with a Share Capital’, and ‘Private Unlimited Company Without a Share Capital’.

Figure 4.2 : The scheme of business structures in the UK



Adapted from Roach (2014, p. 2)

Having taken a quick look at the four types of companies in Japan, four main types in Portugal, as well as the business types in the USA and the UK, let us now go into the details of each subject. In order to compare them effectively and find closer corresponding terms for each concept, they should be individually examined. Here, Japanese terms are set as the source language and Portuguese as the target language. In addition, it is assumed that English terms, both British and American, will be used as intermediaries. Therefore, each of the Japanese company types is analyzed together with their English translations and then they will be compared with Portuguese company types. Of the four types of Japanese companies, let us first focus on the group of 持分会

社 *Mochibun kaisha*, which will be referred to as 'Membership Company', following the translation of the Companies Act, published by the Ministry of Justice in Japan.

4.2. 合名会社 *Gōmei gaisha* (GMK)

4.2.1. 合名会社 *Gōmei gaisha* (GMK) in Japan; 'General Partnership Company' (provisional translation by the Ministry of Justice)

Today, 合名会社 *Gōmei gaisha* is hardly seen in Japan. It can be found in traditional businesses or regional micro enterprises, such as brewing companies of Japanese *sake* (rice wine), *miso* (bean paste) and *shōyu* (soy sauce), and they are normally very small in scale (Ma, 1997, p. 209). This is probably because this type of company is the closest to sole proprietorship (行政書士とみなが行政法務事務所, 2017). It may be described as the most primitive form of company, in which situations such as family management and the joint-business of more than two business owners of the individual business is presupposed (安部, 2007, p. 164). Therefore, its structure is very close to that of association or partnership, and it is so close, in fact, that regulations regarding association are applied *mutatis mutandis*. In trade names in English, the term is sometimes abbreviated to 'GMK' taking the first initials of the Japanese words '**G**ō**M**ei **K**aisha', although it is normally pronounced 'Gōmei **G**aisha'.

There is another business entity similar to 合名会社 *Gōmei gaisha*, which is called 組合 *Kumiai*. However, these two entities differ decisively in that a 合名会社 *Gōmei gaisha* has full legal personality while many of the 組合 *Kumiai* have no legal personality.

The characteristics of 合名会社 *Gōmei gaisha* are the following: (1) Investment from two or more members; (2) Investors not only own the company but also execute business; and (3) Each of the investors is jointly and unlimitedly liable to the company's debt (Ohara & Furukawa Law office, 2016). Special attention should be paid to point (3), which obliges each partner to be unlimitedly responsible for the loss of the business (International Business Publications, 2008, p. 44). This is the point on which 合名会社

Gōmei gaisha is considered as the closest entity to sole proprietorship. To take an extreme example, if a partner had invested 1,000 euros and eventually the company had a loss of 1,000,000 euros, the partner must assume the payment of those 1,000,000 euros, even though the amount that the person invested was less than that. In the worst-case scenario, the stakeholders of this company form run that risk, which would be exactly the same as when they run the individual business. The fact that the investor is in charge of the management of the company and simultaneously owes unlimited liability would be the reasons why it is seen only in small-scale businesses (International Business Publications, 2005, p. 267) and is not popular among foreign investors (Ohara & Furukawa Law office, 2016).

With regard to the advantages of 合名会社 *Gōmei gaisha*, first of all, there is no need to collect a share capital. Since no minimum capital is required for the establishment of 合名会社 *Gōmei gaisha*, one can easily start this form of company. Another advantage is that the company establishment cost is low. In addition to the low registration fee, there is no need to authenticate Articles of Incorporation for the establishment of 合名会社 *Gōmei gaisha*. Therefore, it is possible to establish one by oneself, without the help of specialists, and with a relatively low budget. Considering the fact that the Companies Act enforced in 2006 enabled this kind of company to be founded by only one partner (investor), it is a fairly accessible company form for those who wish to obtain a legal personality (行政書士とみなが行政法務事務所, 2017).

There are, however, some disadvantages. The biggest risk is the unlimited liability of partners, in that the investors must assume the company's loss, no matter what the amount is. The fact that the designation of 合名会社 *Gōmei gaisha* is not well known in general can be also counted as a disadvantage. People are not familiar with the definition and it may bring less impact compared with other forms of company (行政書士とみなが行政法務事務所, 2017). Another disadvantage can be seen from the viewpoint of its structure. The major characteristic of this company form is that each partner is an investor as well as an executive. It is therefore suitable for small scale business with a limited number of fixed partners, where the close relation among

partners is possible to maintain. In other words, if the relation among partners fails, it will directly affect the management of the company (International Business Publications, 2005, p. 168). The company's stability depends greatly on the closeness of the relations among partners. The characteristics of 合名会社 *Gōmei gaisha* can be summarized as in the table below:

Table 4.8 : Characteristics of 合名会社 Gōmei gaisha *in Japan*

Characteristics of 合名会社 *Gōmei geisha*		
Principal characteristics	Numbers of investors	Two or more members (since 2006, it is possible to form such a company with only one investor);
	Liability of investors	Each investor is **jointly and unlimitedly** liable to the company's debt
	Function of investor	Not only owns the company but also **carries on business**
	Representative of company	Each investor (partner)
Advantages		(1) No minimum share capital required. (2) Cost for company establishment is low.
Disadvantages		(1) Unlimited liability of investors, the same risk as sole proprietorship. (2) Little known to the public. (3) Stability depends on the relations among partners.

Adapted from 行政書士とみなが行政法務事務所 (2017)

One question arises: how does the Japanese 合名会社 *Gōmei gaisha* compare with companies in the Portuguese system? What a Japanese <> Portuguese translator would usually do when encountering tasks on unfamiliar subjects would be to refer to as much information as possible including Japanese <> English and English <> Portuguese,

and discover which terms in English of the USA and of the UK correspond to 合名会社 *Gōmei gaisha*. To start with, the translated term found in the English translation version provided by the MoJ in Japan is 'General Partnership Company', which appeared in Article 575 referred to in the section 4.1.1. (see the table below). It can be assumed from this translation that this business form in Japan would be roughly equivalent to the one related to 'Partnership' in both the USA and the UK.

Table 4.9 : Article 575 of Japanese Companies Act

Japanese (original)	**English (translation)**
第五百七十五条　**合名会社**、合資会社又は合同会社（以下「持分会社」と総称する。）を設立するには、その社員になろうとする者が定款を作成し、その全員がこれに署名し、又は記名押印しなければならない。	Article 575 In order to incorporate a **General Partnership Company**, Limited Partnership Company or Limited Liability Company (hereinafter collectively referred to as "Membership Company"), persons who intend to be its partners must prepare articles of incorporation which must be signed by or record the names of and be affixed with the seals, of all partners.

Adapted by Ministry of Justice of Japan (2017a)

4.2.2. English equivalent of 合名会社 *Gōmei gaisha* in the USA: 'General Partnership' and its characteristics

Like other countries, when a new business starts in the USA, an adequate business form must be selected to operate the business. According to Hamilton (1991), there are three choices in the USA: (a) 'Partnership', (b) 'Limited Partnership' and (c) 'Corporation' (p. 16).

When two or more people start a business together without special formalities, their relationship is considered a general partnership. If one considers establishing a collaborative business, the 'Partnership' is the most basic form and its advantage can be found in the simplicity of this business organization involving more than one person

(Hamilton, 1991, p. 16). The formation of a 'Partnership' is generally regulated by provisions established in each State. This State regulation regarding 'Partnership' follows the Revised Uniform Partnership Act (RUPA).

Unlike corporations which require a series of complex processes, the creation of a 'Partnership' is simplified, as it is formed only by agreement of the partners (Hamilton, 1991, p. 16). The partners are entitled to share any profits from the business, and they pay tax individually on their share, no matter how they use the profits, whether they keep or reinvest them (International Business Publications, 2009, p. 40). The Act does not recognize separate legal personality for such a 'Partnership' – i.e. the 'Partnership' itself is not considered to form a business entity. It is rather recognized as an extension of each individual partner (Hamilton, 1991, pp. 17-18). Therefore, the 'Partnership' itself is not taxed but the partners are taxed individually. In either event of actual distribution or not, each partner's income is subject to tax. Exemption of corporate tax is one of the points which propose an advantage over taxation for corporations (International Business Publications, 2009, p. 40). It should be noted, however, that there are some cases where some States and local laws could impose duty obligation on 'Partnerships' such as an unincorporated business tax (Henn & Alexander, 1983, p. 85). Regarding its administration, the partners share the right to manage – i.e. they can directly control the business and make binding decisions. Each partner therefore reserves the power to bind the partnership and a right to participate in management (Hamilton, 1991, p. 18). 'Partnerships' enjoy relative freedom with regard to their form of operation as well as formal legal requirements, whereas, in terms of liability, they take a risk of being jointly and unlimitedly liable for any debts or tort caused by the partnership.

There is, on the other hand, a category called 'Proprietorship'. This is a business form owned by a single person and its characteristics are essentially identical to 'Partnership', except for the fact that the business is owned by one person and not by multiple persons (Hamilton, 1991, p. 16). In a 'Proprietorship', the owner has the exclusive right to manage and is exclusively entitled to the profits. The owner is also unlimitedly reliable for the loss of the business. Therefore, it can be said that a

proprietorship can be fundamentally recognized as a one person partnership (Hamilton, 1991, p. 16).

Table 4.10 : Characteristics of 'General/Ordinary Partnership' in the USA

Characteristics of 'General/Ordinary Partnership' in the USA		
Principal characteristics	Numbers of partners	Two or more members
	Liability of partners	The partners are **jointly and unlimitedly** liable for the debts of the partnership and are **jointly and severally** liable for its liabilities
	Function of partners	Each partner possesses a right to participate in management
	Representative of company	Each partner possesses authority to bind the partnership
	Partners known as:	The partners are known as 'partners'
Advantages		(1) Simplicity (2) No taxation to the entity itself (3) Costs of creation and operation are low
Disadvantages		(1) Unlimited liability of partners, the same risk as sole proprietorship. (2) Partners are both liable personally, collectively and unlimitedly. (3) Stability depends on the relations among partners.

Adapted from Hamilton (1991, pp. 16-29)

4.2.3. English equivalent of 合名会社 *Gōmei gaisha* in the UK: 'General/Ordinary Partnership' and its characteristics

In the UK, too, a 'Partnership' is considered as one of the appropriate business forms when two or more persons wish to do business jointly. 'Ordinary Partnership' is regulated by partnership law, such as the Partnership Act 1890 (PA 1890) and it is usually referred to as a 'firm', in order to distinguish from the partnership in a contract relationship[7] (Legislation.gov.uk, 2018). According to Section 1 (1) of the PA 1890, a 'Partnership' is "the relation which subsists between persons carrying on a business in common with a view to profit". Roach (2014, pp. 4-5) defines three different forms for the 'Partnership':

1. 'Ordinary Partnership', which is usually referred to simply as a 'partnership';
2. The 'Limited Partnership', a partnership which can be formed under the Limited Partnership Act 1907 (however, nowadays this form is extremely rare);
3. The 'Limited Liability Partnership', which is a partnership but has an incorporated structure.

The PA 1890 also sets some default terms which define the relationship between partners in a 'Partnership'. They include the ones which assure that "all the partners are entitled to share equally in the profits of the firm and must also contribute equally towards the firm's losses" (Roach, 2014, p. 5). This means that in a 'Partnership', the partners personally share responsibility for the business together, including any financial risks on the business, as well as bills for items necessary for the business such as equipment (GOV. UK, 2017). The business' profits are shared by partners and it is on their share that each partner pays tax (GOV. UK, 2017). The Act also provides that the management of the firm may be carried out by every partner (Roach, 2014, p. 5). Regarding the liability in this business form, each partner acts as agents for each other, but at the same time one is individually responsible for not only the actions of oneself, but also the actions of other partners, as well as being responsible collectively as a

[7] It is defined by the Article 4 (1) of Partnership Act 1890 as follows: "(1) Persons who have entered into partnership with one another are for the purposes of this Act called collectively a firm, and the name under which their business is carried on is called the firm-name" (Legislation.gov.uk, 2018).

partnership in general (Rocket Lawyer, 2016). The partners are jointly and severally liable in the case of a criminal act by a partner. This means that if one partner commits wrongful acts, other partners may be found guilty for his act. Section 10 of the PA 1890 establishes that the 'Partnership' and each partner has vicarious reliability for the criminal acts or negligence committed by another partner, provided that the act was conducted within the authority of the partner, or in the normal process of the firm's business (Roach, 2014, p. 6). The aforementioned legal study guide provides the following example:

Example:

> Coffey & Sons is a UK based firm of accountants consisting of 50 partners. One of the firm's partners, Kirsty, is conducting an audit of BioTech plc, but she conducts the audit negligently. Under s 10, Coffey & Sons and the other 49 partners face liability for Kirsty's act of negligence. (Roach, 2014, p. 6)

It is worth stressing that this liability toward partners is assumed jointly and severally, and is also personal and unlimited. This means that there is a possibility that each partner is sued individually one by one, or the claimant can sue all the partners simultaneously in order to succeed with the full recovery of the amount of the loss (Roach, 2014, p. 6). Therefore, it is important that as a partner, one must act with honesty and in the best interest of the partnership (Rocket Lawyer, 2016).

According to this description, one can say that the 'General / Ordinary Partnership' in the UK is the closest form of business to the Japanese 合名会社 *Gōmei gaisha*. The principal features are represented in the following table.

Table 4.11 : Characteristics of 'General/Ordinary Partnership' in the UK

Characteristics of 'General/Ordinary Partnership' in the UK		
Principal characteristics	Number of investors	Two or more members
	Liability of investors	The partners are **jointly and unlimitedly** liable for the debts of the partnership and are **jointly and severally** liable for its liabilities
	Function of investor	All the partners are entitled to share equally and may **carry on business**
	Representative of company	Each partner
	Partners known as:	The partners are known as 'partners'
Advantages		(1) Simplicity (2) No taxation to the entity itself
Disadvantages		(1) Unlimited liability of partners, the same risk as sole proprietorship. (2) Partners are both liable personally, collectively and unlimitedly. (3) Stability depends on the relations among partners.

Adapted from Roach (2014, p. 8)

4.2.4. The equivalent of 合名会社 *Gōmei gaisha* in Portugal: *Sociedade em Nome Colectivo* and its characteristics

Before entering into the analysis of the equivalent of the term in Portuguese, it is worth examining the background of this term in Japanese. It is strongly connected with the French Napoleonic Code, which can lead to some similarities with the Portuguese legal system. Which term or type of company in Portugal could be considered as an

equivalent to a Japanese 合名会社 *Gōmei gaisha*? One of the clues can be found in its history. The designation of this company type itself in Japanese was a translation in the first place, from the Napoleonic Code. When Japan elaborated the first modern legal system in the late nineteenth century, the Japanese government referred to European codes, inviting various specialists from Europe, namely from Germany and France. The Japanese commercial code was based on the German Code, which, in turn, was strongly influenced by the Napoleonic Code in terms of this form of company (高田, 2014, p. 175). Therefore, when Japan finally decided to establish the Commercial Law following the German Commercial Code, the French-influenced legal concepts of company were also introduced. As a result, the company form of the Napoleonic Code, '*société en nom collectif*', was adopted in the Japanese system and the term was literally transferred into the Japanese language (櫻井, 2008, p. 120): In Japanese, 名 corresponds to '*nom*' and 合 means '*collectif*'. It should be noted, however, that there are some differences between French '*société en nom collectif*'' and Japanese 合名会社 *Gōmei gaisha*. For example, the name of one or more partners should appear in the company name in France, followed by a suffix 'et compagnie'. This custom is not applied in Japan, although the company name should include the denomination '合名会社' in Japanese (International Business Publications, 2008, p. 58).

From this point of view, one can presume that a similar company type can be found in the Portuguese legal system, since it was strongly influenced by the French Napoleonic Code. A possibly equivalent entity to the French '*société en nom collectif*'' in the legal system in Portugal can be found with the denomination of '*Sociedade em Nome Colectivo*'. It corresponds literally to the French denomination, which leads one to suppose that the concept of the Portuguese term is also identical to the French one. Let us devote a little more space to examining the Portuguese business form.

First of all, Portuguese law follows the French tradition. In this regard, there is a difference between the Japanese and Portuguese business forms. The Act presents the definition of the business name of this form as detailed below:

Table 4.12 : Article 177 of the Portuguese Código das Sociedades Comerciais *(Commercial Company Act)*

Portuguese (original)	**English (translation)**
Artigo 177º	Article 177
Firma	Business name
1 – A firma da sociedade em nome colectivo deve, quando não individualizar todos os sócios, **conter, pelo menos, o nome ou firma de um deles,** com o aditamento, abreviado ou por extenso, «e Companhia» ou qualquer outro que indique a existência de outros sócios.	1 – The partnership name shall be **formed by the name of one or more partners,** and when the names of all partners are not included, the words «and company» or their equivalent shall be added.

Data from CAC-JaPo

Portuguese law establishes that the minimum numbers of partners for a company is two (Maia *et al.*, 2013, p. 31). This is indicated in Article 7, No. 2, with some exceptions, where the law sets a maximum limit, or allows a one-person company, such as the case of *Sociedades Unipessoais por Quotas* ('Single-member Private Limited Companies') and others (Carvalho, 2013, pp. 7-8).

Table 4.13 : Article 7 of the Portuguese Código das Sociedades Comerciais *(Commercial Company Act)*

Portuguese (original)	**English (translation)**
Artigo 7º	Article 7
Forma e partes do contrato	Format of and Parties to the Articles of Association
2 – O número mínimo de um contrato de sociedade é de dois, excepto quando a lei exija número superior ou permita que a sociedade seja constituída por uma só pessoa.	2 – Two shall be the minimum number of parties to a company's articles of association, except when the law requires a higher number or permits a company to be established by only one person.

Data from CAC-JaPo

According to Maia *et al.* (2013, p. 14), one of the essential points of the *Sociedade em Nome Colectivo* is the liability. The partners are individually and unlimitedly liable toward the company, as provided for in Article 175, No.1. More precisely, the partners are individually responsible for the initial capital contribution, as well as being responsible toward company creditors, jointly for the company and severally among the partners (Carvalho, 2013, pp. 29-30).

Table 4.14 : Article 175 of the Portuguese Código das Sociedades Comerciais *(Commercial Company Act)*

Portuguese (original)	**English (translation)**
Artigo 175º	Article 175
Características	Characteristics
1 – Na sociedade em nome colectivo o sócio, **além de responder individualmente pela sua entrada, responde pelas obrigações sociais subsidiariamente em relação à sociedade e solidariamente com os outros sócios**.	1 – In 'General Partnerships', **in addition to being individually responsible for the initial capital contribution, partners are jointly liable for the company's liabilities.**

Data from CAC-JaPo

It is also worth mentioning that a Portuguese *Sociedade em Nome Colectivo* is recognized as a company and thus it possesses legal personality once it is registered (Article 5). This nature is identical to the one of the Japanese entity, 合名会社 *Gōmei gaisha*, which also has legal personality, whereas it differentiates it from that of 'Partnership' in the context of Common Law, which does not. Obtaining legal personality means that the company itself will be responsible for its loss (Carvalho, 2013, p. 31) as well as its profit. This means that company creditor(s) first should demand fulfilment through property of the company and only when the company's assets are not sufficient to satisfy the amount, may the creditor(s) require payment by any of the partners, where partners are jointly and severally responsible for it (Maia *et al.*, 2013, pp. 15-16). In this case, the partners include the one whose name is in the company's name, even if this person is not a partner, and non-capital partners (*Sócios de indústria*), who do not contribute with money or non-cash assets in kind but provide the contribution with services, even if they are not internally responsible as a general rule (Carvalho, 2013, p. 31).

Table 4.15 : Article 5 of the Portuguese Código das Sociedades Comerciais *(Commercial Company Act)*

Portuguese (original)	**English (translation)**
Artigo 5º	Article 5
Personalidade	Personality
As sociedades gozam de personalidade jurídica e existem como tais a partir da data do registo definitivo do contrato pelo qual se constituem, sem prejuízo do disposto quanto à constituição por fusão, cisão ou transformação de outras.	**Companies shall be deemed to have legal personality** and exist as such from the date of final registration of the articles of association by means of which they are established, notwithstanding the stipulations as regards the establishment of companies by merger, division or the conversion of other companies.

Data from CAC-JaPo

With regard to the organizational structure of this business form, the persons themselves as partners take primary importance, which suggests the reason why this form is commonly referred to as a typical example of 'companies of persons (*sociedades de pessoas*)' (Carvalho, 2013, p. 41). This implies that the various aspects of its legal framework reflect the person-based nature – i.e. business activities are presumed to be performed by living persons, such as the case of 'equity assignment' and others (Maia *et al.*, 2013, pp. 32-33). According to this doctrine, the individual person of each partner assumes responsibility and importance, which demonstrates the opposite position of that of the 'capital companies (*sociedades de capitais*)', a typical example of which is the *Sociedade Anónima* ('Public Company') (Carvalho, 2013, p. 33).

All partners belong to the supreme body of the company, and they are all managers, unless otherwise stated (Article 191, No. 1) (Maia *et al.*, 2013, p. 22). The managers then are responsible for both administration and representation of the company (Article 192, No.1), as long as the duty is carried out within the limit of the

company's objective (Article 192, No. 2). Consequently, all the partners share equal power as well as the right to independently represent the company (Article 193).

Table 4.16 : Article 191, 192, and 193 of the Portuguese Código das Sociedades Comerciais *(Commercial Company Act)*

Portuguese (original)	**English (translation)**
Artigo 191º	Article 191
Composição da gerência	Composition of the Management
1 - Não havendo estipulação em contrário e salvo o disposto no nº 3, **são gerentes todos os sócios**, quer tenham constituído a sociedade, quer tenham adquirido essa qualidade posteriormente.	1 - Unless otherwise provided for and with the exception of the provisions in paragraph 3, **all partners who established the company shall be managers,** even if they acquired the quality of partner at a subsequent date.
Artigo 192º	Article 192
Competência dos gerentes	Management Responsibilities
1 - **A administração e a representação da sociedade competem aos gerentes.**	1 - **The managers are responsible for administering and representing the company.**
2 - **A competência dos gerentes, tanto para administrar como para representar a sociedade, deve ser sempre exercida dentro dos limites do objecto social** e, pelo contrato, pode ficar sujeita a outras limitações ou condicionamentos.	2 - **The responsibility of the management for the administration and representation of the company must always be exercised within the boundaries of the stated corporate purpose** and, through the articles of association, may be subject to additional limitations or conditions.
Artigo 193º	Article 193
Funcionamento da gerência	Management Operation
1 – Salvo convenção em contrário, havendo mais de um gerente, **todos têm**	Unless otherwise agreed, if there is more than one manager, **they shall all have**

poderes iguais e independentes para administrar e representar a sociedade, mas qualquer deles pode opor-se aos actos que outro pretenda realizar, cabendo à maioria dos gerentes decidir sobre o mérito da oposição.	**equal and independent powers to manage and represent the company,** but any one of the managers may object to the acts of another manager and the majority of the managers shall decide on the merits of the objection.

Data from CAC-JaPo

From the tax point of view, the Portuguese Corporate Income Tax Code (*Código do Imposto sobre o Rendimento das pessoas Colectivas*, CIRC) defines taxation on companies, which is generally referred as IRC (*Imposto sobre o Rendimento das Pessoas Colectivas*) (Silveira, 2016, p. 9). The IRC is applicable to all the collective persons which hold legal personality, including all types of commercial companies (PwC Portugal, 2017). Therefore, it is safe to determine that, since a *Sociedade em Nome Colectivo* possesses legal personality, the company is subject to taxation, which is the same as in the case of Japan. Another feature of this entity is that, unlike other business forms, it is understood that with a *Sociedade em Nome Colectivo* it is not mandatory in Portugal to establish a supervisory board. Instead, each partner (as well as the managers) performs the supervisory role (Carvalho, 2013, p. 42).

The overall characteristics of the Portuguese entity, *Sociedade em Nome Colectivo*, have been discussed so far. In summary, the collected features are demonstrated below for further comparison with terms in other languages:

Table 4.17 : Characteristics of a Sociedade em Nome Colectivo *in Portugal*

Characteristics of *Sociedade em Nome Colectivo* in Portugal		
Principal characteristics	Numbers of investors	Two or more members
	Liability of investors	The partners are **jointly and unlimitedly** liable for the debts of the partnership and are **jointly and severally** liable for its liabilities
	Function of investor	All the partners are entitled to share equally and may **carry on business**, as well as independently represent the company.
	Representative of company	Each partner
	Partners known as:	The partners are known as 'partners' (*sócios*)
Advantages		(1) Simplicity
Disadvantages		(1) Unlimited liability of partners, the same risk as sole proprietorship. (2) Partners are both liable personally, collectively and unlimitedly. (3) Stability depends on the relations among partners.

Adapted from Maia *et al.* (2013)

4.2.5. Comparison of the 合名会社 *Gōmei gaisha* in Japanese to similar structures in USA English, UK English, and Portuguese

Now that the term in each language has been examined, one can go on to analyze the validity of the equivalence of each term. Before that, it is worth noting that there is a particular feature in the Japanese system regarding this business form. As explained above, the nature of this company form, which has traditionally existed for a long time,

is close to that of an individual business and its structure is rather similar to a partnership or joint-business. The introduction of the Companies Act of 2006, however, made it possible for 合名会社 *Gōmei gaisha* to be established with only one member (partner). This means that a 'Sole Proprietorship' with no nature of 'Partnership' or joint-business can be transformed into a legal person by obtaining a status of 合名会社 *Gōmei gaisha*.

Another difference is whether or not this company form has a legal personality. This depends on the legislation of each country, even in Europe. For example, the deliberate use of the original term in French, a '*société en nom collectif*'', in nations such as Germany, Belgium, Switzerland, Poland, and others, does not possess legal personality. On the other hand, in nations such as France, Luxemburg, Norway, the Czech Republic, Sweden and Scotland[8] it does (Wikipedia, 2018a). Japan and Portugal are also included in this group, as became clear above.

It would therefore be safe to say that the Portuguese term '*Sociedade em Nome Colectivo*' is equivalent to the Japanese 合名会社 *Gōmei gaisha*. There are two reasons for this: firstly, it is presumed that they both come from the same origin, which is '*société en nom collectif*'' in French, with its origins in the Napoleonic Code. The historical background of the Japanese term was explained above, and the Portuguese term is a direct translation from French. Sharing the same root implies that they also share the same legal concept. Secondly, the characteristics of both the Japanese and the Portuguese concepts mostly correspond. In addition to the similarity of the partner's joint and unlimited liability, they both are considered as companies and possess legal personality, which leads to a similar consequence in the taxation systems. Although there are some small exceptions, such as the difference of the minimum number of partners in order to constitute this business form, they do not impact the concept of both terms, since these differences are rather minor compared to other major features in common.

[8] It is defined by the Article 4 (2) of Partnership Act 1890 as follows: "(2) In Scotland a firm is a legal person distinct from the partners of whom it is composed, but an individual partner may be charged on a decree or diligence directed against the firm, and on payment of the debts is entitled to relief *pro rata* from the firm and its other members" (Legislation.gov.uk, 2018).

However, if one proceeds with the research referring to English – whether in USA English or UK English – there is a risk of confusion due to the difference in nature of the business structure of each version. In the case of the Japanese 合名会社 *Gōmei gaisha*, the provisional translation provided by the Ministry of Justice in Japan suggests the term 'General Partnership Company'. However, as explained above, there is no 'Partnership Company' in either the USA or in the UK. The apparently equivalent entity has slightly different characteristics in the English-speaking legal system. In the Common Law system, the equivalent company form would be 'General/Ordinary Partnership'. Some media also describe the Japanese 合名会社 *Gōmei gaisha* as similar to an Anglo-American 'General Partnership' (International Business Publications, 2008, p. 28; Ohara & Furukawa Law office, 2016). However, it is not considered to have a legal personality.

This leads to a translation problem. If one seeks a close term of the Japanese 合名会社 *Gōmei gaisha* in English, most of the information collected would point to the term '(General or Ordinary) Partnership'. There is no apparent difference between the USA and the UK for this business form. When one is not familiar with the Portuguese legal references, it is possible to refer to English terms. If the translator looks for an equivalent term for the 合名会社 *Gōmei gaisha*, starting from Japanese as an original language, one will first find the USA term, '(General) Partnership', as there are abundant resources in Japan regarding translation between Japanese and USA English. The translator then looks for a Portuguese term using references in the UK term, 'General/Ordinary Partnership', since the UK English is standardly used in Portugal.

Therefore, there is a possibility that the translator may face confusion during this process due to the differences in the characteristics of the content of these business forms in each nation. One of the fundamental dissimilarities is the question of the status of the entity. The entity is considered as a company in Japan and Portugal, whereas it is not treated as a company and consequently it does not possess legal personality in the USA and the UK. This may cause a certain doubt, which can lead to misunderstanding or mistakes in selecting the right term. Furthermore, the adoption of the English term as the translation for 合名会社 *Gōmei gaisha* may give a wrong idea of the Japanese term

itself, especially in relation to this question of legal personality. It can be presumed from this reason that the Japanese 合名会社 *Gōmei gaisha* may have been translated as ‘General Partnership Company’ in English, while trying to solve this problem by adding the term ‘company’ in order to explain the situation. The solution which aimed to compensate for the fact that the Japanese entity has a legal personality, however, can cause a sense of awkwardness for the English-speaking specialist, since the exact term and concept probably does not exist in the Common Law system. Close attention and caution are therefore needed when searching for a close term through English.

The difference of the nature of each term among the four languages is demonstrated in the table below.

Table 4.18 : Comparison among 合名会社 Gōmei gaisha*, 'General Partnership' and Sociedade em Nome Colectivo*

	Japan	**U.S.**	**U.K.**	**Portugal**
	合名会社 ***Gōmei gaisha***	**(General) Partnership**	**General/ Ordinary Partnership**	***Sociedade em Nome Colectivo***
Abbreviation	**GMK**			**SNC**
Suggested English translation by authority	General Partnership Company			General Partnership
Minimum number of partners (investors)	One (Originally two or more)	Two or more	Two or more	Two or more
Status of partners	Owner and Executive of business	Each partner has a right to participate in the management	Every partner may participate in the management of the business	Every partner is responsible for the management and representing the company
Liability of partners	Each is jointly and unlimitedly liable to the company's debt.	Each is jointly and unlimitedly liable to the firm's debts.	Each is jointly and unlimitedly liable to the firm's debts.	Each is jointly and unlimitedly liable to the company's debt.
Status of company	Yes	No	No	Yes
Legal personality	Yes	No	No	Yes
Taxation	Tax to the entity itself	- Each partner pays the tax	- Each partner pays the tax	Tax to the entity itself

		- No tax to the entity itself	- No tax to the entity itself	
Note	Company name: No need to have partner(s)'s name in the company name	Regulating law: regulated by each State, under the Revised Uniform Partnership Act (RUPA)	Regulating law: Regulated by partnership law, PA 1890	Company name: Need to have partner(s)'s name in the company name

Adapted from 永井 (2015, pp. 188-191), Hamilton (1991, pp. 16-21) Roach (2014, pp. 4-8), Maia *et al.* (2013, pp. 11-36)

4.3. 合資会社 *Gōshi gaisha*

4.3.1. 合資会社 *Gōshi gaisha* in Japan: 'Limited Partnership Company' (provisional translation by the Ministry of Justice)

Similar to the 合名会社 *Gōmei gaisha*, 合資会社 *Gōshi gaisha* is also a company form less familiar in the Japanese business situation today. It is also commonly seen in family-run businesses and traditional enterprises such as brewing companies, as well as taxi companies and IT related companies. It is a company form relatively close to 合名会社 *Gōmei gaisha*, but the difference lies in the nature of the investors.

The structure of 合資会社 *Gōshi gaisha* is characterized as follows: (1) Two or more partners are responsible for the initial investment for the company; (2) Within the investors, at least one or more is unlimitedly liable to the company; (3) Within the investors, at least one or more is limitedly liable; (4) All the investors not only own the company but also execute business (since the enforcement of the Companies Act in 2006). From the points (2) and (3), it can be inferred that a 合資会社 *Gōshi gaisha*

consists of both partner(s) with unlimited liability and limited liability. This is the biggest – and according to 永井 (2015) the only essential – difference between 合名会社 *Gōmei gaisha* and 合資会社 *Gōshi gaisha*, while in 合名会社 *Gōmei gaisha*, all the investors are required to assume unlimited liability.

In a 合資会社 *Gōshi gaisha*, there should be at least one or more such investor who takes a total responsibility in case of the company's loss. The liability of other partners, on the other hand, is limited – i.e. the responsibility of such investors is set at a limit to the value of their initial investment. To take the aforementioned example again, let us presuppose that two partners – partner X and partner Y – have jointly established a 合資会社 *Gōshi gaisha*, each of them having initially invested 1,000 euros and the partner X had assumed unlimited liability. In this case, if the company eventually had a loss of 1,000,000 euros, partner X would be responsible for assuming the compensation of those 1,000,000 euros, whereas the partner Y only needs to assume the amount of 1,000 euros initially invested. The status of partner Y is the same as that of shareholders of a 'Stock Company'. Therefore, most 合名会社 *Gōmei gaisha* are naturally small scale businesses. The example of difference between unlimited and limited liability can be shown in the table below:

Table 4.19 : Difference between unlimited and limited liability

Unlimited and limited liability	
Unlimited liability	Limited liability
Ex. Initial contribution of 1,000 euros ↓	Ex. Initial contribution of 1,000 euros ↓
1,000,000 euros of company's debt	
↓ → Responsible for **1,000,000 euros**	↓ → Only responsible for **1,000 euros**

Adapted from 行政書士とみなが行政法務事務所 (2017)

As for the advantages of 合資会社 *Gōshi gaisha*, they are similar to those described in the previous company form. Like 合名会社 *Gōmei gaisha*, on points such as (1) there is no system of minimum share capital; and (2) there is a relatively low cost to establish a company. These are benefits for people who wish to obtain a legal personality quickly and at a low cost. In addition, the provision which defines partners, within which at least one must assume unlimited liability, makes the recruitment of investors relatively easy (行政書士とみなが行政法務事務所, 2017). The fact that at least one takes the overall responsibility of management makes it easy to call for collaborators, and this eventually leads to the prompt establishment of a company. Considering the nature of the structure, however, the partners should consist of members who have relations based on mutual trust. Regarding the disadvantages, they also overlap with those of 合名会社 *Gōmei gaisha*: (1) the situation of the one(s) who assume(s) the unlimited liability is the same as that of sole proprietorship; and (2) the denomination of 合資会社 *Gōshi gaisha* is little known to the public. Therefore, it is similar to the previous form, and is also suitable for enterprises on a small scale. To summarize, the characteristics of 合資会社 *Gōshi gaisha* can be shown in the following table:

Table 4.20 : Characteristics of 合資会社 Gōshi gaisha

Characteristics of 合資会社 *Gōshi geisha*		
Principal characteristics	Number of investors	Two or more members: At least one or more with unlimited liability and more than one with limited liability
	Liability of investors	At least one or more investor is **unlimitedly** liable to the company's debt
	Function of investor	All the partners **execute business**
	Representative of company	Each investor (partner)
Advantages		(1) No minimum share capital required (2) Cost for company establishment is low. (3) Relatively easy to recruit investors as not everyone needs to assume unlimited liability.
Disadvantages		(1) Unlimited liability of at least one investor, the same risk as sole proprietorship. (2) Little known to the public. (3) Stability depends on the relations among partners.

Adapted from 行政書士とみなが行政法務事務所 (2017)

The denomination of this form of company should include the term 合資会社 in the trade name in Japanese (Article 6 (2)), and abbreviated as 'GSK' (**G**ō**S**hi **K**aisha). An example can be found in a company such as 合資会社手焼工房 (Teyakikobo GSK[9]), 南洲酒造合資会社 (Nanshu Shuzo GSK) and others. However, there are others that are designated as 合資会社 *Gōshi gaisha* in Japanese but are expressed in other

[9] http://girls-photo.jp/about.htm

forms in the English company name. The examples are 合資会社 GB (GB Inc.[10]), 合資会社カシュシステムデザイン (Kashu System Design Inc.[11]), 飯田産業合資会社 (Iida Sangyo & Co., Ltd.[12]), 合資会社アイザックエレメント (Isaac Element & Co.[13]), 菊姫合資会社 (Kikuhime Co., Ltd.[14]), and many others. As one can see, the corresponding English translation of the term 合資会社 *Gōshi gaisha* is not by any means unified. This is due to the fact that there is no consensus or unified translation regarding the English term for each company form provided by law. Consequently, each company can freely select a company designation in English which it considers fit. This generally applies, not only to 合資会社 *Gōshi gaisha*, but also to other types of company.

The concept of 合資会社 *Gōshi gaisha* is recognized specifically in the Civil Law countries, the business form denominated according to Henn and Alexander (1983) as '*societas in commendam*' in Latin, '*Kommanditgesellschaft*' in German, and '*société en commandite*' in French (p. 86). As it is unidentified in the Common Law system, the 'Limited Partnership' was derived from this particular form of 'partnership' of the Civil Law system, in order to establish a business form where a person can invest and share in a partnership business's profits while limiting his/her liability to his/her investment at the same time (Henn & Alexander, 1983, p. 86). 'Limited Partnership' both in the USA and in the UK will be analyzed in the following subsection and an overall similarity is to be expected. In Portuguese, there is a business form apparently similar to that in Latin and French, which is '*sociedade em comandita*'. The following sections will examine each company form in each language in order to analyze the affinity among these terms.

[10] http://gb-japan.com/
[11] http://kashu-sd.co.jp/en/
[12] http://www.venture-net.jp/iidasangyo/index.html
[13] http://www.isaac4.co.jp/company/
[14] http://www.kikuhime.co.jp/index.html

4.3.2. English equivalent of 合資会社 *Gōshi gaisha* in the USA: 'Limited Partnership' and its characteristics

The essence of the characteristics of 'Limited Partnership' in the USA is well summarised by Henn and Alexander (1983) in the following description:

> A limited partnership is a partnership formed by two or more persons under a limited partnership statute – the Uniform Limited Partnership Act or Revised Uniform Limited Partnership Act in all American jurisdictions except Louisiana and Puerto Rico – having as members one of more general partners and one or more limited partners. In many respects, the principles applicable to general partnership apply to limited partnerships, which are sometimes called special partnerships. (p. 85)

The 'Limited Partnership' is sometimes known as 'Special Partnership', and in this case, the limited partner members are called special partners (Henn & Alexander, 1983, p. 86). This business form was unfamiliar to the Common Law system and was first recognized in the United States in 1822, by a New York statute, and today is recognized in jurisdictions of the whole United States through statute (Henn & Alexander, 1983, p. 86). Except for Louisiana, where the equivalent entity is known as the 'Partnership in *Commendam*', the Uniform Limited Partnership Act or the Revised Uniform Limited Partnership Act has been adopted by all states in the United States (Henn & Alexander, 1983, p. 86).

The entity is recognized as another type of partnership, which consists of one or more general partners, who owe unlimited liability for the debts of the business, and one or more limited partners, who have no personal liability for the debts of the business and "risk only what they have agreed to invest in the venture" (Hamilton, 1991, p. 17). The entity itself should comply with the aforementioned Acts, although the general principles are common to that of 'General Partnership'. For example, the rules relating to members of 'General Partnership' are also applied to general partners in 'Limited Partnership' (Klein & Coffee, 1996, p. 99). The creation of a 'Limited Partnership' requires payment of a fee and a certificate. The 'Limited Partnership' certificate, which is generally similar to corporate articles of incorporation, must be filed with an

appropriate State or county official (Hamilton, 1991, p. 17). ‘Partnership’ agreement should mention the fact that specified persons are ‘limited partners’ or that certain members are ‘not personally liable for the debts of the business’. The filing of a certificate of ‘Limited Partnership’ is compulsory in order to ensure limited liability – i.e. the limit of the personal liability of partners will not take effect if a certificate is not filed (Hamilton, 1991, p. 17).

The major characteristic that distinguishes ‘Limited Partnership’ from ‘General Partnership’ lies in the organization of its members, which consists of general partner(s) and limited partner(s). The feature of general partners is essentially the same as that of ‘General Partnership’: (a) the general partners are personally liable for the debts of the business; (b) they have the power to act as representatives of the firm; as well as (c) the right to control the business (Klein & Coffee, 1996, p. 99). The Uniform Limited Partnership Act defines the status of the limited partners as follows: (a) each limited partner’s liability is restricted to one’s agreed-upon capital contributions; (b) limited partners do not participate in the ‘control’ of the business, nor do they have the power to act as representatives of the firm; (c) the contributions of limited partners are limited to money or other property, but not services; and (d) in the case of liquidation, priority is given to each limited partner over the general partner or partners in net assets (Henn & Alexander, 1983, pp. 86-87). If limited partners participated in management, they would lose the limited liability guarantee and have to assume the obligations of a general partner (Hamilton, 1991, p. 18).

However, the situation changed when the Act was revised. The Revised Uniform Limited Partnership Act came to correct the following points regarding the limited partners: in relation to the above point (c), the contribution method of limited partners was expanded – i.e. limited partners may contribute services and other specified consideration; and for the point (d), the priority ceased to take effect – i.e. limited partners have no priority over general partners, unless otherwise provided for (Henn & Alexander, 1983, p. 87).

The Revised Act therefore came to allow limited partners to participate in decisions of management without losing their shield of limited liability; and modern

‘Limited Partnership’ agreements can include a provision to permit, on the one hand, the right of limited partners to vote on certain fundamental changes, and on the other hand, to exclude them from the possibility of participating in management of the business in other ways (Hamilton, 1991, p. 18).

Unlike a corporation, which is a typical separate tax paying entity, a partnership is considered as an extension of the individual partners themselves. It is important to stress that a ‘Limited Partnership’ is also treated as a partnership for tax purposes (Hamilton, 1991, p. 18) and, in the USA, Henn and Alexander (1983) summarize the situation as follows:

> For tax purposes, the ‘Limited Partnership’ and ‘General Partnership’ usually are similarly treated. For federal tax purposes, a ‘Limited Partnership’ is somewhat more likely to have the characteristics of an ‘association’ and hence to be taxable as a corporation, and, as such, if otherwise eligible, may elect under Subchapter S. (p. 96)

The tax considerations applied to the ‘General Partnership’ are generally the same as the ‘Limited Partnership’. In some statutes the term ‘Partnership’ is defined as both a ‘General Partnership’ or a ‘Limited Partnership’ (Henn & Alexander, 1983, p. 96). Compared with ‘General Partnerships’, limited liability is the major feature that makes the difference of ‘Limited Partnership’ and it simultaneously provides the most attractive feature in terms of taxation. This is especially prominent in ventures like real estate development, where a firm tends to consist of a rather large number of passive investors (Klein & Coffee, 1996, p. 99). Nonetheless, ‘Limited Partnerships’ were not so popular for a long time, since it is possible to acquire limited liability if the firm adopts the corporate form. However, thanks to tax considerations in the early sixties, this form turned out to be more popular as a medium for passive investors in areas such as real estate, certain farming operations, oil and gas, as well as for more active investors in ‘venture capital’ firms (Klein & Coffee, 1996, p. 99).

From the point of view of federal tax purposes, a ‘Limited Partnership’ is positioned in a ‘grey’ zone. It may be considered rather more than a ‘General Partnership’ and therefore “fall within the definition of ‘association’ and be treated as a

corporation" (Henn & Alexander, 1983, p. 97). Nonetheless, the provisions of the Uniform Limited Partnership Act and Revised Uniform Limited Partnership Act rule that a 'Limited Partnership' elaborated according to these Acts is normally treated as a 'Partnership' (Henn & Alexander, 1983, p. 97). For federal income tax purposes, the 'Limited Partnership' was rather popular compared with the 'Corporation', because, as ordinary partners in a 'General Partnership', it was possible for limited partners to allocate their pro rata share of the losses of the business as "losses on their individual returns, to be offset against income from their activities" (Klein & Coffee, 1996, p. 99). This method cannot be applied to shareholders in ordinary corporations, as a 'Corporation' is subject to a corporate tax, which eventually results in a double tax. However, the alteration of the rules in 1987 meant that if the firm presents sufficient characteristics as a corporation, such as being publicly traded and its income is other than 'passive-type income (i.e. real property rents and others)', a 'Limited Partnership' could be treated as an 'association' or 'corporation', and thus be subject to corporate tax treatment (Henn & Alexander, 1983, p. 97; Klein & Coffee, 1996, p. 100).

The principal characteristics of 'Limited Partnership' in the USA have been discussed up to now. The relevant points of this business form are summarized in the table below:

Table 4.21 : Characteristics of 'Limited Partnership' in the USA

Characteristics of 'Limited Partnerships' in the USA		
Principal characteristics	Number of investors	Two or more members: At least one or more with **unlimited liability (general partners)** and more than one with **limited liability (limited partners)**
	Liability of investors	At least one or more investor is **unlimitedly** liable to the company's debt
	Function of investor	- General partners have control of the business. - Limited partners contribute with money, other property, or services.
	Representative of company	Only general partners
Advantages		(1) From a federal income tax point of view, it can be more beneficial than 'Corporation' form. (2) Relatively easy to recruit investors as not everyone needs to assume unlimited liability.
Disadvantages		(1) Unlimited liability of at least one investor, the same risk as sole proprietorship. (2) Stability depends on the relations among partners. (same as 'General Partnership') (3) Depending on a certain characteristics, it could be treated as corporation.

Adapted by Hamilton (1991, pp. 16-29)

4.3.3. English equivalent of 合資会社 Gōshi gaisha in the UK: 'Limited Partnership' and its characteristics

In comparison with 'Limited Partnership' in the USA, we shall now observe the characteristics of its equivalent business form in the UK, focusing especially on

‘Limited Partnership’ in England. A Dictionary of Law (Martin, 2003) by Oxford defines ‘Limited Partnership’ as follows;

> A limited partnership is governed by the Limited Partnership Act 1907. It consists of general partners, who are fully liable for partnership debts, and limited partners, who are liable to the extent of their investment. Limited partners lose their limits of liability if they take part in management. (p. 357)

As explained above, the concept of ‘Limited Partnership’ in the USA was derived from the Civil Law countries of continental Europe, and it was brought from England in 1907 (Henn & Alexander, 1983, p. 86), with the introduction of the Limited Partnership Act 1907. The ‘Limited Partnership’ is genuinely a ‘Partnership’, and therefore it is governed by the 1890 Partnership Act and the Common Law of Partnership, except, as long as it is necessary to give effect to the specific features of this business form as follows: (a) some partners, but not all, of this entity have limited liability; (b) partners with limited liability are prohibited from participating in the management of the business; (c) these partners are not allowed to have power to bind the partnership as against outsiders; and (d) there is some specific information of the ‘Limited Partnership’ that must be publicly filed (Davies, Gower, Worthington, & Micheler, 2016, p. 6).

However, this business form is rarely adopted in England today, since the entity form called ‘Private Company’ has more advantages over that of ‘Limited Partnership’ (Henn & Alexander, 1983, p. 86; Roach, 2014, p. 5). According to the official statistics of the British government, the number of existing ‘Limited Partnerships’ was 33,000 in 2014/2015, while the private companies account for 3.3 million entities in the same period (BIS/Companies House, 2015, p. 6, cited in Davies, 2016, p.6-7). There is, however, a tendency for this number to increase lately in certain areas of industry. The ‘Limited Partnership’ has become especially attractive for business activities such as venture capital or private equity investment funds, in which the investors and the business manager can be separated – i.e. the investors as limited partners, while the managers of the fund are general partners. This system is also favoured in property investment, especially for investors who are remitted from tax and wish to be free from

any management duty (Davies *et al.*, 2016, p. 7). In fact, the Limited Partnership Act 1907 prescribes the existence of a 'sleeping partner', which is described by Davies *et al.* (2016) as the following:

> Someone who contributes assets to the partnership and therefore wishes to become a member of the partnership in order to safeguard his or her investment and obtain an appropriate return on it, but who does not want to be involved in its business. (p. 6)

With respect to the business names, from 1 October 2009, 'Limited Partnerships' are obliged to include the term 'limited partnership' or 'LP' in the firm's name, in order to indicate the characteristics of the organization (Davies *et al.*, 2016, p. 6).

One crucial point regarding 'Limited Partnership' in the UK is the existence of a highly confusing Act called the Limited Liability Partnerships Act 2000. It is important to bear in mind the difference between 'Limited Partnership' and 'Limited Liability Partnership'. They are confusingly alike in appearance but different in nature. The 'Limited Partnership' is a 'true' partnership, created under partnership law, while the 'Limited Liability Partnership' (LLP) is closer to a company, being subject to company law (Davies *et al.*, 2016, p. 7). More details regarding LLP and its difference will be discussed later in this chapter.

Having observed the overall characteristics of 'Limited Partnership' in the UK, the outstanding features can be summarised in the following table:

Table 4.22 : Characteristics of 'Limited Partnership' in the UK

Characteristics of 'Limited Partnerships' in the UK		
Principal characteristics	Number of investors	Two or more members: At least one or more with **unlimited liability (general partners)** and more than one with **limited liability (limited partners)**
	Liability of investors	At least one or more partner is **unlimitedly** liable to the company's debt
	Function of investor	- General partners have control of the business. - Limited partners are not allowed to participate in the management.
	Representative of company	Only general partners
Advantages		(1) Limited liability is guaranteed to limited partners. (2) It is a good business form for who wish to be a 'sleeping partner'. (3) Relatively easy to recruit investors as not everyone needs to assume unlimited liability. (4) Tax is imposed on individual members.(same as 'General Partnership')
Disadvantages		(1) Unlimited liability of at least one investor, the same risk as sole proprietorship. (2) Stability depends on the relations among partners (same as 'General Partnership'). (3) Less adapted compared to Private Company.

Adapted by Davies *et al.* (2016, pp. 6-7)

4.3.4. The equivalent of 合資会社 *Gōshi gaisha* in Portugal: *Sociedade em Comandita Simples* and its characteristics

In Portugal, a similar model can be found through a reference of the equivalent term in French, '*société en commandite*', which would be rendered as *Sociedade em Comandita*. *Sociedade em Comandita* can be further divided into two categories: *Sociedade em Comandita Simples* and *Sociedade em Comandita por Acções*. The distinction depends on the form of its share capital. An entity whose share capital is not represented by shares is denominated as a *Sociedade em Comandita Simples*, which is the closest business form to 合資会社 ***Gōshi gaisha*** that has been analyzed in this section, whereas the one in which the shares of the partners with limited liability (limited partners) are represented by shares is defined as a *Sociedade em Comandita por Acções* (Carvalho, 2013, p. 34). The same is explicitly demonstrated in Article 465, N. 3.

Table 4.23 : Article 465, N.3 of Portuguese Código das Sociedades Comerciais *(Commercial Company Act)*

Portuguese (original)	**English (translation)**
Artigo 465º	Article 465
Noção	Notion
3 - Na sociedade em comandita simples não há representação do capital por acções; na sociedade em comandita por acções só as participações dos sócios comanditários são representadas por acções.	3 - In limited partnerships, there is no representation of the capital by shares, whereas in limited partnerships with share capital only the equity interests of sleeping partners are represented by shares.

Data from CAC-JaPo

There are also two different types of members in Portuguese legislation: the partner who assumes personal and unlimited liability toward the business (the same as the partner of *Sociedade em Nome Colectivo*) and the partner whose liability is limited to the value of their capital investment. In this business organization, the structure of the

members is practically the same as the ones in other languages: it consists of both of these two types of members. Maia *et al.* (2013) gives the following description concerning this point: a *Sociedade em Comandita Simples* is constituted through the simultaneous existence of partners only responsible for performance of their participation (in the same terms as those of *Sociedade em Nome Colectivo*), and those with limited liability. Those who assume the same liability as that of the partners of *Sociedade em Nome Colectivo* are called *sócios comanditados*, and those who assume liability only for the value of the initial contribution are called *sócios comanditários*.

One can therefore assume that it would be relatively safe to consider that *sócios comanditados* is an equivalent of 'general partners' and *sócios comanditários* could be translated as 'limited partners'. This business form is sometimes categorized as a 'mixed' or 'hybrid' type, in order to emphasize the idea that two types of partners, *sócios comanditados* and *sócios comanditários*, exist in the same entity (Maia *et al.*, 2013, p. 17). The minimum number of partners who make up a commercial company is two, according to Article 7 N.2. This rule also applies to *Sociedade em Comandita Simples* (Maia *et al.*, 2013, p. 31). The following is the part of the legislation which indicates the nature of *Sociedade em Comandita*. Although the term 'sleeping partner' and 'working partner' are used as translations of '*sócio comanditário*' and '*sócio comanditado*', respectively, in the English translation version, the terms 'limited partner' and 'general partner' will be continuously used in the main body of this study, in order to maintain consistency.

Table 4.24 : Article 465, N.1 of the Portuguese Código das Sociedades Comerciais *(Commercial Company Act)*

Portuguese (original)	**English (translation)**
Artigo 465º	Article 465
Noção	Notion
1 - Na sociedade em comandita cada um dos sócios comanditários responde apenas pela sua entrada; os sócios comanditados respondem pelas dívidas da sociedade nos mesmos termos que os sócios da sociedade em nome colectivo.	1- In limited partnerships, each of the sleeping partners shall be liable only for their initial capital contribution, whereas working partners shall be liable for any debts incurred by the company under the same terms applicable to partners in general partnership.

Data from CAC-JaPo

Due to the difference of the characteristics between the two business forms, the article of association should specify if the firm consists of *Comandita Simples* or *Comandita por Acções* (Article 466 N. 2), as well as identify clearly whether each partner is either a *sócio comanditário* or a *sócio comanditado* (Article 466 N. 1) (Carvalho, 2013, pp. 34-35).

Table 4.25 : Article 466 of the Portuguese Código das Sociedades Comerciais *(Commercial Company Act)*

Portuguese (original)	**English (translation)**
Artigo 466º	Article 466
Contrato de sociedade	Articles of Association
1 - No contrato de sociedade devem ser indicados distintamente os sócios comanditários e os sócios comanditados.	1 - The articles of association of a company must indicate and distinguish between sleeping partners and working partners.
2 - O contrato deve especificar se a sociedade é constituída como comandita simples ou como comandita por acções.	2 - The articles of association must specify whether a company is established as a limited partnership or a limited partnership with share capital.

Data from CAC-JaPo

Another significant difference between *Sociedade em Comandita Simples* and *Sociedade em Comandita por Acções* can be seen in subsidiary law. The provisions regarding *Sociedades em Nome Colectivo* are applied to *Sociedades em Comandita Simples*, whereas *Sociedades em Comandita por Acções* are subject to those regarding *Sociedades Anónimas* (Article 474 and 478) (Maia *et al.*, 2013, p. 30). This suggests that *Sociedades em Comandita Simples* are considered as a derivative of *Sociedades em Nome Colectivo*, while *Sociedades em Comandita por Acções* are treated as *Sociedades Anónimas*. The organizational structure of a *Sociedade em Comandita Simples*, therefore, follows the provisions of *Sociedades em Nome Colectivo*. In addition, Article 470 N. 1 rules that management can only be composed of *sócios comanditados* unless otherwise stipulated in the articles of association (Maia *et al.*, 2013, p. 30).

Table 4.26 : Article 474, 478 and 470 of the Portuguese Código das Sociedades Comerciais *(Commercial Company Act)*

Portuguese (original)	**English (translation)**
Artigo 474º	Article 474
Direito subsidiário	Subsidiary Law
Às sociedades em comandita simples aplicam-se as disposições relativas às sociedades em nome colectivo, na medida em que forem compatíveis com as normas do capítulo anterior e do presente.	Limited partnerships shall be subject to the provisions set forth with regard to general partnerships, insofar as they are compatible with the rules of the previous and the present chapter.
Artigo 478º	Article 478
Direito subsidiário	Subsidiary Law
Às sociedades em comandita por acções aplicam-se as disposições relativas às sociedades anónimas, na medida em que forem compatíveis com as normas do capítulo I e do presente.	Limited partnerships with share capital shall be subject to the provisions set forth with regard to public companies, insofar as they are compatible with the rules of chapter I and the present chapter.
Artigo 470º	Article 470
Gerência	Management
1 - Só os sócios comanditados podem ser gerentes, salvo se o contrato de sociedade permitir a atribuição da gerência a sócios comanditários.	1 - Only working partners are permitted to be managers, except where the articles of association permit the conferring of managerial powers upon sleeping partners.

Data from CAC-JaPo

Regarding tax, commercial companies in Portugal have legal personality and thus *Sociedades em Comandita Simples* are subject to be taxable persons (Silveira, 2016, p. 14). The name of the firm must contain the name (or business name) of at least one of the *sócios comanditados*. The names of *sócios comanditários* may not be placed in the name of the firm without their express consent, and if they appear, it implies that those

sócios comanditários assume the same liability as the *sócios comanditados* (Carvalho, 2013, p. 51). Furthermore, the business name of the firm should include a variable addition according to the sub-type of *Sociedades em Comandita*, such as 'em comandita' or '& comandita' for *Sociedades em Comandita Simples*, and 'em comandita por acções' or '& comandita por acções' for *Sociedades em Comandita por Acções* (Article 467) (Carvalho, 2013, p. 51).

Table 4.27 : Article 467 of the Portuguese Código das Sociedades Comerciais *(Commercial Company Act)*

Portuguese (original)	**English (translation)**
Artigo 467º	Article 467
Firma	Business Name
1 - A firma da sociedade é formada pelo nome ou firma de um, pelo menos, dos sócios comanditados e o aditamento «em Comandita» ou «& Comandita», «em Comandita por Acções» ou «& Comandita por Acções».	1 - The business name of the company shall be formed from the name or business name of at least one of the working partners and bear the addendum «em Comandita» (limited partnership) or «& Comandita», «em Comandita por Acções» (limited partnership with share capital) or «& Comandita por Acções».
2 - Os nomes dos sócios comanditários não podem figurar na firma da sociedade sem o seu consentimento expresso e, neste caso, aplica-se o disposto nos números seguintes.	2 - The names of sleeping partners must not appear in the business name of the company without their express consent, in which case the provisions of the following paragraphs shall apply.
3 - Se o sócio comanditário ou alguém estranho à sociedade consentir que o seu nome ou firma figure na firma social fica sujeito, perante terceiros, à responsabilidade imposta aos sócios comanditados, em relação aos actos outorgados com aquela firma, salvo se demonstrar que tais terceiros sabiam que ele não era sócio comanditado.	3 - Should the sleeping partner or a third party consent to their name or business name being included in the business name of the company, they shall be subject, towards third parties, to the liability imposed upon working partners, in relation to any deeds signed using the business name, unless they demonstrate that such third parties knew that the person in question was not the working partner.

Data from CAC-JaPo

The characteristics of Portuguese *Sociedade em Comandita Simples* can be summarized as follows:

Table 4.28 : Characteristics of a Sociedade em Comandita Simples *in Portugal*

Characteristics of *Sociedade em Comandita Simples*		
Principal characteristics	Number of investors	Two or more members: At least one or more with **unlimited liability (*sócios comanditados*)** and more than one with **limited liability (*sócios comanditários*)**.
	Liability of investors	At least one or more partner is **unlimitedly** liable to the company's debt
	Function of investor	- General partners have control of the business. - Limited partners are not allowed to participate in the management.
	Representative of company	Only general partners
Advantages		(1) Limited liability is guaranteed to limited partners. (2) It is a good business form for those who wish to be a 'sleeping partner'. (3) Relatively easy to recruit investors as not everyone needs to assume unlimited liability.
Disadvantages		(1) Unlimited liability of at least one investor, the same risk as sole proprietorship. (2) Stability depends on the relations among partners. (same as 'General Partnership')

Data from CAC-JaPo

4.3.5. Comparison of 合資会社 *Gōshi gaisha* in Japanese, USA English, UK English, and Portuguese

There are two principal differences in a Japanese 合資会社 *Gōshi gaisha*, in comparison with the identical model in other languages: (1) the status of the organization members; and (2) whether it has legal personality or not. Starting from the latter point, we have seen in the analysis above that the Civil Law model possesses a legal personality, while the Common Law model does not. This is the first point that marks the difference, namely between Japanese / Portuguese and the USA / the UK. The former relates especially to the Japanese form. There is one peculiar characteristic that can be only seen in the Japanese system: the status of partners. Only the Japanese legislation allows for all partners to be involved in the management of the business, while in the USA, England and Portugal, management is the right given only to general partners. In fact, another different feature can be seen in the business name. In the Portuguese system, if the name of a *sócio comanditário* (equivalent to a limited partner) appears in the business name, regardless of his/her status, that person is considered to have assumed the same role as *sócio comanditado* (equivalent to a general partner).

Lastly, the characteristics of the term in question in each language are shown in the table below for a general comparison. It should be noted that in the table below English terms are used to substitute Japanese and Portuguese terms such as *sócios comanditados* (general partners) and *sócios comanditários* (limited partners). This is because, by unifying the expression, it was considered to facilitate the comparison.

Table 4.29 : Comparison among 合資会社 Gōshi gaisha*, 'Limited Partnership's and* Sociedade em Comandita Simples

	合資会社 ***Gōshi gaisha*** **in Japan**	**Limited Partnership in the USA**	**Limited Partnership in the UK**	*Sociedade em Comandita Simples* in Portugal
Abbreviation	**GSK**	**LP**	**LP**	**SCS**
Suggested English translation by authority	Limited Partnership Company	-	-	Limited Partnership
Minimum number of partners (investors)	Two or more - One or more general partners - One or more limited partners	Two or more - One or more general partners - One or more limited partners	Two or more - One or more general partners - One or more limited partners	Two or more - One or more general partners - One or more limited partners
Status of partners	All the members are owner and Executive of business	General partners: control the business management, have power to act as representatives. Limited partners: no participation in	General partners: control the business management, have power to act as representatives. Limited partners: no participation in management,	General partners: control the business management, have power to act as representatives. Limited partners: no

		management, no power to act as representatives.	no power to act as representatives.	participation in management, no power to act as representatives.
Liability of partners	At least one is unlimitedly liable to the company's debt, and the other partner(s) is(are) limitedly liable.	General partner: unlimitedly liable to the firm's debt. Limited partners: limitedly liable.	General partner: unlimitedly liable to the firm's debt. Limited partners: limitedly liable.	General partner: unlimitedly liable to the firm's debt. Limited partners: limitedly liable.
Status of company	Yes	No (in certain cases, can be treated as corporation)	No	Yes
Legal personality	Yes	No (in certain cases, can be treated as corporation)	No	Yes
Taxation	Imposed on the firm and members	- Imposed on each member - No tax to the entity itself - In certain cases, corporate	- Imposed on each member - No tax to the entity itself	Imposed on the firm and members

		tax can be imposed.		
Note			Business name: should include 'limited partnership' or 'LP'. Different form from 'Limited Liability Partnership' (LLP).	Business name: must contain the name of at least one of the general partners. If the name of limited partners appears, they assume the same liability as general partners.

Adapted from 永井 (2015, pp. 188-191), Hamilton (1991, pp. 16-21) Roach (2014, pp. 4-8), Maia *et al.* (2013, pp. 11-36)

4.4. 合同会社 *Gōdō gaisha* (GK)

4.4.1. 合同会社 *Gōdō gaisha* (GK) in Japan: 'Limited Liability Company' (provisional translation by the Ministry of Justice)

合同会社 *Gōdō gaisha* is a new business form introduced in Japan by the Companies Act of 2006. Modelled after the American 'Limited Liability Company' (LLC), 合同会社 *Gōdō gaisha* was implemented as a substitution of 有限会社 *Yūgen gaisha* ('Limited Company'), the establishment of which was abolished by the introduction of the Companies Act (永井, 2015, p. 8). It is frequently abbreviated as GK (***G****ōdō* ***g(k)****aisha*), and it is often called a Japanese version of American LLC. The most

outstanding feature is its mixed structure that combines the advantages of so-called 'human companies', which gives importance to human factors such as 'Partnerships', and those of so-called 'property companies', which focus on property such as 株式会社 *Kabushiki gaisha* (translated as 'Stock Companies' as the provisional translation by the Japanese Ministry of Justice). From the viewpoint of this study, there are three principal features: (1) characteristics of the entity, (2) nature of its members, and (3) taxation.

Firstly, 合同会社 *Gōdō gaisha* is counted as a 持分会社 *Mochibun gaisha* (companies that have a simplified internal organization), so it possesses legal personality. The rules of partnership are applied to internal affairs, which means that each member is responsible for the execution of business, and change of articles of incorporation and other matters of the firm should basically be approved unanimously by the members (永井, 2015, p. 192). The establishment of this business organization was a reflection of the demand from the business community that has long requested a new company type that assures all members' limited liability as well as the application of the rules of 'Partnership' (永井, 2015, p. 189).

Secondly, unlike its Japanese name (literally translated as 'Joint Company' or 'Congruent Company'), anyone can establish this business form all by him/herself, as it requires the minimum of one member. This member and any others are limitedly liable. Each member is bound to invest a certain amount defined in the articles of incorporation, and is not directly responsible for compensating the eventual loss of the business (永井, 2015, p. 192). Unlike 合名会社 *Gōmei gaisha*, where the investment through labor and credit is admitted, in 合同会社 *Gōdō gaisha*, the investment should always be through money, which is the same as 株式会社 *Kabushiki gaisha*. In addition, members are responsible for the management of the business. In other words, those who invested money in the firm should, in principle, be also responsible for the administration of the business. This is one of the reasons why it is considered a 'human company', as the personality of the investors is regarded as important. This point is essentially different from that of a property company, for instance 株式会社 *Kabushiki gaisha*, where shareholders (owners) and executives are not necessarily the same (行政書士とみなが

行政法務事務所, 2017). Each member of 合同会社 *Gōdō gaisha* represents the firm, although it is possible to nominate one representative (行政書士とみなが行政法務事務所, 2017). The most striking characteristic compared with other business organization is the limited liability of all the members. Members are only obliged to invest the money defined in the articles of incorporation, and they do not assume direct responsibility toward debt in the possible liability of the firm. Due to this feature, peculiar rules are provided in relation to external matters in order to protect creditors. One of them stipulates that, in the case of loss resulting from bad faith or serious negligence of executive members, all members assume collectively the responsibility toward the third party (永井, 2015, pp. 192-193). Therefore, the members have limited liability externally but their liability is unlimited internally.

Finally, the third point is its taxation. The reason why this scheme was introduced from the USA has something to do with the tax advantage of this business organization: member taxation. It is also called ‘pass-through tax’. The USA ‘Limited Liability Company’ adapts this taxation, which only imposes a direct tax on its members and not on the firm itself. More detail will be discussed later, but this situation brings the benefit of avoiding double taxation. When this business form was introduced into Japan, the original intention was to import this pass-through tax system. However, the Japanese government has shelved the proposal. Therefore, despite the apparent similarity with the USA ‘Limited Liability Company’, the benefit of ‘pass-through taxation’ does not apply in Japan.

The relevant points of 合同会社 *Gōdō gaisha* are summarized in the following table:

Table 4.30 : Characteristics of 合同会社 Gōdō gaisha

Characteristics of 合同会社 *Gōdō gaisha*		
Principal characteristics	Number of investors	One or more members
	Liability of investors	Liability of all members is **limited** to the company's debt (except for the loss caused by bad faith of one or more members).
	Function of investor	All the partners **execute business**
	Representative of company	Each investor (partner) Members can nominate someone to manage the business.
Advantages		(1) The minimum number of members is one. (2) Cost for company establishment is low. (3) Limited liability to all members.
Disadvantages		(1) Not suitable for developing a large scale business (2) Little known to the public. (3) Relatively difficult to collect capital.

Adapted by 行政書士とみなが行政法務事務所 (2017)

*** 有限責任事業組合 *Yūgen sekinin jigyō kumiai*: 'Limited Liability Partnership' (provisional translation provided by MoJ[15])**

There is another business form which is often confused with 合同会社 *Gōdō gaisha*: 有限責任事業組合 *Yūgen sekinin jigyō kumiai*. This organization refers to a

[15] From Limited Liability Partnership Act [有限責任事業組合系約に関する法律], Act No. 40 of May 6, 2005, by Ministry of Justice of Japan (2017b).
(http://www.japaneselawtranslation.go.jp/law/detail/?ft=1&re=01&dn=1&x=38&y=9&co=01&ia=03&ky=有限責任事業組合&page=26)

‘Partnership’ based on a contract that involves an individual or a corporation investing and engaging jointly in a business for the purpose of profit with the value of each investment as the limit of his/her or its liability (永井, 2015, p. 193). The features of this entity overlap with those of 合同会社 *Gōdō gaisha* on points such as the guarantee of limited liability to all members, and the internal relationship is governed by the rules of ‘Partnership’. There are, however, some peculiarities that differentiate this organization from 合同会社 *Gōdō gaisha*. The following description by Genzberger (1994) explains what 有限責任事業組合 *Yūgen sekinin jigyō kumiai* is in Japan and its difference from 合同会社 *Gōdō gaisha*: “‘Partnerships’ in Japan are generally organized as incorporated partnership companies: The *gomei kaisha* or *goshi kaisha*. Although it is possible to organize a ‘partnership’ as a contractual noncorporate entity, it is seldom done in practice, and it would not be recognized as having separate legal standing” (p. 195). As described in the table below, some of them include the possession of legal personality, the minimum number of members, and the type of taxation, which are the principal points that distinguish them.

Table 4.31 : Comparison between 合同会社 Gōdō gaisha *and 有限責任事業組合* Yūgen sekinin jigyō kumiai

	合同会社 ***Gōdō gaisha***	有限責任事業組合 ***Yūgen sekinin jigyō kumiai***
provisional translation by the Mo J	Limited Liability Company	Limited Liability Partnership
Legal personality	Yes	No (‘Partnership’)
Members	One or more limited liable member	Two or more limited liable members
Investment method	Only money or other assets	Only money or other assets
Business execution	One or more executives	Each member of the ‘Partnership’
Tax	Company taxation	Members taxation (‘Pass-through income taxation’)

Adapted from 永井 (2015)

4.4.2. English equivalent of 合同会社 *Gōdō gaisha* in the USA: ‘Limited Liability Company’ and its characteristics

Considering the fact that the Japanese 合同会社 *Gōdō gaisha* was modelled after the USA business form ‘Limited Liability Company’, one could easily assume that there would be the same business form in the USA and it would be the closest organization to that of the Japanese one. The ‘Limited Liability Company’ in the USA is a hybrid business entity which possesses features of both a corporation and a partnership. It is often described as a ‘limited liability corporation’ by mistake, but the correct denomination is a ‘limited liability **company**’, not **corporation** (International Business Publications, 2009, p. 75). The ‘Limited Liability Company’ has the following principal

two objectives: "(a) limitation of the liability of investors to the amount invested in the firm; and (b) avoidance of the double tax on corporate income" (Klein & Coffee, 1996, p. 101). This business form aims to combine the advantage of a 'Corporation', in which the owners have limited liability toward the debts of the company, and the advantage of a 'Partnership', whose federal tax is imposed only on members of the partnership (so-called 'pass-through income taxation'). Therefore, the International Business Publications (2009) suggests that this business form often offers more flexibility due to the limited liability of the investors and it is thus suitable for smaller scale companies with a single owner (p. 75). In some States, it can be set up with only one natural person involved (International Business Publications, 2009, p. 78).

It is worth mentioning that the 'Limited Liability Company' is a fairly recent business structure developed by state statute. The structure was first adopted by the Wyoming legislature in 1977. The first Limited Liability Company Act was created by mixing the provisions of the laws which define 'Partnerships', 'Limited Partnerships', and 'Corporations' (Klein & Coffee, 1996, p. 101). It attracted the interest of oil companies, as it was mostly inspired by two foreign business structures: the *GmbH*, one of the German business organization types; and the *limitadas*, one of the Latin American business structures (International Business Publications, 2009, p. 79). According to Klein and Coffee (1996), the 'Limited Liability Company' had been adopted in 47 states in the USA as of early 1995, and the remaining three states had legislation that took this form into consideration (p. 101).

The method of management of a 'Limited Liability Company' is determined in the firm's operating agreement, which is an equivalent to a partnership agreement or a corporation's bylaws (International Business Publications, 2009, p. 77). There are two methods: member-managed or manager-managed. Statutes of most states defines that management of the firm is performed by its members if there is no provision or agreement to the contrary provided (Klein & Coffee, 1996, p. 102). In this respect, members have a similar role to that of a 'General Partnership' or 'Limited Partnership', since in addition to participating in decision-making, they may hold the power to bind the company (Klein & Coffee, 1996, p. 102). Some states oblige the LLC to choose

managers, which means that it has a two-tiered centralized management structure. The manager-management approximates that of a corporation and thus it may involve a tax risk in some circumstances (Klein & Coffee, 1996, p. 102). The fact that the management style can be selected gives flexibility. International Business Publications (2009) describes the 'Limited Liability Company' as the most flexible among the business structures, and as a preferable form for many businesses (p. 77).

The biggest feature and benefit of the 'Limited Liability Company' is the application of 'pass-through taxation', in which the tax is imposed directly to the members, 'passing though' the entity itself. For a 'Limited Liability Company', so-called 'check-the-box taxation' is available. This means that a 'Limited Liability Company' enjoys flexibility in terms of how the tax will be imposed, being able to choose whether it is considered as a 'Sole Proprietor', 'Partnership', 'S Corporation' or 'C Corporation' (International Business Publications, 2009, p. 78). The federal income tax in the USA normally imposes general corporate tax on a 'Corporation'. This type of 'Corporation' is called a 'C Corporation', since the tax is imposed under the subchapter C of the Internal Revenue Code (Hamilton, 1991, p. 21). However, small corporations such as 'Limited Liability Companies' can elect a subchapter S to be a so-called 'S Corporation', avoiding the taxation under subchapter C. An 'S Corporation' enjoys a special tax treatment which is similar to that of the 'Partnership', either being 'taxed as a partnership' or 'electing partnership taxation' (Hamilton, 1991, p. 22). Therefore, by choosing to be 'S Corporation', the firm is able to avoid the double tax, i.e. the corporation is taxed on its earnings, and tax is imposed again to the shareholders as income when the diminished earnings are distributed as dividends (Klein & Coffee, 1996, p. 102). In this respect, the taxation to 'Partnerships' and 'S Corporations' looks similar. Although they are broadly close, they are not exactly the same in detail. Hamilton (1991) explains it as follows:

> …under subchapter S, only a single tax on corporate income is imposed at individual income tax rates at the shareholder level. The income is taxable to the shareholder whether or not the income is actually distributed. (p. 22)

Another peculiarity that should be stressed is that the 'Limited Liability Company' is a particular business form in the USA. As International Business Publications (2009) states:

> Companies with limited liability exist in business law world-wide, however the Limited Liability Company is a specific legal structure defined by the laws of states of the United States and with quite distinct characteristics. Several other countries have similar structures. (p.79)

One of the countries that have a similar business organization is Japan, as was explained in the previous section, although it does not possess one of the main advantages of this structure: pass-through taxation. As it is a particular legal structure in the USA, one cannot assume that exactly the same structure can be found in the UK context. Before proceeding to any analysis of this point, the characteristics of a 'Limited Liability Company' can be summarized as in the table below.

Table 4.32 : Characteristics of 'Limited Liability Company' in the USA

Characteristics of 'Limited Liability Company' in the USA		
Principal characteristics	Number of investors	One or more members
	Liability of investors	Liability of all members are **limited** to the company's debt
	Function of investor	All the partners execute business or select managers (in some states).
	Representative of company	Each investor (partner) or selected managers (in some states).
Advantages		(1) The minimum number of members is one. (2) Limited liability to all members. (3) Application of 'pass-through taxation'.
Disadvantages		(1) It may be more difficult to raise financial capital. (2) The form itself and its management system may be still unfamiliar to the public (3) Since it is a new business structure, not all the states recognize this form and it may be treated as a corporation in taxing jurisdictions outside the USA.

Adapted by International Business Publications (2009)

4.4.3. English equivalent of 合同会社 *Gōdō gaisha* in the UK: 'Limited Liability Partnership' and its characteristics

The said 'Limited Liable Company', the equivalent term of 合同会社 *Gōdō gaisha* in English, is a USA specific business structure. The term 'Limited Liable Company' is not therefore familiar in the UK, but there is a similar structure in UK legislation which has practically equivalent characteristics to that of the USA: 'Limited Liability Partnership'. The 'Limited Liability Partnership' is often confused with

‘Limited Partnership’ by UK law students (Roach, 2014, p. 6). However, the two forms are distinct from each other. Although very rare, a ‘Limited Partnership’ is a specialized type of ‘Partnership’ which can be established based on the Limited Partnerships Act 1907, while a ‘Limited Liability Partnership’ has the Limited Liability Partnerships Act 2000 as its basis and is considered as a type of body corporate. The ‘Limited Liability Partnership’ is known as a ‘hybrid legal vehicle’ that combines the features of a ‘Partnership’ and a ‘Company’ (Davies *et al.*, 2016, p. 6). The overall characteristics are so similar that it would be safe to say that the UK ‘Limited Liability Partnership’ is the closest entity of the USA ‘Limited Liability Company’.

In the UK, the ‘Limited Liability Partnership’ was created for a special reason. It is said that professional firms persuaded the government to enact the Act. Roach (2014) explains the background of the Act as follows:

> For large professional firms (e.g. accountants and solicitors) who may have thousands of partners worldwide, the joint and several liability of the partners meant that, for example, one partner in London could be personally liable for the unlawful acts of a New York-based partner that he had never met. The largest accountancy firms therefore lobbied the UK government to create a new form of partnership that provided its partners with limited liability similar to that enjoyed by the members of limited companies. The result was the LLPA 2000. (p. 6-7)

Whilst it is often referred to as a hybrid, the ‘Limited Liability Partnership’ has rather more in common with a ‘Company’ than with a ‘Partnership’, and thus the denomination of the structure is misleading (Davies *et al.*, 2016, p. 6). The creation of a ‘Limited Liability Partnership’ in the UK is realized through a registration of documents with the Registrar of Companies at the Companies House, just like a registered company (Roach, 2014, p. 7). The ‘Limited Liability Partnership’ is regulated by company law. The partners of the organization are called ‘members’ and they are limitedly liable for the performance of the business (Davies *et al.*, 2016, p. 6). The UK Limited Liability Partnership Act 2000 rules that this business structure retains a body corporate, which means that it has corporate personality (Roach, 2014, p. 7). In addition, the ‘Limited Liability Partnership’ is subject to following many of the same provisions

as companies, such as the Companies Act 2006 and the Insolvency Act 1986 (Roach, 2014, p. 7). Whilst it is generally considered to have the nature of a company by being governed by company law, the 'Limited Liability Partnership' is governed in certain areas by partnership law, at the same time.

There are two situations where the firm is considered as essentially a 'Partnership'. One is regarding the internal management. The minimum number to constitute the structure is two or more persons (Roach, 2014, p. 6). There is no separation between members and directors, and the members of a 'Limited Liability Partnership' enjoy the same freedom as in a 'Partnership', which enables them to participate in their internal decision-making process (Davies *et al.*, 2016, p. 6). Another situation relates to taxation. This is the biggest feature of the 'Limited Liability Partnership', which is the fact that, despite being recognized to have corporate personality as well as the structures as a company, it is treated as a 'Partnership' in the context of taxation. This means that the tax is imposed not on the entity but on the members as if they were the partners of a 'Partnership', thus avoiding double taxation. Therefore, in short, the UK 'Limited Liability Partnership' is practically a company in a general sense but treated as a 'Partnership', especially when it comes to taxation. When it is compared with the USA 'Limited Liability Company', the result reached in the end would be identical ('pass-through taxation' is effectively realized in practice), although the approach is different.

As explained above, this business structure is especially attractive to professional firms (Davies *et al.*, 2016, p. 6). In other words, this structure does not address the needs of small businesses in general, and the result was that it was mainly adopted only by professional businesses. Therefore, it is not in widespread use, and there are only 59,327 of them among the 3.3 million private companies registered as of 2014 in the UK (Davies *et al.*, 2016, p. 6; Roach, 2014, p. 7).

The main features of the UK 'Limited Liability Partnership' are listed in the following table:

Table 4.33 : Characteristics of a 'Limited Liability Partnership' in the UK

Characteristics of a 'Limited Liability Partnership' in the UK		
Principal characteristics	Number of investors	Two or more members
	Liability of investors	Liability of all members are **limited** to the company's debt
	Function of investor	All the partners **execute business** (generally the same as 'Partnership')
	Representative of company	Each investor (partner) Members can nominate someone to manage the business.
Advantages		(1) Suitable for professional businesses. (2) Limited liability to all members. (3) 'Pass-through taxation'
Disadvantages		(1) Not suitable for developing large scale businesses (2) Little known to the public. (3) Its usefulness was only proven by professional firms.

Adapted by Roach (2014)

4.4.4. The possible equivalent of 合同会社 *Gōdō gaisha* in Portugal: *Sociedade por Quotas* and its characteristics

Of all the four business structures of the Japanese *Mochibun gaisha* category, 合同会社 *Gōdō gaisha* would be the term that a translator would find most difficult when translating into Portuguese. There is no apparently similar form in Portuguese business structures at first sight. Therefore, one needs to look for entities that secure limited liability of members.

In this connection, there are two business forms in Portugal where members do not assume the firm's loss personally and unlimitedly – i.e. a *Sociedade por Quotas* and a *Sociedade Anónima* (Maia *et al.*, 2013, p. 13). These two options are more frequent when a business form is chosen in Portugal (Carvalho, 2013, p. 29), and their difference can be found in points such as its dimension, number of partners, nature of the firm, whether it is a 'company of persons' or a 'capital company', among others (Carvalho, 2013, pp. 43-44). When one compares these two structures, there are some apparent differences in the minimum requirements stipulated by law. A *Sociedade Anónima* tends to predicate more costs, since it is required to have a more complex organizational structure than that of *Sociedade por Quotas*. Other conditions, such as representation of shareholdings, and amount of share capital, imply superior costs to a *Sociedade Anónima*, which is one of the reasons why it may not be appropriate for small or medium sized companies. This is also because a *Sociedade Anónima* needs to fulfil more intricate legal obligations, such as the establishment of an administrative body and a fiscal body (although they are also required of some *Sociedades por Quotas* if there are certain conditions). Besides, because of the participation in the company through shares (Article 271) (Carvalho, 2013, p. 38) and the limited liability of shareholders, it can be safely said that a *Sociedade Anónima* does not seem to correspond to the characteristics of the Japanese 合同会社 *Gōdō gaisha*. In fact, it is rather similar to the Japanese entity 株式会社 *Kabushiki gaisha* ('Stock Company', as translated in the provisional English translation provided by the MoJ of Japan). Therefore, one can say that the *Sociedade por Quotas* is the term that possibly corresponds to the Japanese 合同会社 *Gōdō gaisha*.

Now that a candidate has been found, let us take a closer look at the *Sociedade por Quotas*. As is the case of other commercial companies in Portugal, the minimum number of members of a *Sociedade por Quotas* is also two (Article 7, paragraph 2), and neither of them should belong to other firms in the same sector (Caixa Geral de Depósitos, 2012). In the case of a single-member firm, the option which can be chosen is a *Sociedade Unipessoal por Quotas* (practically the same structure as a *Sociedade por Quotas*, except that only one person – whether natural or legal – owns the total share

capital of the business). The members' contribution in a *Sociedade por Quotas* should only be carried out through cash or cash-assessable assets, and they may not contribute with services. Maia *et al.* (2013, p. 14) argue that the central point of a *Sociedade por Quotas* is the joint liability of the members to realize the entries agreed in the contract (Article 197-1). This means that members may need to assume a liability towards the company that may exceed the achievement of their own entries, since they are 'jointly liable' for it. However, they do not assume the liability toward the creditors – i.e. the liability of the members is limited externally (Maia *et al.*, 2013, pp. 15-16). This is one of the important characteristics of this form. According to Article 198, paragraph 1, however, it is possible to stipulate in articles of association that one or more members also respond to the creditors up to a certain amount. Even in this situation, the liability that members should assume is up to 'a certain amount', therefore, their liability is always limited (Maia *et al.*, 2013, p. 16).

Table 4.34 : Articles 197 and 198 of the Portuguese Código das Sociedades Comerciais *(Commercial Company Act)*

Portuguese (original)	**English (translation)**
Artigo 197	**Article 197**
(Características da sociedade)	**Company Characteristics**
1 - Na sociedade por quotas o capital está dividido em quotas e os sócios são solidariamente responsáveis por todas as entradas convencionadas no contrato social, conforme o disposto no artigo 207.	1 - In a private limited company the capital is split into quotas and partners are jointly liable for putting up all of the capital agreed in the articles of association, as per Article 207.
2 - Os sócios apenas são obrigados a outras prestações quando a lei ou o contrato, autorizado por lei, assim o estabeleçam.	2 - Partners shall only be obligated to pay the additional capital contributions if the legally binding articles of association or applicable legislation so require.
3 - Só o património social responde para com os credores pelas dívidas da sociedade, salvo o disposto no artigo seguinte.	3 - Unless otherwise provided for in the following Article, only corporate assets may be used to pay creditors.
Artigo 198	**Article 198**
(Responsabilidade directa dos sócios para com os credores sociais)	**Direct Liability of Partners towards Company Creditors**
1 - É lícito estipular no contrato que um ou mais sócios, além de responderem para com a sociedade nos termos definidos no n 1 do artigo anterior, respondem também perante os credores sociais até determinado montante; essa responsabilidade tanto pode ser solidária com a da sociedade, como subsidiária em relação a esta e a efectivar	1 - The articles of association may stipulate that one or more of the partners be answerable not only to the company as described in paragraph 1 of the previous article, but also answerable to the company's creditors, up to a stated value. This liability may be joint with the company as well as several in relation to the company, and shall take effect only

apenas na fase da liquidação.	upon liquidation.

Data from CAC-JaPo

The management structure of a *Sociedade por Quotas* is rather like that of a *Sociedade em Nome Colectivo* and *Sociedade Anónima*. The overall structure is basically similar to that of a *Sociedade em Nome Colectivo*. For example, it should have the collective body of members – i.e. a general meeting which consists of all the members. Unless mentioned otherwise in the articles of association, the firm also has a management body, which consists of one or more natural persons with full legal capacity. They may or may not be members (Article 252, paragraph 1). The managing body assumes administration and representation of the company (Articles 252 and 259), and the management is carried out jointly by the majority, unless stipulated otherwise in the articles of association (Article 261) (Maia *et al.*, 2013, pp. 23-24). In addition to the collective body of members and the management body, a *Sociedade por Quotas* may have the *conselho fiscal* or *fiscal único* ('supervisory board' or 'statutory auditor', respectively, as the provisional translation provided), if the articles of association determine so (Article 262, paragraph 1) (Maia *et al.*, 2013, p. 24). The establishment of this body will become obligatory if the company satisfies certain conditions. In this aspect, this business form contains the characteristics of both a *Sociedade em Nome Colectivo* and a *Sociedade Anónima*.

A *Sociedade por Quotas*, whether it is a 'company of persons' or a 'capital company', is a unique structure since it possesses the characteristics of both. The differences can be seen in the points such as the business name, administration method and others as explained earlier. A 'company of persons' is generally a closed group with a basis of trust among partners, in which a *Sociedade em Nome Colectivo* is typically indicated as a classic example. Such a company considers their partners as the main elements of the firm. This is also visible in the business name, which needs to include the name or names of one or more partners. This rule is also applied to *Sociedade por Quotas*, which suggests that it possesses the characteristics of the 'company of persons'.

In addition to this rule, the name of a *Sociedade por Quotas* should end with '*Limitada*' or its abbreviation '*Lda*' (Caixa Geral de Depósitos, 2012). On the other hand, a 'capital company' regards its capital as important, rather than the partners. One of the distinctions is in the administration method, where the management of the company is carried out by a management body which can consist of non-partners. The typical example of this type is a *Sociedade Anónima*, but the *Sociedade por Quotas* also has this feature. As Carvalho (2013) describes, the border between the two types is not clear and it is possible to find both characteristics in one firm, as in the case of *Sociedade por Quotas* (p. 46).

This Portuguese business form can be problematic from another point of view when one translates from Japanese to Portuguese, or vice-versa. The translation given to the term may confuse the translator. The one suggested by the authority is 'Private Limited Company'. This English term may lead the Japanese translator to wrongly hint at a different company type in Japan, 有限会社 (*Yūgen gaisha*, translated as 'Limited Company'), the company type which is similar to *Sociedade por Quotas*, but was abolished in Japan in 2006. The type 有限会社 *Yūgen gaisha* was introduced into Japan by the Limited Company Act of 1940. It was modelled on the German *GmbH*, the same structure that the USA 'Limited Liability Company' was based on. However, by the implementation of the Companies Act in 2006, 有限会社 *Yūgen gaisha* was replaced with 合同会社 *Gōdō gaisha*, and did not allow a new creation of 有限会社 *Yūgen gaisha* in the future. Those 有限会社 *Yūgen gaisha* that existed already at that point were allowed to continue to operate under special rules.

Taking all this into consideration, the Portuguese *Sociedade por Quotas* is regularly translated as 'Private Limited Company', which rather infers the Japanese 有限会社 *Yūgen gaisha*, the company type introduced based on the German *GmbH* model. In 2006, the 合同会社 *Gōdō gaisha* was introduced into Japan, replacing the 有限会社 *Yūgen gaisha*; although it replaced 有限会社 *Yūgen gaisha*, 合同会社 *Gōdō gaisha* was born by following the USA 'Limited Liability Company' as a model, which was created based on the German *GmbH*. This means that both 有限会社 *Yūgen gaisha* and

合同会社 *Gōdō gaisha* have the German *GmbH* as their basis, and therefore one can conclude that the 合同会社 *Gōdō gaisha* that replaced the 有限会社 *Yūgen gaisha* is a possible equivalent to the Portuguese term *Sociedade por Quotas*.

Lastly, one of the key features of this form is Pass-through taxation. As with the previous structures, the entity of *Sociedade por Quotas* itself also has a legal personality according to the law, meaning that the Portuguese Tax authority considers it as a taxable entity. Therefore, a *Sociedade por Quotas* does not enjoy the 'pass-through taxation'. This fact shows that a *Sociedade por Quotas* shares the same aspect with the Japanese 合同会社 *Gōdō gaisha* and is different from its related entities in the Common Law legislation in this point.

The main features of the *Sociedade por Quotas* are listed in the following table:

Table 4.35 : Characteristics of Sociedade por Quotas *in Portugal*

Characteristics of *Sociedade por Quotas* in Portugal		
Principal characteristics	Number of investors	Two or more members
	Liability of investors	Liability of all members is **limited** to the company's debt **externally** but they are jointly liable to put up all the capital agreed.
	Function of investor	All the partners are members of a deliberative body (general meetings).
	Representative of company	The managing body represents the firm, which consists of one or more managers who may or may not be members.
Advantages		(1) One of the two most commonly chosen business structures in Portugal. (2) Limited liability to all members. (3) There is no minimum capital.
Disadvantages		(1) Not suitable for developing large scale businesses. (2) The limit of liability can go beyond the investments of other partners. (3) No 'pass-through taxation' available.

Adapted from Maia *et al.* (2013)

4.4.5. Comparison among 合同会社 *Gōdō gaisha* in Japanese, USA English, UK English, and Portuguese

The comparison is complicated as the entity in each language represents slightly different situations. Although there are many elements involved and they are analyzed from various points of view, the main features that should be focused are as follows: (1) the status of the company and whether the entity has legal personality; and (2) whether

the ‘pass-through taxation’ is applicable. The comparative information is summarized in the table below.

As it can be verified from the table, none of them is completely identical. There are still minor differences found in each term, such as the minimum number of partners necessary, and status of members. The observation carried out may lead to the conclusion that these four terms can serve as equivalent in an overall context, but more specifically, each represents a different legal entity with separate characteristics. Therefore, it is important to understand this complexity, and to be able to distinguish and explain the differences, when necessary, in order to avoid the potential confusion that may be caused by translation.

Table 4.36 : Comparison among 合同会社 Gōdō gaisha*, 'Limited Liability Company', 'Limited Liability Partnership', and* Sociedade por Quotas

	合同会社 ***Gōdō gaisha*** **in Japan**	**'Limited Liability Company' in the USA**	**'Limited Liability Partnership' in the UK**	***Sociedade por Quotas*** **in Portugal**
Abbreviation	**GK**	**LLC**	**LLP**	**SQ**
Suggested English translation by authority	Limited Liability Company	-	-	Private Limited Company
Minimum number of partners (investors)	One or more	One or more (In some states)	Two or more	Two or more
Status of members	All the members are owner and representatives of the firm by default.	All the members are owners. They can either be involved in the management or select managers. (Depending on the states.)	All the members may participate in the business management (generally the same as 'General Partnership').	All the members are owners. They can either be involved in the management or select managers.
Liability of partners	All the members are limitedly liable for the company's debt.	All the members are limitedly liable for the company's debt.	All the members are limitedly liable for the company's debt.	All the members are limitedly liable for the company's debt. (Although they are jointly liable to put up all the

				capital agreed.)
Status of company	Yes	Selectable (in certain cases, can be treated as corporation).	No	Yes
Legal personality	Yes	Yes (in certain cases, can be treated not to have separate legal personality from the members).	Yes (For taxation, it is treated as a 'Partnership')	Yes
Taxation	Imposed on the firm and members.	Pass-through taxation (Imposed only on members)	Pass-through taxation (Imposed only on members)	Imposed on the firm and members.
Note				Business name: must end with '*Limitada*' or its abbreviation '*Lda*'

Adapted from 永井 (2015, pp. 188-191), Hamilton (1991, pp. 16-21) Roach (2014, pp. 4-8), Maia *et al.* (2013, pp. 11-36)

4.5. Examples of terms that are treated as equivalents but in fact can refer to different contents – Other cases

The first major causes of potential confusion in Company Act can be found in the types of companies as pointed out in the preceding sections. There are, however, other terms and concepts that possibly bring misunderstandings in communication. The

following section calls attention to other terms that apparently seem equivalent but in fact may refer to different concepts.

4.5.1. 監査役; *kansayaku* (JP); Audit & Supervisory Board Member (EN); revisor official de contas (PT)

Another example of difficulty found was the Japanese term 監査役 '*kansayaku*'. This term is generally rendered as 'auditor' in English (Minamide & Nakamura, 2011-2016) and vice-versa, i.e. the English term 'auditor' is translated as 監査役 '*kansayaku*' in Japanese (Kikuchi, 2002). Consequently, when the term is translated from English to Portuguese, the terms equivalent will be '*auditor*' or '*auditora*' as indicated in Nguyen (2018), depending on the gender of the person in charge of the post – i.e. if the person is a man, he is an '*auditor*' and '*auditora*' if the person is a woman. Therefore, the respective translated terms in each language will be as demonstrated below.

Table 4.37 : 監査役 'kansayaku*' and its corresponding translations in English and Portuguese*

Japanese	**English translation (2011-2016)**	**Portuguese translation** (Nguyen, 2018)
監査役	auditor; inspector	auditor (a)

However, the Japan Audit & Supervisory Board Members Association (JASBA, 公益社団法人日本監査役協会 in Japanese) has a different opinion regarding the denomination of the term. The JASBA is a public-service organization established in 1974 with the objective of promoting roles and functions of this professional post. The organization considers that the term 'auditor' does not reflect correctly the reality of this professional activity in Japan (The Japan Audit & Supervisory Board Members Association, 2012b, p. 1). According to the association, 'kansayaku' is not totally equivalent to an 'auditor' in Western culture. It is a unique system in Japan and, except

for some Asian countries, there is no other place in the world where this system is adopted (The Japan Audit & Supervisory Board Members Association, 2012b, p. 2).

The JASBA has conducted the revision of the English translation for ‘kansayaku’ (and eventually the related term ‘kansayaku-kai’) multiple times in the past. For instance, the first attempt to translate the term into English took place in March 1989. Precisely because of the reason presented above, i.e. due to the peculiarity of the system in Japan, the decision was taken to leave the Japanese term ‘KANSAYAKU’ (in capital letters) as the main English translation and the term ‘Statutory Auditor’ was added as the supplementary explanation, since it was commonly used to express ‘kansayaku’ (The Japan Audit & Supervisory Board Members Association, 2012a, p. 2). Some translators still use this term in the translation of legal documents (from my personal experience).

The second challenge came five years later, when the Japanese Commercial Code was revised in 1994 in which it was decided to introduce the ‘kansayaku-kai’ system. The association then changed the strategy and adopted a new English translation: ‘Corporate Auditor’ for ‘kansayaku’ and ‘Board of Corporate Auditors’ for ‘kansayaku-kai’ (The Japan Audit & Supervisory Board Members Association, 2012a, p. 2). The association itself altered its denomination into the Japan Corporate Auditors Association. The term ‘Corporate Auditor’ or ‘Statutory Auditor’ had already been and is still commonly used among companies at present. After nearly two decades, partly as a result of changes of the system and the establishment of the Companies Act, the circumstances surrounding ‘kansayaku’ changed again. The association conducted a revision of the term again and published a new recommended English translation in early September 2012: ‘Audit & Supervisory Board Member’ for ‘kansayaku’ and ‘Audit & Supervisory Board’ for ‘kansayaku-kai’. The transition of the recommended English translation by the JASBA for these terms is demonstrated as follows:

Table 4.38 : Transition of recommended English translation of 監査役 'kansayaku' and 監査役会 'kansayaku-kai' by JASBA

	Kansayaku	**kansayaku-kai**
1989	KANSAYAKU (Statutory Auditor)	
	↓	
1994	Corporate Auditor / Statutory Auditor	Board of Corporate Auditors
	↓	↓
2012	Audit & Supervisory Board Member	Audit & Supervisory Board

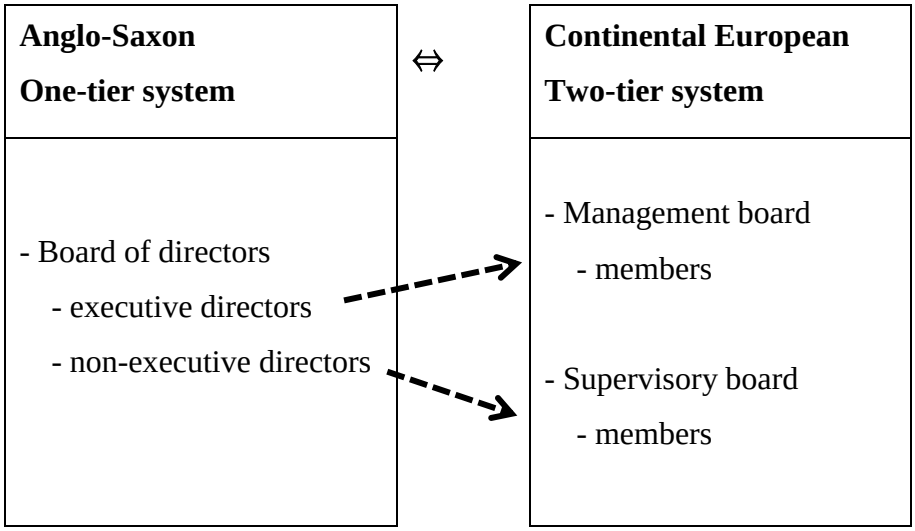
Adapted from The Japan Audit & Supervisory Board Members Association (2012a, p. 2) and The Japan Audit & Supervisory Board Members Association (2012b, p. 1)

None of the terms '*kansayaku*', 'Statutory Auditor' and 'Corporate Auditor' is an incorrect translation and many Japanese companies often use them as equivalent terms, especially the last two designations in relation to '*kansayaku*' (The Japan Audit & Supervisory Board Members Association, 2012a, p. 2). This leads us to the question of why it was necessary to change their designations. The core of the question can be found in the very term 'audit'. In fact, there is a big problem with the expressions 'Statutory Auditor' and 'Corporate Auditor' when they are applied to corporate governance culture in Japan. This issue offers the key to an understanding of the unique system of 'kansayaku' in Japan, which is largely unfamiliar to the rest of the world. Before moving on to the main task, it is helpful to describe the principal characteristics of culture in Japan in terms of corporate governance.

The first incompatibility comes from the governance systems of companies. The governing system in public limited companies in Common Law can be different to the one in Civil Law. In Common Law countries, the so-called 'Anglo-Saxon one-tier system' is employed. In this system, the company is managed by one governing body, i.e. the *Board of Directors*. On the other hand, in the 'continental European two-tier

system'[16] there are two governing bodies: the *management board* and the *supervisory board*. Accordingly, therefore, neither the term *management board* nor the term *supervisory board* exist in Anglo-American legal language and thus they are considered as neologisms (de Groot, cited in Kocbek, 2008, p. 63). Their functions, however, somehow correspond in practice. The role of the executive (inside) directors of *Board of Directors* is similar to that of the members of the *management board* in the continental European system. Similarly, the non-executive directors play an identical part to that of the members of the supervisory board (Kocbek, 2008, p. 63). It means that this cultural difference can always bring discrepancy in the governing structure of a company.

Table 4.39 : Relation between the Anglo-Saxon one-tier system and the Continental European Two-tier system



Adapted from Kocbek (2008, p. 63)

Another word to which attention should be drawn is the term 'auditor'. As was demonstrated earlier, the term 'auditor' is often used as an equivalent to '*kansayaku*', but the mission of an 'auditor' does not totally correspond to that of a '*kansayaku*'. An

[16] Germany is especially famous for employing the *two-tier* system. Although it is broadly mentioned that the two-tier system is generally adopted in Continental European countries in order to facilitate the comparison, there are various studies on the typology of corporate governance and its classification has not been academically defined yet (for example, in France it is possible to choose either the *one-tier* or *two-tier* system). This subject will be further mentioned later in this study.

auditor, according to Basu (2010) (who introduces the definition of ICAI (The Institute of Chartered Accountants of India)), stands for a person who carries out "the independent examination of financial information of any entity, whether profit oriented or not and irrespective of its size or legal form, when such an examination is conducted with a view to express an opinion thereon" (p. 1-4). Therefore, the term in English only implies the professional person who officially examines the financial records of a company. This definition coincides with that of Mautz (1954), who states that "auditing is concerned with the verification of accounting data, with determining the accuracy and reliability of accounting statements and reports" and therefore "(a)n auditor is a professional man who makes an examination of accounting data in order to give his opinion as to the reliability of those data" (p.1).

However, due to developments in the last few decades, the scope of auditing today has changed, and Gupta (2004) describes how the auditor's role has been extended beyond auditing and accounting records. In his view, "(a)uditing today is no longer concerned only with financial accounting records; it may also involve a review of compliance with law, costing records, operations and performances" (Gupta, 2004, p. 7). However, even if this recent amplification is taken into consideration, '*kansayakus*' in Japan have more extensive tasks compared to their counterparts in most of the world. According to the JASBA, a '*kansayaku*' must be elected at a shareholder's meeting and their role is to 'audit' as well as to 'supervise' the activities of management (The Japan Audit & Supervisory Board Members Association, 2011, p. 6). The JASBA further describes the mission of this professional post as follows: "We *[as '*kansayaku*'] aim to contribute extensively to the sound and ongoing growth of corporations and society by maintaining a fair and impartial stance in our role in upholding corporate governance" (The Japan Audit & Supervisory Board Members Association, 2011, p. 4). This means that a '*kansayaku*' is not only responsible for auditing activities in a company but also takes responsibilities for corporate management, as well as strengthening corporate governance of the company.

Table 4.40 : Characteristics and role of kansayaku

Characteristics and role of *kansayaku*
- Appointed by shareholders and independent from the Board of Directors; - Each member is expected to perform his/her roles individually; - To audit and supervise the execution of duties by directors, including monitoring subsidiaries.

Adapted from The Japan Audit & Supervisory Board Members Association (2016, p. 3)

That goes to the very heart of the problem. Employing the term 'auditor' causes confusion by inducing a presupposition that 'kansayaku' is the equivalent to an accounting auditor or internal auditor (The Japan Audit & Supervisory Board Members Association, 2012b, p. 1). This conflict of meanings is unfamiliar to investors and others at an international level. Therefore, the problem of the terms previously suggested by the association such as 'Statutory Auditor' or 'Corporate Auditor', although they are still being widely used by Japanese corporations, is that it is difficult to make a clear difference between the post 'kansayaku' and an internal auditor or an external auditor. As is clearly stated by the The Japan Audit & Supervisory Board Members Association (2012a, p. 2), the mission of a 'kansayaku' includes not only auditing, but also monitoring and supervising management, and is entirely different from the one of an internal auditor or an external auditor. For this reason, the association believes that it is necessary to suggest a new English translation.

Another important point that should be examined, and this also consists of another reason for the association's new proposal, is the variations in the corporate governance system. There are in general three types of corporate organization in Japan: (1) a company with a 'kansayaku-kai'; (2) a company with committees (*Iinkai secchi gaisha*); and (3) a company with an audit and supervisory committee (*Kansa-kantoku iinkai secchi gaisha*) (The Japan Audit & Supervisory Board Members Association, 2012a, p. 2)..

One of the most popular business organizations in the world in general is the one called 株式会社 *Kabushiki gaisha* in Japan (K.K, 'Stock Company', according to the

provisional translation provided by the MoJ of Japan). A company consists of certain organs, each of which is in charge of a function so that the company operates solidly and effectively. One of the functions is the supervisory function, in order to avoid executive directors managing the company against the interests of shareholders and other stakeholders, or using the company's property, personnel, assets and money (The Japan Audit & Supervisory Board Members Association, 2012a, p. 3). The management supervisory organ is generally expected to function in large limited liability companies, particularly in listed companies. The members of the supervisory organ should be non-executive directors, as its target for inspection is the management conducted by executive directors. This means that the Japanese Companies Act requires the supervisory function to be led by non-executive directors, including a 'kansayaku'. According to this regulation, a 'kansayaku' can be defined as a non-executive director by statutory designation (The Japan Audit & Supervisory Board Members Association, 2012a, pp. 3-4). The Japan Audit & Supervisory Board Members Association (2012a) further asserts that: "'kansayaku' and 'kansayaku-kai' are in charge of the supervisory function in a broad sense, considering the global understanding of a limited liability company's governance" (p. 4).

In the case of a Japanese 株式会社 *Kabushiki gaisha*, if a company decides to opt for 'a company with committees', or 'a company with a supervisory and audit committee', the supervisory function is assumed by the Board of Directors. In contrast, if a company adopts the system of 'a company with a *kansayaku-kai*', as in fact is the form adopted by most Japanese companies, the supervisory function is undertaken by the 'kansayaku' and the 'kansayaku-kai' jointly and cooperatively (The Japan Audit & Supervisory Board Members Association, 2012a). The Japanese Companies Act rules that the Board of Directors is in charge of the function of 'kantoku' (supervisory) <Article 381(1)> and a 'kansayaku' is in charge of the function of 'kansa' (audit) <Article 362 (2) (ii)>. The Japan Audit & Supervisory Board Members Association (2012a, p. 4) takes these descriptions and forms an opinion that it is naturally understood that the function of 'kansa' conducted by a 'kansayaku' and a 'kansayaku-kai' is also a part of a supervisory function (in a broad sense) in a limited liability

company, since the Act demands that both ‘kansayaku’ and ‘kansayaku-kai’ be non-executive directors. As for the expected activities, they include the following: the Board of Directors has a right to appoint and dismiss executive directors, and ‘kansayaku’ together with ‘kansayaku-kai’ check if the performance of the appointed executive directors is according to their duty of care and fiduciary. The ‘kansayaku’ has, therefore, an obligation to attend the Board of Directors’ meetings and express their opinions, as well as to submit reports at various meetings and in several circumstances. As to the ‘kansa’ function expected of ‘kansayaku’ and ‘kansayaku-kai’, it includes the following: “(a) information gathering, (b) various actions including reporting, advice, and proposals for the Board of Directors, (c) reconciliation of conflicts of interest between executive directors and the external auditor (an Audit committee is generally in charge of this function outside of Japan), and so on” (The Japan Audit & Supervisory Board Members Association, 2012a, p. 4).

The objective of the three types of organizations mentioned above, (1) a company with a ‘kansayaku-kai’, (2) a company with committees (*Iinkai secchi gaisha*), and (3) a company with audit and supervisory committee (*Kansa-kantoku iinkai secchi gaisha*), is that, whichever system a listed company adopts, the company is expected to maintain the same level of soundness and effectiveness of management as others. Therefore, there is no big difference in the missions among a ‘kansayaku’, ‘audit committee member’, and ‘audit and supervisory committee member’: they are all non-executive directors as well as responsible for monitoring and supervising management (The Japan Audit & Supervisory Board Members Association, 2012a, p. 3). For this reason, the question of taking into account the consistency among these three systems in terms of the revision of the English translation seems to have been resolved, as they all maintain compatibility and there is no substantial difference among the three at a governance level (The Japan Audit & Supervisory Board Members Association, 2012a, p. 5).

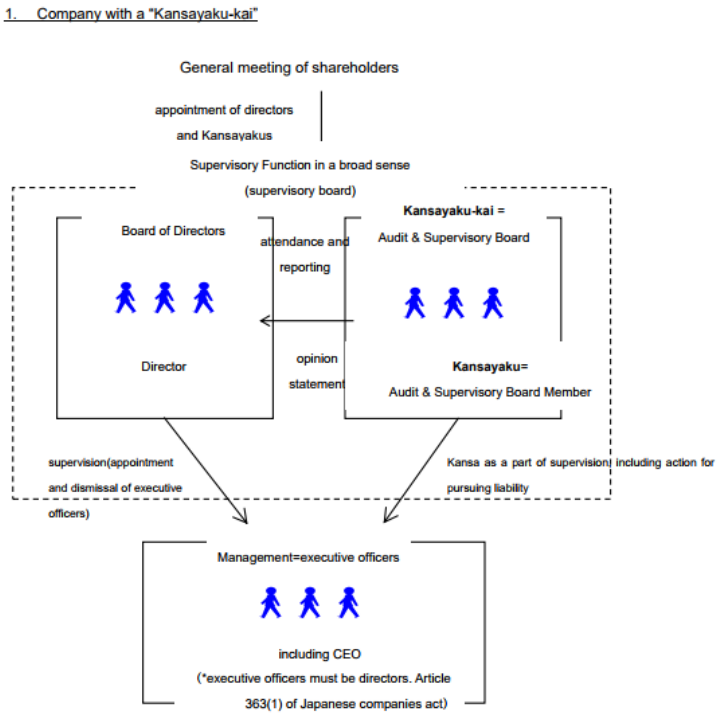
After analyzing and considering all these factors, the JASBA took a decision to adopt the new translation term ‘audit & supervisory board member’ for ‘kansayaku’ and ‘audit & supervisory board’ for ‘kansayaku-kai’. The new translation needed to clarify two principal doubts. One comes from one of the biggest misunderstandings of people

outside Japan, which was to consider that the only supervisory organ is the ‘kansayaku-kai’, excluding the Board of Directors. The JASBA believed that by adding the term ‘audit’, it would avoid the misleading image that ‘kansayaku-kai’ is the only supervisory board (The Japan Audit & Supervisory Board Members Association, 2012b, p. 3). Additionally, the term ‘audit’ is appropriate, since it “would clarify that ‘kansayaku-kai’ carries out an audit function as a part of its supervisory function” (The Japan Audit & Supervisory Board Members Association, 2012a, p. 5). Another concern that should be clarified is the term ‘supervisory board’. The fairly close organ of ‘kansayaku-kai’ in Germany, *Aufsichtsrat*, is also generally translated in English as ‘supervisory board’, but the German organ can appoint and dismiss executive directors, a right which the Japanese organ does not possess (The Japan Audit & Supervisory Board Members Association, 2012b, p. 2). The association arrived at the conclusion that this concern can be solved by explaining that the term is applied in the context of the Japanese system (The Japan Audit & Supervisory Board Members Association, 2012b, p. 3).

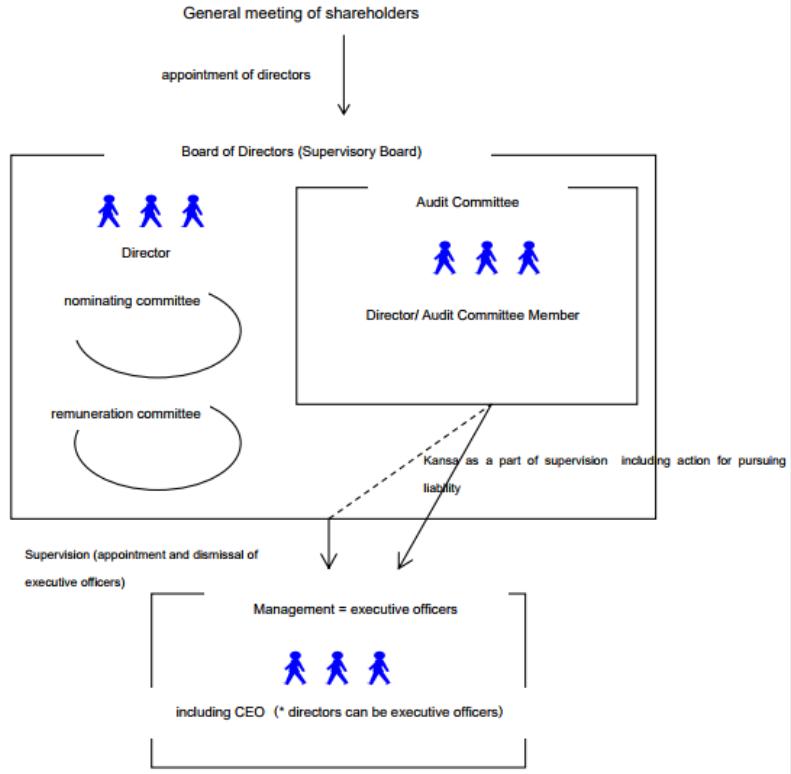
As the association itself assumes, there might not be a perfect equivalent for the term ‘kansayaku’ in English (The Japan Audit & Supervisory Board Members Association, 2012a, p. 3), as ‘kansayaku’ is a unique system in Japan. One of the biggest difficulties for foreigners to understand is the fact that a ‘kansayaku’ and a ‘kansayaku-kai’ both assume the supervisory function, collaborating with the Board of Directors (The Japan Audit & Supervisory Board Members Association, 2012a, p. 4). In fact, the term ‘auditor’ is generally accepted as an English equivalent to ‘kansayaku’ and the The Japan Audit & Supervisory Board Members Association (2012a) itself affirms that “if a company is comfortable using the previous translation of ‘Corporate Auditor’, it won’t be compelled to use the new translation” (p. 6). However, taking into account the background that has been demonstrated, it may be necessary to pay attention to and examine if the term truly corresponds to the reality. The term ‘audit & supervisory board member’ might be found to be more precise in a certain context, but in that case, it would be necessary to decide which term is appropriate in a Portuguese text if it must be translated into Portuguese.

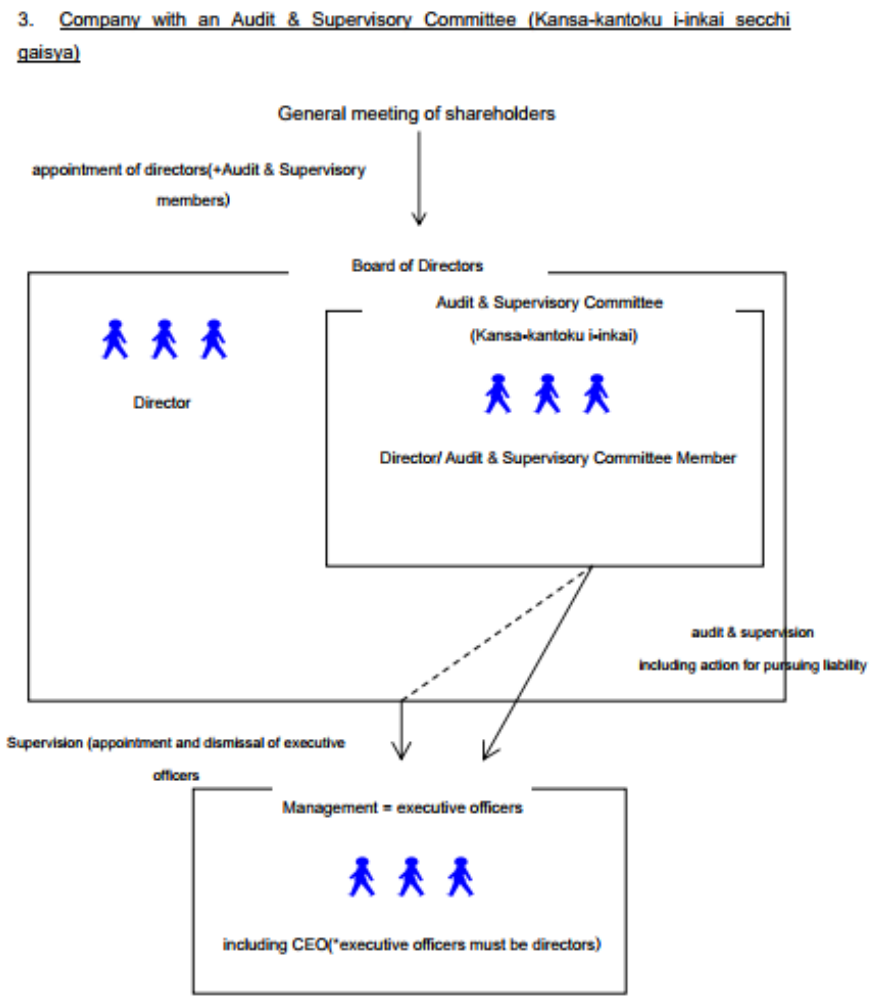
The chart below shows the variations on corporate governance systems in Japan and on the organs responsible for the supervisory function in a broad sense:

Figure 4.3 : Variations on corporate governance systems and on the organs responsible for the supervisory function in a board sense



2. Company with committees (I-inkai secchi gaisha)





Adapted from The Japan Audit & Supervisory Board Members Association (2012a)

Turning now to another language combination – i.e. Portuguese and English –, an analysis of the equivalent term is needed to compare and understand the usage of the term in the same context. In the *Código das Sociedades Comerciais* and its English translation 'Commercial Company Act', the term suggested by the competent Japanese association – 'audit & supervisory board member' – was not found in the Portuguese Code, but the term 'auditor' was found instead in the English translation of Article 28.

Table 4.41 : Article 28 of Portuguese Código das Sociedades Comerciais *(Commercial Company Act)*

Portuguese (original)	**English (translation)**
Artigo 28º	Article 28
Verificação das entradas em espécie	Verification of Initial Capital Contributions in Kind
1 – As entradas em bens diferentes de dinheiro devem ser objecto de um relatório elaborardo por um **revisor oficial de contas** sem interesses na sociedade, designado por deliberação dos sócios na qual estão impedidos de votar os sócios que efectuam as entradas.	1 – Initial capital contributions in assets other than cash must be subject of a report prepared by a **statutory auditor** with no interest in the company, to be appointed by means of a resolution adopted by the partners, in which partners to whom the initial capital contributions correspond shall be prohibited from voting.

Data from CAC-JaPo

The term '*revisor oficial de contas*' is employed as the equivalent to the English 'statutory auditor'. A '*revisor oficial de contas*' is equivalent to '*kansayaku*', since the discussion above regarding the translation of '*kansayaku*' demonstrated that the Japanese term used to be translated as 'statutory auditor'. However, the term 'auditor(a)' also exists in Portuguese and the English term entry 'auditor' indicates the Portuguese translation '*auditor(a)*' (Nguyen, 2018, pp. 2754-2755). This fact illustrates that there can be more than one option for the translation of the English term 'auditor' into Portuguese: it can be '*auditor(a)*' or '*revisor oficial de contas* (*ROC*)'. A question then arises as to whether these two can be considered as synonyms. It is necessary, therefore, to look more carefully into the relation between these two terms, '*auditor(a)*' or '*ROC*', in order to clarify if there is any difference between them.

Castanheira (2007, p. 1) states that the term 'fiscal audit' in Portuguese is generally used to designate the tax inspection conducted by the tax authorities, but the same may refer to further content depending on the position of the entity that performs

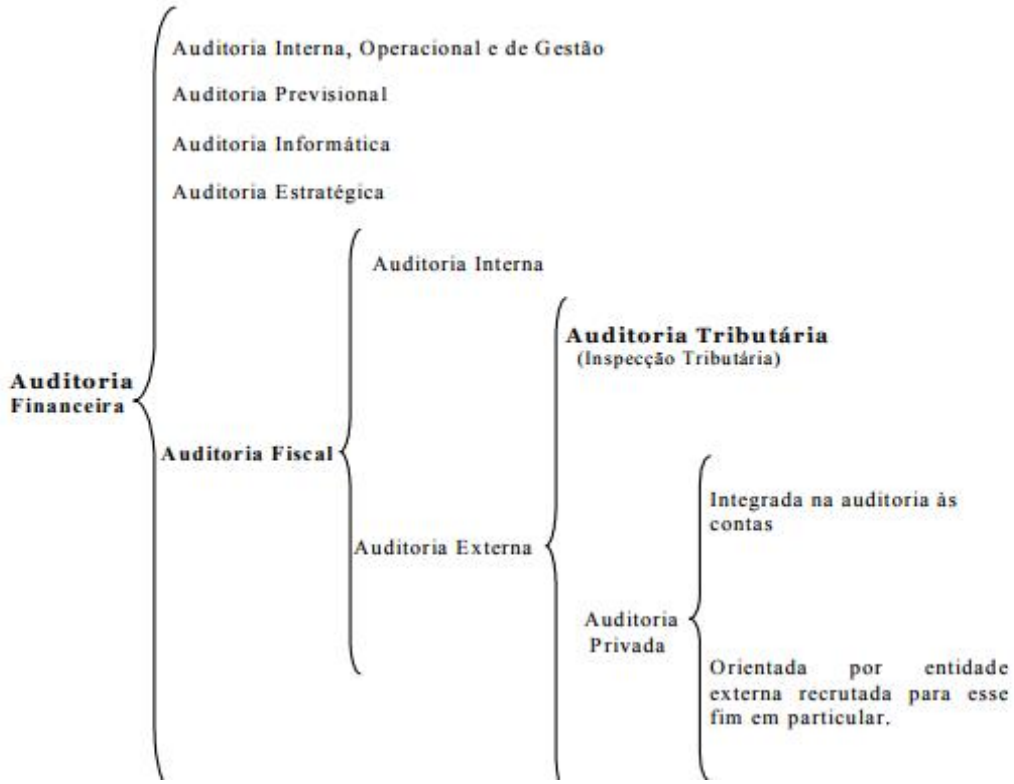
the audit. Guimarães (2001) affirms that, when the term 'fiscal audit' is used, it can refer to one of the following three options:

> (1) By the fiscal entities of the State, that is, the Fiscal Authority;
> (2) By the internal auditors of the Company;
> (3) By the external auditors, including the ROC. (p.351)

According to this definition, if an audit is conducted by a technician from a tax authority, as in case (1), the term refers to an independent process of administrative audit as a means of enforcing compliance with tax legislations, mainly, for example, the payment of taxes. The main objective of this kind of audit, i.e. tax inspection by the tax authority, is to combat tax avoidance and fraud by checking whether the taxpayer is fulfilling the tax obligations in the correct form. This type of audit seeks to minimize the gap between the tax legally defined and the tax declared by the taxpayers in reality (Castanheira, 2007, p. 1). In the cases of (2) and (3), the concept behind the term changes. If such an audit is performed by either internal or external auditors, the term 'fiscal audit', in this context, comes to mean a limited element of the audit conducted by those professionals. An Internal Audit is an important supporting tool for the management of a company, especially when it seeks to review its method of action (Castanheira, 2007, p. 2). Its main objective is to improve the company's performance by searching for the best solutions that fulfil the objectives of the company. Fiscal management is one of the important elements of the Internal Audit, which includes verification of compliance with tax legislation, as well as optimization of the tax burden in terms of the general management of the company, seeking possible fiscal strategies within the legal framework in force (Castanheira, 2007, p. 2). An External Audit is conducted in order to present a true and proper image of a company by verifying the financial situation of the company by a third party, namely, the External Auditors *ROC* (Castanheira, 2007, p. 2). If the company fails to comply with its tax obligation, it may have a serious impact on the company. For example, it may lead to penalties or eventual deterioration of the tax liability and financial conditions. Failure to comply, whether partially or entirely, with tax obligations, therefore, could lead to serious consequences

for the financial condition of the company (Lourenço, 2000). In order to avoid this potential risk and the impact of tax, and to preserve the true and fair image of financial state of the company, the External Auditors (*ROC*) are responsible for analyzing compliance with tax legislation and other obligations. Additionally, they are also expected to express their opinion on whether the financial statements of the company actually reflect the real and true situation of the company (Castanheira, 2007, p. 2). Bastos (2006, p. 2) describes the framework of existing types of audit as follows:

Figure 4.4 : Conceptual positioning of tax audit



Adapted from Bastos (2006, adapted from Arenas, 2001)

On the other hand, some people draw attention to the obscurity peculiar to this subject area in Portugal. Bastos (2006, p. 6), for instance, points out the ambiguity of the Portuguese accounting system and that this ambiguity is reflected in the position taken by the *Ordem dos Revisores Officiais de Contas* (*OROC* – The related

professional body) as well as in the various types of audit (financial, tax or by a tax authority). Rocha (2006, p. 28) draws attention to the '*auditoria legal* (legal audit)', stating that only in Portugal is there a case *sui generis* of '*auditoria legal*' and '*auditoria não legal*', which is causing deep confusion between them. According to Rocha (2006, p. 27), there are two professional activities in Portugal: '*auditor*' and '*revisor (ROC)*'. This distinction of activities is also clearly expressed in the Portuguese Code of Personal Income Tax (*Código do Imposto sobre o Rendimento das Pessoas Singulares*). '*Auditores*' are attributed the code (*4011 – Auditores*) and belong to the group of Economists, Accountants, Actuaries and Similar Technicians. '*Revisores*' are attributed the code (*9010 – Revisores Oficiais de Contas*) and belong to the group of professionals selected by official appointment. Audit is the responsibility of the '*auditores*' and '*revisão legal das contas*' is the responsibility of the '*ROC*' (Rocha, 2006, p. 27). Furthermore, a ROC can be a statutory auditor or member of a supervisory board, as the legislation (Portaria n.º 83/1974, de 6 de Fevereiro) came to define the obligation that "a member of the supervisory board or sole auditor and an alternate member must be designated among those inscribed in the list of statutory auditors[17] [my translation]".

In the understanding of Rocha (2006, p. 28), therefore, there is a clear distinction between '*auditor*', '*ROC*', and '*revisão legal das contas*' and auditing is not the same thing. The function of audit is much more comprehensive than the function of '*revisão*', since it covers all the companies including micro and small enterprises, whereas the '*revisão legal e certificação legal das contas*' is required of *sociedades anónimas, sociedades por quotas, empresas públicas,* and other entities obliged to include a *ROC* in the supervisory board (Rocha, 2006, p. 27). According to Rocha (2006, p. 29), of the 290 thousand companies existing in Portugal, only 9 per cent are subject to '*revisão das contas*', besides entities related to health, education, and public institutes, among others. The number of companies which are obliged to have '*revisão legal das contas*' and '*certificação das contas*' is not so big when compared with the same regarding the audit,

[17] [Original] "*um membro do conselho fiscal ou fiscal único e um suplente terem de ser designados entre os inscritos na lista dos revisores oficiais de contas".*

since all the companies and entities eventually need to perform an audit, in order to find points to improve. Therefore, the demand for audit is greater than for '*revisão legal das contas*'. The '*revisão legal das contas*' presupposes the execution of an audit, as it is needed to achieve it. The audit itself is not the '*revisão legal das contas*' but is considered as an instrument for that action (Rocha, 2006, p. 28). Since auditing is exclusively reserved for auditors who are registered in the Order of *ROC*, a *ROC* can be considered as an auditor in a broad sense when they conduct the function as an auditor. From this point of view, the recent tendency of the *ROCs* is that they are trying to expand their designation, expressing their function as '*revisão/auditoria*' (Rocha, 2006, p. 27). In addition, the statute of ROC has another characteristic. The function of a ROC is only recognized in the Portuguese legal framework, whereas that of audit is widely acknowledged at a European level (Rocha, 2006, p. 29). The author himself raises some questions regarding the universality of ROCs, for example, whether this specific profession in Portugal would be recognized in another country such as the USA.

When it comes to business practice, audit and '*revisão legal*' are clearly distinct both in terms of their function and of concept (Rocha, 2006, p. 30). Decree-Law 487/99 of 16/11 claims that '*revisão legal das contas*' is based on a legal provision and '*auditoria às contas*' results from statutory or contractual provision. For that reason, it appears that for business owners, the audit is considered as a necessity and the '*revisão*' as an obligation (Rocha, 2006, p. 29). The '*revisão oficial das contas*' can be considered, to a certain extent, as a kind of replacement of the tax authority in terms of its tax inspection, although "inspection, supervision, review and audit are not the same thing in their origin, concept and nature[18] [my translation]" (Rocha, 2006, p. 30). While '*revisão*' implies legality, audit is associated with actions of improvement derived from the entity, whether it is an internal audit or an external audit. It has something to do with an introduction of improvement and thus the initiative is always addressed by entities, fiscal administration, and the general public (Rocha, 2006, p. 30). '*Auditores*' are

[18] [Origianl] "*(a) inspecção, a fiscalização, a revisão e a auditoria não são em origem, conceito e natureza a mesma realidade."*

responsible for accompanying these improvement actions in order to ensure their implementation.

The point can be summarized as follows: in Portugal, there are two different terms that can be translated as 'audit' when they are translated in English – '*auditoria*' and '*revisão legal das contas*'. The two terms, however, refer to completely different realities and concepts. '*Revisão legal das contas*' has a legal basis and is a legal obligation for a certain group of companies, while audit ('*auditoria*') is carried out on a contractual basis, and its execution is derived from a company's necessity – i.e. desired by the company, in order to find points to correct so that it can introduce some improvement to the company. '*Certificação legal de contas*' is emitted through '*revisão legal das contas*' performed by '*revisores*', while '*certificação das contas*' is something to do with the result of the audit, performed by '*auditores*'. Activities of '*revisão*' and other related services are specifically directed to the '*revisores*' and the activities of audit are the responsibility of '*auditores*' (Rocha, 2006, p. 31).

The ROC belongs to the supervisory board or can be a '*fiscal único*', performing, in terms of its function of '*revisão*', the role of a kind of tax inspector. This profession is responsible for verifying the legality and supervises the management of the company, as well as denouncing possible crimes if they are classified as public (Rocha, 2006, p. 31). The actions of audit, on the other hand, are not related to legality but are intimately linked with the verification of control and improvement of the company. The external audit, for example, is performed when there is a necessity or at a request by a company, and it will be executed by an external auditor, who is completely independent of the company requesting the service. The work of external auditor is facilitated if internal auditing and control are well maintained (Rocha, 2006, p. 31). The following table illustrates the different points in comparison between the 'r*evisão legal das contas*' and audit ('*auditoria*'), based on the information stated above.

*Table 4.42 : Comparison between the 'r*evisão legal das contas*' and audit ('*auditoria*')*

	Revisão legal das contas	**Audit ('*auditoria*')**
Performed by	*Revisores*	*Auditores*
Belong to	A member of the supervisory board or *fiscal único*	Can be '*auditor externo*' or '*auditor interno*'
Basis	Legal	Statuary or contractual (not legal)
Certification	*Certificação legal das contas*	*Certificação das contas*
Objective	Obligation	Improvement (in quality, environment, accounting, IT, management, operational and others)
Companies subjected to	9 % out of 290 mil companies in Portugal (*sociedades anónimas, uma parte das sociedades por quaotas, empresas públicas, Caixas de Crédito Agrícola Mútuo*, among others)	All the companies and entities

Adapted from Rocha (2006)

Let us return now to the initial question of whether it is necessary to analyze how terms such as '*kansayaku*' could be translated into Portuguese, and whether English interferes with the fair linguistic transfer. The term '*kansayaku*' refers to a profession peculiar to Japanese culture as well as its custom. Depending on the circumstances, there may be cases when the English translation of '*kansayaku*' as 'auditor' and '*auditor*' as the corresponding term in Portuguese can be accepted. The combination of the translation ''*kansayaku*' = auditor (EN)' and 'auditor (EN) = '*auditor*'' are also widely accepted in general, and confusion may not be caused even if it is applied, when the context requires rather simple solutions. In other cases, however, it would be

necessary to go through the texts carefully to pick up the best term for the context. If we recall the characteristics of '*kansayaku*', these were also totally distinct from those of internal or external auditors.

In addition to the function of auditing, '*kansayaku*' belong to the supervisory board of a company, being also in charge of the supervisory function. Bearing this in mind, some common features can be observed between '*kansayaku*' and '*revisor legal das contas*', such as: (1) they both are supervisory board members; (2) they both can be involved in auditing actions (according to DL nº 487/99 of Portugal, which suggests that audit is exclusively reserved for auditors registered in the Order of ROC.). Conversely, there is no mention that the activities of the Japanese profession '*kansayaku*' is based on legality from the aforementioned research. Further analysis would be desirable before fully confirming the authenticity of the translation combination ''*kansayaku*' = '*revisor legal das contas*'' but it is too involved a subject to be treated here in detail. Therefore, there is room for further investigation.

4.5.2. 公証人 *kōshōnin*; notary / notary public; *notário*

The term 公証人(*kōshōnin*; notary / notary public) is another example where there is a possible discrepancy not only between the SL and the intermediary language but also between the SL and the TL if we look into the details. One of the descriptions in the Companies Act that involves the term is as follows:

Table 4.43 : Article 30 of Japanese Companies Act

Japanese (original)	**English (translation)**
（定款の認証）	(Certification of Articles of Incorporation)
第三十条　第二十六条第一項の定款は、**公証人**の認証を受けなければ、その効力を生じない。	Article 30　Articles of incorporation set forth in Article 26(1) shall not become effective unless they are certified by a **notary public**.

Data from CAC-JaPo

A 公証人 *kōshōnin*, in the first place, is a profession that elaborates deeds and certifies private legal documents in general. This profession exists in Japan and Portugal, and, according to some theories and to some extent, a similar role can be found also in the Common Law systems, namely in the USA (notary public, as it is translated in the provisional translation offered by the Japanese authority as above). However, its nature may vary between legal systems and sometimes even from nation to nation. The main reason for this difference can be found in the background of this occupation.

It is said that the history of the notary as a profession goes back as far as the Egyptian Age, and was developed mainly during the Roman Empire in the Civil Law. It is therefore easy to understand that, in American Common Law, the profession known as 'notary public' should be considered as the counterpart of the Japanese 'notary' in Civil Law. Although the same term is employed in these denominations, there are some resources which make a clear separation between the Civil Law notary and the notary public of the USA, to which attention should be paid as they are different in nature (Piombino, 2011; 久保内, 2010). There is even an opinion that denies the existence of notaries in the USA or UK. Rossini (1998) affirms that there is no profession in the USA or UK similar to the notaries known in continental Europe, and professes that the lack of this knowledge is causing much confusion (p. 222). In addition, if one looks carefully into the scope of the tasks of notary, one will find that there is a gap even within Civil Law nations. The term 公証人 *kōshōnin* runs a risk of causing confusion and it is worth devoting a little more space to examining what this term stands for in each jurisdiction. Focusing on the fact that the Japanese term is translated as 'notary public', which is an American profession, in the provisional translation presented by the Ministry of Justice of Japan, the analysis here concentrates on the characteristics of this occupation mainly in Japan, the USA and Portugal, although a small description of notaries public in the UK will also be given.

- 公証人 *kōshōnin* in Japan

The profession of 公証人 *kōshōnin* was introduced into Japan sometime between the late 19th century and the beginning of 20th century. The Notary Act, which was influenced by French and German laws, was enacted in 1909 (久保内, 2010, p. 3). From this historical background, and including the other aspects that have been presented in this study, one could presume that the system of notary in Japan is based on the Civil Law regime. According to the Japan National Notaries Association (日本公証人連合会, 2018), the tasks of Japanese notaries can be mainly divided into three: preparing notarial deeds, granting authentications of private documents, and certifying the fixed-date (attesting the existence of a private document on that particular day.).

A 公証人 *kōshōnin* in Japan is a government worker. According to the Japan National Notaries Association, this is one of the characteristics which differentiates a notary from lawyers and judicial scriveners, since, unlike the latter, who perform a duty for the benefits of their client, notaries are required to be fair as well as neutral because they are civil servants (日本公証人連合会, 2018). Therefore, a 公証人 *kōshōnin* is chosen by experienced judges or public prosecutors (Notary Act 13), or from experienced practitioners who are qualified as lawyers or the equivalent (Notary Act 13, No.2). In either case, a 公証人 *kōshōnin* is nominated by the Minister of Justice. This is one of the characteristics of this occupation: a legal profession qualification is an obligatory condition in many countries in Civil Law systems (久保内, 2010, p. 3). Although a 公証人 *kōshōnin* is recognized as a government worker, there is no salary or subsidy provided from the government. Instead, their business is run on the basis of commissions defined by the government. There are approximately 500 notaries and approximately 300 notary's offices in Japan (日本公証人連合会, 2018).

- Notary public in the USA

With some exceptions, unlike their counterparts in Civil Law system who exercise legal powers, a notary public in the USA does not enjoy any legal power (Piombino, 2011). American notaries public are mainly responsible for the certification of

signatures and creation of affidavits, as well as taking depositions from witnesses (Rossini, 1998, p. 222). Their duties are rather focused on certifying the factual acts. They do not have the power, like their Civil Law counterparts, in relation to the tasks which require legal qualifications, such as preparing notarial deeds (久保内, 2010, p. 3). Rossini (1998) calls attention to the 'notarial deed' existing in Civil Law systems:

> The continental European notary is usually a trained lawyer who is required to oversee the form, content and execution of certain deeds embodying permanent legal acts and required in strict form. Notarial deeds are not used in the UK or the USA. (p.222)

Taking these points into account, Lawrence and Lewis (2018) stress the difference of the missions of an American notary public from the others, stating as follows:

> In the USA, the job of a notary public is to authenticate that the person is really the person who is signing the document. It is not your job to understand WHY someone is selling a property, or WHY someone needs a Power of Attorney (although understanding those things often helps a great deal); it is your job to authenticate the signature. (The underlining is in the original.)

The nature of missions of this kind facilitates accessibility to this profession. Considering that a notary's service is only to attest the factual acts, legal qualifications are not required in order to be a notary public in the USA (Rossini, 1998, p. 222; 久保内, 2010, p. 3). One just needs to receive some training in order to become a notary public, and can establish a notary office practically anywhere. Civilians and even employees of a company can easily become notaries public, which make mass-production of the tasks such as signature certification and creation of affidavits easier, with the result that there are 3 to 4.5 million notaries public in the USA (久保内, 2010, pp. 3-4). The following is an extract from a handbook for immigration related processes which demonstrates the nature of this occupation in the USA:

> If a bank, insurance company, school, or other institution asks you to get a document *notarized*, it means you should not sign it until you are in the presence of a notary public. (Banks, courthouses, real estate agencies, and car dealerships often have a notary on staff – just walk in and ask.) The notary will ask you for an ID, watch you sign the papers, and stamp the papers with a **notary seal** and sign them. The notary may charge a few dollars for this service. (Livingston, 2004, p. 93)

- Notary public in the UK

The reality of notaries public in the UK is well summarised by Mota, Buhigues, and Moreno (2011) as below:

> In the UK, notaries public do not have the same *quasi*-judicial function as they have in many civilian jurisdictions, and are not able to create authentic acts in the sense of enforceable documents having a status equivalent to that of a court decree. Such notarised documents as are issued in the UK may be relied on by judicial authorities and private persons in the UK and abroad as having probative status, but they are not enforceable *per se*. (p. 406)

From the above it is clear that the so called occupation of Civil Law notary does not exist in the UK (Rossini, 1998, p. 222). It is worth noting that there are some differences within the UK. For example, in England and Wales, a part of the notaries' activities is controlled by the Public Notaries Acts of 1801 and 1843, and the other part is regulated by the rules of the Master of the Faculties. In Scotland, on the other hand, notaries must be solicitors, being required therefore to have the legal professional qualifications as in the Civil Law system (Mota *et al.*, 2011, p. 406).

- *Notário* in Portugal

As it belongs to the Civil Law system, Portugal supposedly shares the same understanding regarding this occupation with Japan. The following description of Holtom and Howell (2003) also corresponds to that of their counterparts in Japan:

> The notary is a special type of lawyer. They are partly public officials but also in business, making their livings from the fees they charge for their services. (p. 148)

Therefore, *notários* in Portugal have almost the same characteristics as notaries in Japan: they are civil servants and are required to have legal professional qualifications. However, the situation changed in 2004, with the implementation of *Decreto-Lei n.º 26/2004 de 4 de Fevereiro*, which imposed the 'privatization' of notaries (Jardim, 2015, pp. 1-2). This means that today Portuguese notaries are liberal professionals – i.e. either self-employed or company-employed, unlike their Japanese counterparts. Before the privatization, the number of notaries and their location areas were defined by legislation, which indicated the total number of notaries in Portugal as 543 (Diário da República, 2004). According to Ordem dos Notários Portugal (2018), the notary employs nearly 1400 people today.

In addition, the scope of the responsibilities of notaries in Europe, including Portugal, is sometimes different from that in Japan. In general, notaries in Europe deal with a much wider range of notarized work. They include the preparation of contracts, testamentary notarization, registration procedures, and even the execution of wills, whereas notaries in Japan merely engage in peripheral tasks beyond the elaboration of deeds (久保内, 2010, p. 3). It is essential to understand this difference in the scope of work, and even vital in some cases. As the legal systems of Portugal and Japan belong to the same family, one may make an important mistake by blindly assuming that they work in the same manner. Bearing in mind that their missions do not totally correspond may help to understand both cultures.

Table 4.44 : Comparison among 公証人 kōshōnin, notary public and notário

Country	Japan	USA	Portugal
Denomination	公証人 *kōshōnin*	notary public	*notário*
Legal system	Civil Law	Common Law	Civil Law
Status	Government worker	- Company employed - Self-employed	- Company employed - Self-employed
Qualification	Legal profession qualification	No legal training required	Legal profession qualification
Occupational background	- Judge - Public prosecutor - Lawyer - Legal qualification equivalent to above	- Civilians - Employee of a company	Lawyer
Number of notaries in the country	Approx. 500	3-4.5 million	Approx. 1400
Scope of work	- Preparation of notarial deeds - Authentication of private documents, - Certificaton of the fixed-date	- Attestation of the genuineness of document - Certification of the signature	- Preparation of contracts Testamentary notarizations - Registration procedures - Execution of wills

Adapted form 久保内 (2010), Rossini (1998) and Diário da República (2004)

4.5.3. 取締役会 *Torishimariyaku-kai*; Board of Directors; *Conselho de Administração*

The structure of a business organization is another theme that reflects the different points of view in each culture in relation to the so-called 'corporate governance'. Interestingly, when observed closely, it becomes clear that the conventional comparison of Common Law vs. Civil Law does not apply in this field. Although it was mentioned earlier that Common Law is a *one-tier* system and Civil Law is generally a *two-tier* system, the classification is rather complex. In Japan, the Board of Directors should consist of all directors as described in the following (Article 263).

Table 4.45 : Article 362 of Japanese Companies Act

Japanese (original)	**English (translation)**
（**取締役会**の権限等）	(Authority of **Board of Directors**)
第三百六十二条　**取締役会**は、すべての取締役で組織する。	Article 362　**Board of directors** shall be composed of all directors.
２　取締役会は、次に掲げる職務を行う。	(2) Board of directors shall perform the following duties:
一　取締役会設置会社の業務執行の決定	(i) Deciding the execution of the operations of the Company with Board of Directors;
二　取締役の職務の執行の監督	(ii) Supervising the execution of the duties by directors; and
三　代表取締役の選定及び解職	(iii) Appointing and removing Representative Directors.

Data from CAC-JaPo

- The Anglo-Saxon *one-tier* system and the Continental (German) *two-tier* system

As mentioned earlier, it is still globally assumed that there are two main streams of business structures in the world: *one-tier systems* and *two-tier* systems. *One-tier* systems are the structures employed by Anglo-Saxon countries, namely the USA and the UK. In the USA, the Board of Directors is responsible for the governance of the company, while the practical management is performed by executive officers headed by a CEO (Chief Executive Officer), appointed by the Board of Directors. This is the organ where much of a company's power is concentrated (Roach, 2014, p. 65). The Board of Directors monitors the performance of the executive officers, separating in this way the supervisory function from the executive function. The intentions of the shareholders can be easily reflected in this system, since the directors of the Board are elected by the shareholders during a general meeting. (However, a general shareholders' meeting is not counted as a tier).

From the perspective of separating supervisory and executive functions, it is desirable that the Chairman of the Board and the CEO should be separate. This is one of the points where a different attitude toward the independence of the management can be seen between the two main Common Law nations. In the UK, this independence of the Board of Directors has been secured by appointing a different person for the Chairman of the Board and for the CEO (田村, 2002, p. 53), although "the British Act says very little about what the board is to do or how its members are to be appointed" (Roach, 2014, p. 13). In the USA, on the other hand, it is common to see the same person double as the Chairman of the Board and the CEO (田村, 2002, p. 53). Instead, the majority of the members of the Board should be outside independent directors in order to maintain the independence. Unlike the *one-tier* systems, the continental counterparts – especially in Germany – are famous for opting for *two-tier* systems. Here, the Board of Directors is divided into two bodies: the supervisory board and the management board. The Management Board (*Vorstand*) conducts business operation and the Supervisory Board (*Aufsichtsrat*) is responsible for supervising their performance. It is legally prohibited to hold both posts concurrently, thus separating the executive and supervisory functions (有限責任監査法人トーマツ, 2017, p. 12). This separation of

the Board is definitely not required in, for example, the British Act (Davies *et al.*, 2016, p. 13). Here, the difference within Europe can also be observed. In Germany, employing a *two-tier* system is mandatory and enforced by law (有限責任監査法人トーマツ, 2017, p. 12). However, in France, a company is free to select *one-tier* or *two-tier* organization (末永 & 藤川, 2004).

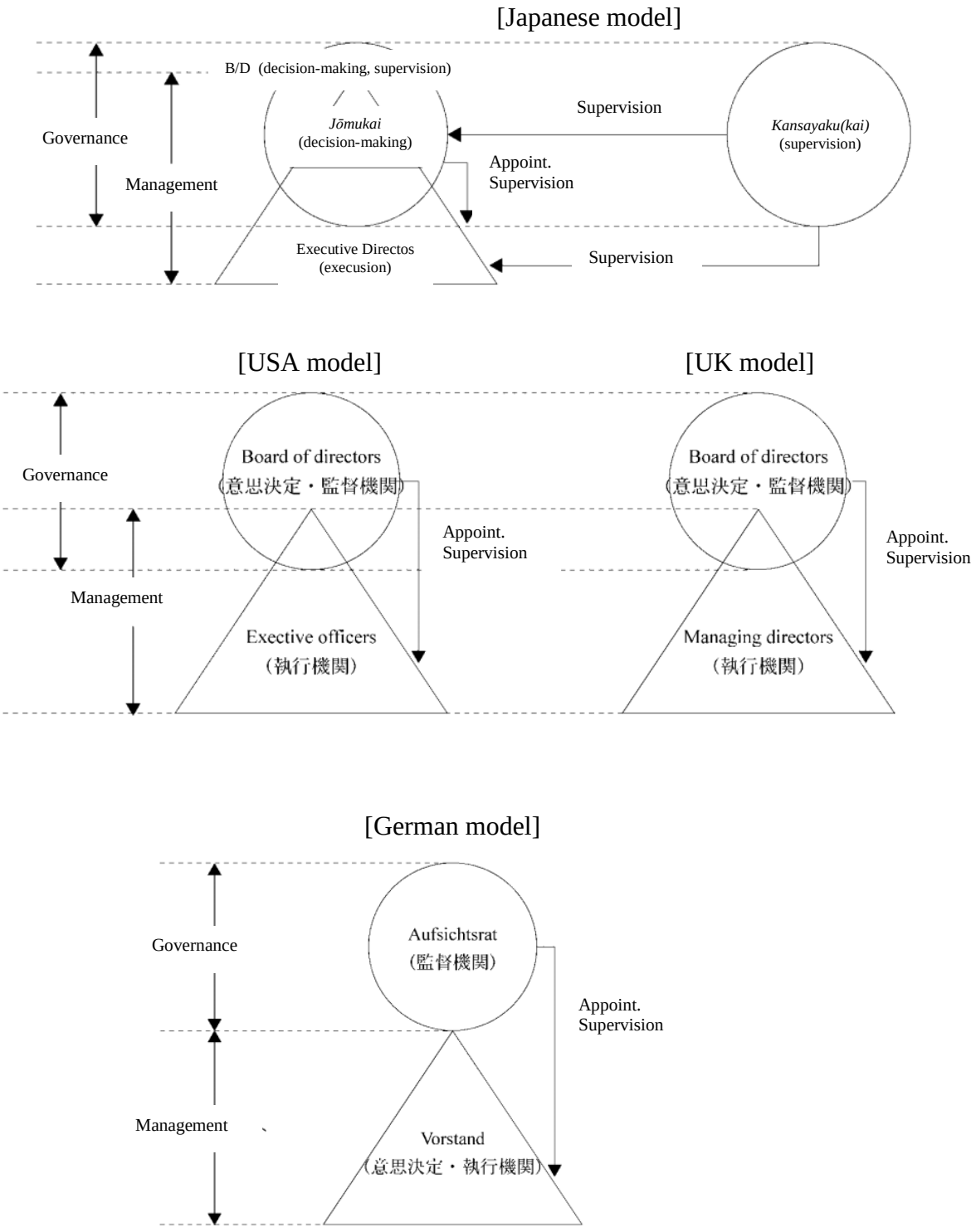
- Systems in Japan and Portugal

One may think that Japan and Portugal naturally opt for *two-tier* systems, since both countries belong to the Continental / Civil Law family. But this does not happen. Japan has rather a unique system and Portugal allows for more versatile options, similar to France.

To start with the historical background of the Japanese system, the company governance was already established as consisting of a shareholders' general meeting, a Board of Directors and a '*Kansayaku* (Audit and Supervisory Board, as described in the previous argument)' by 1899. This system is said to be based on the German and/or French system (末永 & 藤川, 2004, p. 5). Later in 1950, the American Board of Directors system was introduced, implementing simultaneously the position of representative/ managing director as an executive organ, which, as a result, enlarged and complicated the said organ (末永 & 藤川, 2004, p. 5). One of the most important characteristics of the Japanese governing system is that there is no separation between the supervisory function and the executive function, as the directors are usually responsible for the performance of the business (平田, 2003, p. 162; 末永 & 藤川, 2004, p. 8).

One scholar provides a scheme to explain the difference of Japanese system compared with other typical ones, distinguishing the Anglo-Saxon model as a 'unitary *one-tier*' system, the German model as a 'unitary *two-tier* system', and the Japanese model as 'binary *one-tier* system', as follows (平田, 2003, p. 160):

Figure 4.5 : Models of corporate governance



Adapted from 平田 (2003)

Currently, there are multiple company governing models in Japan. In 2002, even only within large companies, at least four models were coexisting (although a further explanation of each model is beyond the purpose of this study) (平田, 2003, p. 173). The implementation of the recent Companies Act secured deregulation of the design of business organization, as it allows for multiple options according to the size and development stage of a company (永井, 2015, p. 109).

As to the Portuguese system, the question of whether it belongs to the Anglo-Saxon model or to the Continental model remains uncertain. For example, Hopt (1998) describes Portugal as one of the countries that permit only *one-tier* systems. This view is supported by Alves (2014), as follows:

> The corporate board structure in Portugal is similar to those existing in other European countries. It consists of a single-tier system, without a separate supervisory board. The single board comprises the CEO, other executive managers, and non-executive directors. In this single-tier system, the prescribed role of non-executive board members is to protect the interests of shareholders in key decisions to the company. They are supposed to bridge the gap between uninformed shareholders and informed executive managers. (p. 25)

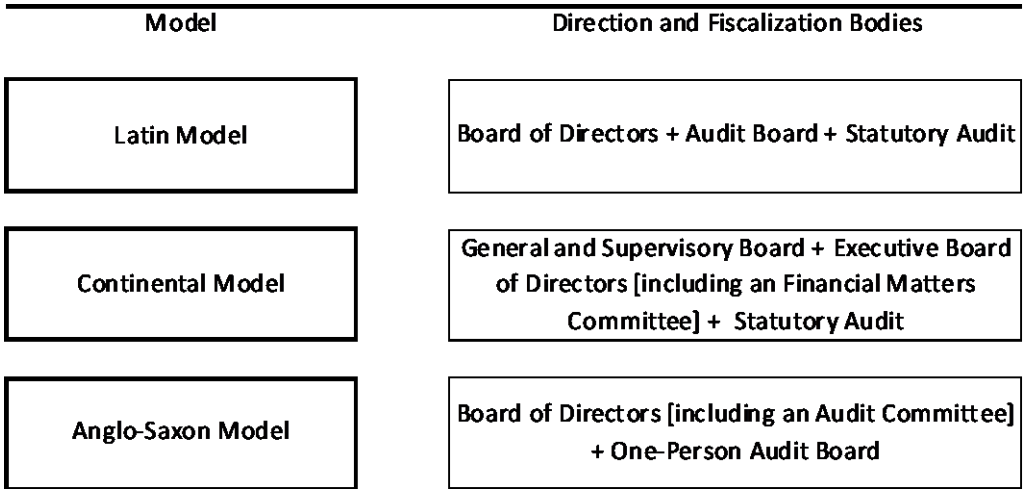
By contrast, another tendency can also be seen. A report published by the European Commission counts Portugal among the nations that offer both options (European Commission, 1996). The revision of Portuguese law in 2006 brought companies more options for structuring their businesses. This is supported by Alves and Mendes (2009), who affirms that now the law allows three options:

> The review of the Portuguese Companies' Code in 2006 and its entry into force in 2007 permitted the management and supervision of companies to be structured in one of three ways (see Figure 2):
> i) Board of Directors (Conselho de Administração), Audit Board (Conselho Fiscal) and Statutory Audit (Revisor Oficial de Contas) [Latin Model];
> ii) ii) Executive Board of Directors (Conselho de Administração Executivo, General and Supervisory Board (Conselho Geral e de

Supervisão), including a Financial Matters Committee (Comissão para as Matérias Financeiras) and Statutory Audit (ROC) [Continental Model];

iii) iii) Board of Directors (Conselho de Administração), including an Audit Committee (Comissão de Auditoria), and a One-Person Audit Board (Fiscal Único) [Anglo-Saxon Model]. The companies have to opt for one of these models, and cherry-picking practices are not allowed. (p. 331-332)

Figure 4.6 : Figure Post-2007 Corporate Governance Models



Adapted from Alves and Mendes (2009)

These three categories show that, at a legal level, Portugal offers multiple governing options, although many Portuguese companies still opt for the Anglo-Saxon one-tier system in reality.

Apart from these situations in the USA, UK, Japan and Portugal, there are some exceptions. For example, it is not impossible to have two-tier organs in the Common Law system in the UK[19]. However, the eclectic solution found in the Japanese and Portuguese systems highlights their characteristics. This is an example which shows that

[19] "Typically, there is only a single board in British companies, but there is nothing in the legislation to stop them establishing a separate 'management board' below the main board, and this is sometimes done" (Davies *et al.*, 2016, p. 13).

the idea of simply connecting Japan and Portugal with the Continental system should not be taken for granted.

4.5.4. 過半数; majority; *maioria*

This is a particular example that can be problematic, especially in the relation between Japanese and Portuguese. The term '過半数 majority' is frequently used as a method of making decisions in political and legal settings. Its general meaning of 'majority' is "the number of votes by which one political party wins an election; the number of votes by which one side in a discussion, etc. wins" (Turnbull *et al.*, 2010). The Japanese term '過半数 majority' is expressed in the following meanings in English (NICT, 2018):

1. **majority, bulk**
   the property resulting from being or relating to the greater in number of two parts.
2. **majority, absolute majority**
   more than half of the votes.

In a legal context, the meaning of number 2 is generally applied. However, there are cases in which a majority requires more than half of the votes, as in the last article of the following extract, which mentions that the term 'majority' should be read as 'majority of two thirds or more'.

Table 4.46 : Article 44 of Japanese Companies Act

Japanese (original)	**English (translation)**
（設立時取締役等の解任の方法の特則）	(Special Provisions on Method of Dismissal of Directors at Incorporation)
第四十四条　前条第一項の規定にかかわらず、第四十一条第一項の規定により選任された設**立**時取締役の解任は、その選任に係る発起人の議決権の**過半数**をもって決定する。	Article 44　Notwithstanding the provisions of paragraph (1) of the preceding article, the dismissal of Director(s) at Incorporation who is elected pursuant to the provisions of paragraph (1) of Article 41 shall be determined by a **majority** of the votes of the incorporators relating to such election.
５　前各項の規定は、第四十一条第三項において準用する同条第一項の規定により選任された設立時監査役の解任について準用する。この場合において、第一項及び第二項中「**過半数**」とあるのは、「**三分の二以上に当たる多数**」と読み替えるものとする。	(5)　The provisions of the preceding four paragraphs shall apply mutatis mutandis to the dismissal of Auditors at Incorporation who are elected pursuant to the provisions of Article 41(1) which shall be applied mutatis mutandis under paragraph (3) of such Article. In such case, the term "**majority**" in paragraph (1) and paragraph (2) shall be deemed to be replaced with "**majority of two thirds or more.**"

Data from CAC-JaPo

As this sentence suggests, in Japanese, the term ‘过半数 majority’ covers the general situations of majority, including that of two thirds or more. In Portuguese, on the other hand, there are at least three expressions regarding majority (*maioria*): simple

majority (*maioria simples*), absolute majority (*maioria absoluta*), and qualified majority (*maioria qualificada*). A website which introduces how the Portuguese Parliament works explains the difference as follows (IMPRESA, 2008):

- **Simple majority (*maioria simples*):**
  "This is a general rule in voting on the deliberations of Parliament and means that the majority of the present deputies vote in favor". For example, 150 out of 230 members are present, 76 (75+1) votes in favor are necessary.

- **Absolute majority (*maioria absoluta*):**
  "The number of votes required to approve certain legislative initiatives. The absolute majority means that half of the elected deputies plus one vote in favor". For example, in the case of the Portuguese Parliament, with a total of 230 deputies, 116 (115+1) votes in favor are necessary.

- **Qualified majority (*maioria qualificada*):**
  "The number of votes favourable to enable initiatives and resolutions must exceed two thirds or four fifths of the elected deputies".

From the above, it is clear that the terms '过半数 majority' in the aforementioned Japanese articles refer to two different terms in Portuguese. The former '过半数 majority' is most closely equivalent to a simple majority (*maioria simples*), and the latter '过半数 majority' stands for a qualified majority (*maioria qualificada*). It should be concluded, from these examples above, that it is useful to know that there are more detailed definitions for the term 'majority' in other languages, as that knowledge would help a translator to provide a more precise translation.

4.6. Example of terms which need special attention in the original language

There are several terms that gain different meanings from their ordinary ones when they are employed in a legal context. In a normal everyday context, the word means ‘A’, but, when it is used in a legal document, it can mean ‘B’. This knowledge of the polysemy of terms is very important for legal translators, since the lack of this perception can lead to misreading of the texts. The issue is related to the knowledge regarding the source language and the source legal system.

4.6.1. 社員; ‘partner’ ≠ ‘employee’

One of the examples is the term 社員. In the Companies Act, the term 社員 is frequently used as in the description below:

Table 4.47 : Articles 580 and 590 of Japanese Companies Act

Japanese (original)	**English (translation)**
第二章　**社員**	Chapter II **Partners**
第一節　**社員**の責任等	Section 1 Responsibility of **Partners**
（**社員**の責任）	(Responsibility of **Partners**)
第五百八十条　**社員**は、次に掲げる場合には、連帯して、持分会社の債務を弁済する責任を負う。	Article 580 **Partners** shall be jointly and severally liable for the performance of obligations of the Membership Company in the cases listed below: ….

（業務の執行）	(Execution of Business)
第五百九十条　社員は、定款に別段の定めがある場合を除き、持分会社の業務を執行する。	Article 590 A partner shall execute the business of the Membership Company, unless otherwise provided for in the articles of incorporation.
２　社員が二人以上ある場合には、持分会社の業務は、定款に別段の定めがある場合を除き、社員の過半数をもって決定する。	(2) In cases where there are two or more partners, the business of the Membership Company shall be determined by a majority of the partners, unless otherwise provided for in the articles of incorporation.
３　前項の規定にかかわらず、持分会社の常務は、各社員が単独で行うことができる。ただし、その完了前に他の社員が異議を述べた場合は、この限りでない。	(3) Notwithstanding the provisions of the preceding paragraph, each partner may perform the ordinary business of the Membership Company individually; provided, however, that this shall not apply in cases where other partners raise objections before the completion of

	the same.

Data from CAC-JaPo

The word 社員 *shain* in Japanese consists of the letter 社, which means 'company', and another letter 員, which means 'member'. The term that consists of these two characters is normally referred to as 'employee'. However, as can be inferred from the English translation above, the term gains different meanings in a legal context other than 'employee'. In the legal sphere, or more precisely in the context of Commercial Law, including the Companies Act, the term 社員 is used in a sense of 'partner' – i.e. a person who invested in the company – and not 'employee' (行政書士とみなが行政法務事務所, 2017). Furthermore, in the context of 持分会社 *Mochibun kaisha*, a 社員 'partner' is an investor and simultaneously an executor of business (Article 590 (1)), a member of the company's decision-making organization (Article 590 (2)), as well as a representative of the company. There is no clear separation between ownership and management in 持分会社 *Mochibun kaisha*, therefore, a 社員 'partner' in this context refers to as a person who assumes simultaneously the role of shareholder, a member of the Board of Directors, and the Representative Director. The following diagram shows the meaning of 社員 *shain*, which differs depending on each context.

Figure 4.7 : Meaning of 社員 shain

社員 ***shain***	
- **Ordinary meaning :**	Employee
- **Commercial Law context:**	Partner (person who invested in the company)
- **持分会社 *Mochibun kaisha* context:**	Partner • Shareholder (investor) • Board of Directors • Representative Director

What has to be noticed here is that this special meaning of the term 社員 *shain*, different from the ordinary one, is specific to the legal sphere of a country and it can be even slightly different depending on its sub-categories. This shows that, in order to understand and translate the original text correctly, one needs to have knowledge of not only the general legal terms of the original language, but also of the legal terms in a specific legal domain. Even if the original language of the text is the translator's mother tongue, if the translator does not have enough knowledge of legal terms and their characteristics in the original language, producing a correct interpretation of the text will be difficult. For instance, in the present case, if a translator does not know the fact that the term 社員 *shain* stands for 'the person who invested money in the company' and its meaning can even be different in the more specific context of 持分会社 *Mochibun kaisha*, there is a possibility that the translator may use the term 'employee' instead of 'partner'.

4.6.2. 謄本 *tōhon*: '(certified) copy / transcript' = complete copy

The term '謄本 *tōhon*' and the following '抄本 *shōhon*' often appear in legal texts. In addition to the fact that they sound similar, they are generally used in a sense of an 'official copy' of a document. Even Japanese citizens sometimes do not understand the difference between these two. They are frequently regarded as 'official copies' in a general context, but when analized in detail, their contents are distinct.

Table 4.48 : Article 31 of Japanese Companies Act

Japanese (original)	**English (translation)**
（定款の備置き及び閲覧等）	(Keeping and Inspection of Articles of Incorporation)
第三十一条	Article 31
二　前号の書面の**謄本**又は**抄本**の交付の請求	(ii) A request for a **transcript** or **extract** of the articles of incorporation referred to in the preceding item;

Data from CAC-JaPo

The term '謄本 *tōhon*' refers to a 'certified copy', especially in a sense of 'transcription' (2011-2016). According to the National Institute of Information and Communication Technology, NICT (2018), there are two meanings for the term:

1. Copy (a thing made to be similar or identical to another thing)
2. Copy, transcript (a reproduction of a written record, e.g. of a legal school record)

For legal purposes, the problem is point 2: copy / transcript. As it is expressed in the explanatory description, '謄本 *tōhon*' suggests a reproduction of a documentary register, i.e. – a complete copy of the whole registration, including all related history and matters.

The term ‘謄本 *tōhon*’ is widely used in multiple Japanese regulations. This is also obvious from this very article of the Japanese Companies Act, which was established in 2005 and these terms can still be found. However, one of the issues that Japanese readers should pay attention to regarding this term is that this ‘謄本 *tōhon*’ itself is not available anymore in a strict sense today. In the old days, the registration of information was kept in the form of a register as written records. The ‘謄本 *tōhon*’ used to indicate a documentary copy emitted by the legal affairs bureau, transcribing all the data registered in the original register (Ministry of Justice of Japan, 2018b). However, the registration in written form has come to an end. Since the revision of the Commercial Registration Act in 1989, digitalization of data has replaced the paper-based system. Consequently, in a true sense, the real ‘謄本 *tōhon*’, which is a documentary copy of the paper-based register, has also disappeared, together with the written register. Strictly speaking, today what a Japanese citizen can obtain as an equivalent document of ‘謄本 *tōhon*’ is the ‘履歴事項全部証明書 Certificate of full registry records/ Certificate of complete historical records (hereinafter referred to as Certificate of complete historical records)’ (Ministry of Justice of Japan, 2018c), which is a certified document with all the history registered up to the time, including previous changes in registrations. Other regional authorities in Japan also assume and explain that ‘謄本 *tōhon*’ and ‘履歴事項全部証明書 Certificate of complete historical records’ are to have the same legal effect and that ‘謄本 *tōhon*’ had been replaced by the ‘履歴事項全部証明書 Certificate of complete historical records’ (Kunitachi City, 2018; Regional Legal Affairs Bureau in Matsuyama, 2018). It can be concluded therefore that ‘謄本 *tōhon*’ means ‘履歴事項全部証明書 Certificate of complete historical records’ (Ministry of Justice of Japan, 2018b). It is consequently important to bear this fact in mind, and note that, depending on the specific situations, the term ‘履歴事項全部証明書 Certificate of complete historical records’ might be more adequate than the conventional term ‘謄本 *tōhon*’ in some cases.

4.6.3. 抄本 *shōhon*: 'extract copy' = partial copy

As explained above, both the terms '謄本 *tōhon*' and '抄本 *shōhon*' are sometimes used as synonyms in a sense of 'copy'. However, it is also true that the two terms are compared as antonyms (三省堂編修所, 2014). In comparison to'謄本 *tōhon*', the term '抄本 *shōhon*' is indicated as 'extract copy' (Minamide & Nakamura, 2011-2016). The Japanese Law Translation Database System shows the following possible translations in legal contexts (Ministry of Justice of Japan, 2018a):

1. extract
2. abridged copy
3. copy

Overall, the characteristic of a '抄本 *shōhon*' is that it is an official 'partial copy', certifying a part of the fact registered in the register. This is the biggest difference from '謄本 *tōhon*'. The same as '謄本 *tōhon*', '抄本 *shōhon*' is not available anymore in a strict meaning. Instead, '登記事項証明書 Certificate of registered matters' serves the same objective, for which, according to the Ministry of Justice of Japan (2018b), there are the following four types (my translation):

(1) Certificate of All Present Matters

A document attached to the certification statement with only registered matters that are currently in effect.

(2) Certificate of Complete Historical Records

A document attached to the certification statement which includes all registered matters, including the history of previous registration changes. This document is equivalent to a '謄本 *tōhon*', i.e. – Certificate of complete historical records.

(3) Certificate of Removed Matters

A document attached to the certification statement which includes a history of merger and acquisition, as well as of relocation of head office.

(4) Certificate of Registered Matters in Respect of Representatives

A document attached to the certification statement which contains matters concerning the representatives of the company currently in effect.

As can be confirmed through the description above, (2), the Certificate of complete historical records is equivalent to the aforementioned '謄本 *tōhon*'. It also becomes clear that all the other three types are documents that authenticate a part of the registration data. It seems reasonable to conclude, therefore, that all the three types (1), (3) and (4) are referred to as '抄本 *shōhon*'. In other words, when '抄本 *shōhon*' is required by a Japanese authority, one is expected to obtain one of these three documents, depending on the matters that should be proven. As in the case of '謄本 *tōhon*', however, the term '抄本 *shōhon*' is also still widely in use in legal settings in order to express the idea of a certified 'partial copy' of a document. For this reason, in the same way when using '謄本 *tōhon*', it is important that a translator recognizes this fact in relation to the certified documents on registration, bearing in mind that there are three types of certification. There is room for argument on this point, as to whether the term '抄本 *shōhon*' should be simply translated as 'extract / partial copy', or instead, the three types of certificate should be specified, depending on the situation.

Chapter 5. - Results and discussion

The analysis and observation of some legal terms in the preceding chapter was based on a situation which is becoming increasingly common for translators: searching for a corresponding term between two non-English languages (Japanese and Portuguese), using two varieties of English (USA and UK English) as their references. In this chapter, the results found in the analysis will be discussed, so that the findings of this study can serve as better references for the future.

As Drolshammer and Vogt (2003) aptly pointed out, the common use of English in the legal sphere is obscuring the conceptual border among the various legal systems and cultures in the world (p. 27). This implies the risk of using English as a lingua franca in legal context. The process of opacification is described as follows:

> From a practitioners' perspective it seems that law often follows language and language often carries the law. Furthermore, it appears that form (language) begins to govern substance (law) through translation and the terminology of the language into which legal concepts are translated as well as the terminology of the language from which legal concepts are translated take on a life of their own.
>
> Once a legal concept such as breach of contract starts to be used – by translation or otherwise – with regard to e.g. one of the continental European legal systems, the notion of breach as perceived in the Anglo-American legal system starts to impact the approaches under the applicable substantive (continental European) law. (p. 57)

In order to avoid this opacification and retain the identity of one's own legal culture, therefore, it is of absolute importance to have a better understanding of English as a technical legal language, and, to do so, it is essential to understand the legal system that underlies it (Drolshammer & Vogt, 2003, p. 27). Some of the potential risks of English as a 'bridge' language could be discerned throughout the comparative analysis in this study, and now I intend to bring them to light in order to discuss possible solutions.

As already mentioned in the section on terminology, terminological choice is one of the most challenging aspects for legal translators. The pitfalls can be found both in

intra- and inter-linguistical spheres. In intra-linguistic cases – i.e. within a single language – the issue often arises with semi-technical terms, since they contain more than one meaning in everyday life and in the field of law respectively, such as ‘offer’, ‘consideration’, ‘performance’, ‘remedy’, and ‘assignment’, as discussed in Section 1.2 of Chapter 1. One good example of this case was found in the present study with the term 社員 *shain*. The general meaning of this word is ‘employee of a company’, while in the specific context of Japanese Companies Act it should be read as a ‘partner’ who invests in the company. In inter-linguistic cases (i.e. between/among multiple languages), it involves various aspects from the difference of legal systems to the method of writing (such as alphabet and characters), the very causes that are making legal translation so complex. What are, then, the criteria for selecting one term and not another? What standard should a translator be faithful to, the original text, the legal system of the target readers, or the translated information produced by an authority?

In order to tackle these terminological issues, various discussions have been undertaken, as demonstrated in the Chapter1: Literature Review. Many scholars argue that the degree of difference of legal systems involved comes to play a significant role in finding the terminological equivalence. For example, Beaupré (1987) considers that when the two legal systems are very close, the issue would be linguistic one – in the case, for instance, that “(t)he languages through which the concepts of the two similar legal systems are expressed may belong to quite different families, the search for legal equivalence becomes a major exercise in lexicography” (p. 741-742) .

The present study, however, demonstrates that the issue has rather more to do with legal concepts themselves (i.e. terminology) than with matters of dictionary (i.e. lexicography). In the specific case of Japanese law and Portuguese law, they can be considered similar in the nature of legal systems, but their languages are distinct. According to Beaupré (1987)’s theory, the major problems encountered in cases like this should be linguistic ones. The problems observed through this study, however, have rather more to do with the concepts themselves. It indicated that some of the major concepts, such as 合資会社 *Gōshi gaisha*, and 監査役 ‘kansayaku’, do not correspond to the counterpart’s legal concepts.

Similarly, de Groot (1992) takes the position to defend that legal translation is more greatly affected by the difference between the legal systems than the difference of languages. He explains the degrees of translatability by suggesting four translational situations in relation to legal systems and languages. There, the difference among legal systems seems to be wrapped up in the difference of legal families. This tendency is also reported by Scarpa (2013), who alerts that "globalization has brought about transnational legal frameworks which tend to diminish the importance of national legislations" (p.71).

This becomes clearer from Cao (2007) argument, who supports his point of view and counts the difference among legal systems – namely, Common Law and Civil Law – as one of the big difficulties in legal translation (p. 30-31). This investigation shows that some legal concepts are different between SL and TL, and their differences are indeed derived from the legal systems, namely Civil Law and Common Law. However, some differences cannot be explained merely by the difference of these two major legal systems. The examples above, as well as the terms such as 公証人 *kōshōnin* and 取締役会 *Torishimariyaku-kai*, demonstrate that there are conceptual differences that are simply of culture-bound characteristics. These characteristics are something that depends on each country, owing to their historical, social, and cultural background. The cases found through this investigation imply that the difficulty does not lie only in the difference of legal families but also in each legal concept at a national level.

As for the four translational categorizations, Kocbek (2008) argues against de Groot (1992), claiming that his classification fails to include another possible scenario, which is the translation between legal systems that belong to the same legal family, using a lingua franca – namely English - that belongs to another legal system (p. 58).

Given the results found in this research, I totally agree with her point of view. Not only was this study based on this hypothesis, but also this scenario of using a lingua franca – English – is increasing, as was demonstrated earlier. There is, however, a point with which I do not agree in relation to her position. It is Kocbek (2008)'s opinion that legal language does not have any relation to legal systems and that the translatability of legal concepts is related less to the legal systems of the SL and the TL than to the

languages themselves. The outcomes of the present study, however, suggest that there are also difficulties at the language level. The terms that are used differently in a general context and a legal context within the same language/country demonstrate this difficulty. The possible pitfalls such as 社員 *shain*, 謄本 *tōhon*, and 抄本 *shōhon* seem to be derived from the linguistic aspect, when one lexicon offers more than two meanings, which suggests that they have rather less to do with the legal concept.

Overall, these points suggest that it is essential to bear in mind that a legal system has rather more to do with the cultural and historical background of each country than with simply grouping them into Civil Law or Common Law families. In this connection, I agree with de Groot (1987)'s opinion that the knowledge of comparative law and comparative legal terminology are important for legal translators, but in the sense of micro level – i.e. at the national level – and not macro level of legal families.

Returning to the initial questions in this chapter on selecting adequate terminology: when using English as a bridge language, as the first step, it is necessary to have enough knowledge of the UK legal system and/or the USA legal system, in addition to the national legal system of the SL and that of the TL, including its socio-cultural, historical, and linguistic background, in order to gather possible TL 'candidate' terms for the SL term that are as closely equivalent as possible. Then, as the second step, choose the closest term according to various conditions, such as the context and the objectives.

In my opinion as an experienced translator, the criteria to follow should depend on the objective of the target text in the real world situation. My view is in line with the *skopostheorie*. The *Skopostheorie* is "the theory that applies the notion of *Skopos* [purpose] to translation" (Nord, 1997, p. 27). It was initially presented by Reiss and Vermeer (2014), who believe that "any action is determined by its *skopos*" (p. 90), including the translation activity. In the same line, Nord (2006) also considers that the act of translating is a "purposeful professional activity" and asserts that the act of translation does not depend on the source text to follow the translation strategy but "the overall communicative purpose the target text is supposed to achieve in the target culture" (p. 142). She further proposes two types of translation: 'documentary' and

'instrumentary'. A 'documentary' translation focuses on the source text. Its objective is to 'document' messages that "a source-culture sender communicates with a source-culture recipient under source-culture conditions" (Nord, 2016, p. 32). An 'instrumental' translation, conversely, is target-oriented – i.e. it takes information delivered by the SL text and converts it according to the TL culture, serving "as an instrument for communication" in that culture (Nord, 2016, p. 32). If one applies this target-text-oriented theory to the issues discussed in this investigation, one may assume that if the translated text as the final product intends to offer no more than basic information (which is a 'documentary' purpose), probably the close corresponding definition of the system of the TL will do. If the objective of the client of the TL is to obtain the knowledge of the legal consequence in detail, translation should go further and provide related information as accurately as possible with a descriptive explanation. This would be an 'instrumental' perspective.

In order to analyse the circumstances better, let me identify roughly two possible situations: Case (A) – when the objective of the translation is merely informative; and Case (B) – when some kinds of legal consequence may affect the result of translation. Of course, in the real world of translation, many other kinds of situation can be considered. One such example is the case where the request of the client is to strictly follow the original text. This is a situation where one needs to translate a Japanese legal document as it is – i.e. maintaining the nature of the original document as well as following the Japanese legal system. Although this could be added as the third Case, I will focus on the first two situations for the convenience of the purpose of this study, for three reasons: (1) in order to enhance a much clearer comparison by limiting the target; (2) because the first two are the main situations that most translators face in reality; and (3) because, in the last mentioned scenario, the possible solution that can be considered would be generally the literal translation or borrowing, keeping the original terms.

As was discussed in Section 1.2.6, literal translation is applied if there is no literal equivalent in the TL. This used to be the best practice of legal translation. However, this method works as a good solution only when the SL term's meaning is clear enough and when it is sure that the corresponding TL term does not contain any other specific

meaning in its legal reality (Šarčević, 1991). If the literal translation is not successful, borrowing is employed. Šarčević (2000) defends its effectiveness when the term is already familiar enough to the readers. This is a good strategy if one can transfer the SL concept without altering it. However, in the opinion of de Groot and Rayar (1995), it should not be abused because the use of too much borrowings may reduce the readability for the readers. Nonetheless, these two methods can be useful in some contexts. One of my colleagues who translates for broadcasting news explained the other day that she uses only these two techniques for translating Japanese news into English for three reasons: 1) one does not know how much knowledge on Japan the receiver has; 2) in order to make the English texts as simple as possible; 3) in order to avoid adding any other information derived from the interpretation in English. This situation, however, is different from the context of the present discussion.

Case (A) is frequently seen when the translation is requested for an informative purpose. The priority of the scope of the translation in this situation is to give the client a general idea of the original content, and consequently, the corresponding terms. Another situation can be the one where the number of letters is limited due to space restrictions. Theoretically, the higher the affinity of translation, the better. Transferring the information as rigorously as possible is ideal, but there are cases in real life when this is not achievable. Such examples can be found in the localization of online information, subtitles and translation for narration of broadcasting, where the detailed explanation needs to be sacrificed simply because there is not enough physical time or space. In these cases, the translator needs to choose a term from which the TL reader can roughly grasp the idea. Here, for example, are a few lines from Ma (1997):

> There are two forms of partnership. The *gomei kaisha* is composed solely of partners with unlimited liability and is usually very small. The *goshi kaisha* comprises both partners with limited and partners with unlimited liability. (p.209)

From the preceding chapter, it became clear that '*gomei kaisha* (*Gōmei kaisha)*' and '*goshi kaisha (Gōshi kaisha)*' are not classified as partnerships in Japan; therefore, strictly speaking, the word 'partnership' is not conceptually or referentially correct. If,

however, the intention of Ma (1997) is to provide a general image of the Japanese entities so that the understanding of readers can be facilitated, the choice of this term can be said to be one of the appropriate options. Similarly, and in many other cases, if there is no direct equivalent available, the issue is solved by applying partial equivalents.

Another example can be seen even in basic, yet fundamental terms. The French term '*droit*' and the English term 'law' are habitually used as equivalents, but they are not conceptually identical (Cao, 2007, p. 57). The French term '*droit*' not only suggests the body of law itself, but also encompasses political science and morality that involve the social rights and duties surrounding it, while in English Common Law, 'law' refers more strictly to a body of regulations. Therefore, the two terms are not identical from both conceptual and referential points of view, although, in reality, they need to be used as equivalents in many cases, because there are no other alternatives that work functionally, and the other option is "simply unthinkable" (Weston, 1991, p. 57). Accordingly, the solution for this scenario would be employing the TL term that is closely or partially equivalent to that of the SL term.

Case (B) supposes that the client is looking for more detailed information, or the cases that the translated document may have some legal consequences. In this case, the solution described for the Case (A) is not suitable. Simplification may hide the meanings behind the word and can bring serious consequences to both the client and the translator. Here, the most appropriate solution would be to provide descriptive solutions, supplying necessary information to make clear the differences between the source and the target legal systems.

Additional explanatory notes are also recognized to be useful for translators in the EU governmental bodies (DGT/European Commission, 2012, p. 221). In order to be able to give such supplementary descriptions, the translator should have sufficient legal knowledge. This point is also stated by Alcaraz and Hughes (2014), who argue that, although apparently no legal qualification is required for translators, it is equally obvious that "they need a good working knowledge of the main outlines of both the Anglo-American system of law and the legal system of the other language in play" (p. 4). Hence, legal qualifications are not obligatory, but they certainly help and reinforce

the assurance of quality of translations. Their importance is also acknowledged by multinational organizations like the EU, where law graduate traineeship programmes are offered internally. The fact that the EU is "offering young law graduates an intensive and constructive translation experience" (DGT/European Commission, 2012, p. 202) underlines the importance of specialization.

According to these two Cases, let me now individually analyse each term from this point of view.

5.1. 合名会社 *Gōmei gaisha*

合名会社 *Gōmei gaisha*, was found to be relatively simple compared with other types of the same family. As this is the most basic business structure, the characteristics of the corresponding structures in each language are comparatively identical. It is very similar to a so-called 'Partnership' in Common Law system. However, the Japanese 合名会社 *Gōmei gaisha* is considered as a corporation with a separate legal personality, while the 'Partnerships' in the Common Law regime do not have legal personality. This difference may seem small; however, it may bring a big impact in practice, especially in taxation. 'Partnerships' in the USA and the UK enjoy a so-called 'pass-through taxation', whereas the business structure in Japan is subject to double taxation, since the tax will be imposed on both the firm and the partners. It is essential to know this difference in order to avoid eventual confusions and financial implications for the companies, especially when using English to explain or refer to this Japanese business entity.

According to the comparison, one may conclude that the corresponding term of the 合名会社 *Gōmei gaisha* in Portuguese should be *Sociedade em Nome Coletivo*. Therefore, the Portuguese term *Sociedade em Nome Coletivo* would serve as an adequate equivalent term for the Japanese correspondence in Case (A), since it will reproduce the idea similar enough to the target reader. However, even here, caution is necessary, as the same would not be the case for Cases (B). The Portuguese *Sociedade em Nome Coletivo* also has a legal personality and has almost the same nature as the

Japanese entity, except for the minimum number of partners required. The Portuguese *Sociedade em Nome Coletivo* requires the minimum of two partners, while it is possible to establish a 合名会社 *Gōmei gaisha* with only one investor. This may also be considered as a small gap; however, it is nonetheless necessary to be aware of this difference because this minor difference may also cause a potential confusion at the end of the day. Translation for Case (B) should make this point clear so that the TL reader can correctly recognize the difference.

5.2. 合資会社 *Gōshi gaisha*

Although it is classified as provisional, the translation provided by the Japanese government indicates that the equivalent term of 合資会社 *Gōshi gaisha* is 'Limited Partnership Company'. A corresponding business form to 'Limited Partnership Company', however, does not exist in the Common Law legal system. One of the decisive distinctions between the Japanese 合資会社 *Gōshi gaisha* is the fact that in all the other legislations – i.e. Portuguese, UK and USA – the general partners have the power to act on behalf of the firm and limited partners have no power to participate in the management. Another point which separates the Japanese model and the American one is that it is regarded as a pure 'partnership'; therefore, it is considered as the same as 'General Partnership': the taxation is paid by individual members and no tax will be imposed to the firm itself. With regards to federal tax, depending on the real state of the firm, the 'Limited Partnership' may belong to the category of 'association' and thus, treated as a 'Corporation'. This implies that, depending on the objective of the document, the choice of the term may lead to a legal consequence.

The term, 'Limited Partnership', as well as the business form is also available in England. The basic characteristics are identical to those of 'Limited Partnership' in the USA, namely regarding its membership structure as well as that 'Limited Partnership' is a true partnership and is a product of partnership law. Consequently, this business organization does not have a legal personality. However, attention should be paid that there are some differences even between the two Common Law nations. Not everything is the same between the USA 'Limited Partnership' and the UK 'Limited Partnership'.

One of the gaps between them was found in the tax system. Although it is normally treated as a partnership, in the federal tax context, the USA 'Limited Partnership' may be recognized as a corporation if the organization is functioning as such in practice. On the other hand, there is naturally no federal tax in England, and the 'Limited Partnership' is treated in accordance with the status of partnership, both from the legal and tax points of view. Additionally, it should be noted that there is another business that apparently resembles 'Limited Partnership': 'Limited Liability Partnership'. It is essential not to confuse them.

The equivalent Portuguese entity, *Sociedade em Comandita Simples*, has similar features to a 'Limited Partnership' in the USA and the UK. Although there are differences in the details, the principal characteristics of the Portuguese form are concentrated on the possession of legal personality and the conditions concerning the business name. In relation to the status of the firm, like the Japanese model, Portuguese law defines this entity as a 'Company' – i.e. it possesses legal personality. Therefore, the entity is subject to corporation taxation.

The observation regarding the 合資会社 *Gōshi gaisha* demonstrates that all equivalent forms in each language have differences to a greater or lesser extent. None of them has exactly the same features. For this reason, it is not difficult to imagine that a certain misunderstanding and eventually discrepancy can be caused when the term is translated into another language. Even if the translation is performed directly from Japanese to Portuguese, there is a structural gap concerning the management body. On the other hand, the gap between the Japanese form and that of the USA is even wider. It is therefore not hard to presume that when a translator goes through references in English, they can induce more structural confusion on this particular term. Since the concept is different in each country, my suggestion is to add remarks or descriptions as much as possible for both Cases (A) and (B). For example, supplementary note to explain the structural and financial differences between the business entities of the two countries would be helpful, so that the gap becomes sufficiently clear to avoid undesirable consequences in the future. Given the fact that the concept of this term varies in some measure, it is always safer to distinguish the difference in both Cases (A)

and (B). This term is an excellent example to prove that there can be a conflict of concept even within the same legal systems, as well as the possible confusion that can be induced by English as an intermediary language, in addition to the difficulty in transferring the legal concept from the SL to the TL.

5.3. 合同会社 *Gōdō gaisha*

合同会社 *Gōdō geisha*, translated as 'Limited Liability Company' by the MoJ in Japan, was modelled on the 'Limited Liability Company' in the USA. Despite this fact, there are several dissimilarities between the two. First of all, as discussed above, the Japanese entity is considered to be a corporate body by the Companies Act, and thus it is subject to corporation tax, unlike the American entity.

A 'Limited Liability Company' is a specific business organization in the USA, one can find a practically similar business structure in the UK: 'Limited Liability Partnership'. The difference from that of the USA is that the UK's structure is essentially a creature under company law but is treated as a 'Partnership' in relation to the taxation. Viewed in this light, the UK 'Limited Liability Partnership' brings similar consequences to the USA 'Limited Liability Company', but still demonstrates their different natures. Thus, it can be regarded as a business structure peculiar to the UK. The task of looking for an equivalent term in the Portuguese system is troublesome. It starts from the fact that there is no apparent counterpart either for a 'Limited Liability Company' or 'Limited Liability Partnership'. Within the entity family that assures limited liability of the members, the most possible candidate is *Sociedade por Quotas*. Sharing the characteristics of *Sociedade em Nome Coletivo* and *Sociedade Anónima*, a *Sociedade por Quotas* is a unique entity since it combines the two different doctrines of company: 'company of persons' and 'capital company'.

In the Situation (A) the translator should look for informative material, and the safest solution would be to maintain the Japanese original term, accompanied by a description to explain that it is an entity similar (but not the same) to the 'Limited Liability Company' of the USA. In Case (B), more priority should be given to

emphasizing the dissimilarities of the business form in each language, since transmitting a wrong image or information can eventually bring serious legal consequences. This is another example that shows the high probability of English influencing the concept and the choice of TL terms when it is used as a reference, something that was substantially demonstrated in this study, and opens a new horizon to the similar practical cases.

5.4. 監査役 'kansayaku' and 監査役会 'kansayaku-kai'

The observation in the preceding chapter also revealed that the Japanese term 'kansayaku' and its related term 'kansayaku-kai' require further analysis when they are translated into Portuguese. The concept of 'kansayaku' itself is a profession peculiar in Japan. As it is unique to the Japanese corporate governance system, there is no exact equivalent in Western culture. The Japan Audit & Supervisory Board Members Association (JASBA) suggests that 'kansayaku' and 'kansayaku-kai' should be translated as 'audit & supervisory board member' and 'audit & supervisory board' respectively. Nevertheless, as the association points out and admits, the term 'kansayaku' is generally translated as 'auditor' or 'statutory auditor' in English. If one looks for an appropriate term in Portuguese through this English translation, one will eventually find two terms: '*auditor*' and '*revisor oficial de contas (ROC)*'. The two denominations are different in their functions. Through the observation carried out, it became clear that the function of '*auditor*' is more comprehensive than '*revisor oficial de contas (ROC)*'. The act of audit (called *auditoria* in Portuguese) is valid for all companies, not only the major enterprises, but also micro and small companies. Its objective is to find points to improve. The service performed by *revisores* (called *revisão*) is only required by certain business forms, namely *Sociedades Anônimas* and *Sociedades por Quotas*. It is a part of the legal demand imposed on certain entities.

For this reason, both '*revisor oficial de contas (ROC)*' and '*auditor*' can be applied as translations of 'kansayaku'. It all depends on the context. In a specific context that involves satisfying the conditions to be assumed, it can be translated as '*revisor oficial de contas (ROC)*'. In other contexts, it might be better to apply the term

‘*auditor*’. In other words, these two Portuguese terms can both serve as candidates for the equivalent term of Japanese ‘kansayaku’ for informative purposes such as in the Case (A). It seems, however, safer to employ the original Japanese term in Case (B), in order to emphasize the difference from Portuguese ‘*revisor oficial de contas (ROC)*’ and ‘*auditor*’, as well as English ‘auditor’ or ‘supervisor’. Further analysis cannot be discussed here for lack of space. Here only the fact of these two options and their differences will be mentioned.

5.5. 公証人 *kōshōnin*; notary / notary public; *notário*

公証人 *kōshōnin* is another profession which requires caution with the selection of an equivalent term. It is frequently translated as ‘notary’ or ‘notary public’ according to the provisional translation of the MoJ. However, my research made clear that the profession of 公証人 *kōshōnin* (or ‘notary’ in a broad sense) was developed in the Civil Law system and their features do not correspond to ‘notary public’, the term considered to be equivalent in the USA. The biggest gap lies in the status and qualification required for the profession. In Civil Law countries in general and interestingly also in the UK, a ‘notary’ is considered as a public servant, while a ‘notary public’ in the USA is usually self-employed or company employed. In order to be a ‘notary’, one needs to have legal professional qualifications in Japan, Portugal and the UK, while in the USA no such legal training is required. Furthermore, the difference between 公証人 *kōshōnin* and *notário* in Portugal was found in the professional status as well as in the scope of the work. In addition to their difference in occupational position between government worker and freelancer, Portuguese *notários* are in charge of more demanding tasks than their Japanese counterparts – although both countries belong to the same Civil Law family. If someone Portuguese obtains a wrong idea of 公証人 *kōshōnin* in Japan, the person will be confused. For this reason, it is my personal opinion that applying simply the term ‘notary public’ is not the best solution even in Case (A). The term ‘notary’ seems much more suitable than the American culture-specific ‘notary public’ and it is more appropriate if a short note is added. In Case (B), I would suggest to either employ

the original term as it is, or an explanatory description added in addition to the original Japanese term.

5.6. 取締役会 *Torishimariyaku-kai*; Board of Directors; *Conselho de Administração*

It was found that the organization of business – so-called 'corporate governance' – is another field that reflects strongly the historical and cultural background of each country. In this case in particular, attention should be focused on the corporate governance style of each nation, rather than comparing legal systems. There are two main governing systems in the world: the one-tier system, in which the Board of Directors is the organ responsible for governing the company, and the two-tier system, in which the business is conducted by roughly two organs: the Board of Directors and the Supervisory Board. It is generally considered that the one-tier system is adopted by Common Law regime and the two-tier by Civil Law regimes, typically in Germany.

However, the investigation demonstrated that this established idea is not necessarily correct. As for the Japanese corporate governing system, 取締役会 *Torishimariyaku-kai*, again, its unique characteristic is the fact that all the directors take part in the performance of business, blurring the distinction between governance and management more than any other system. The Portuguese governing system, on the other hand, is flexible. It accepts various governing options, including the major two systems. It is worth mentioning, nonetheless, that the majority of Portuguese companies adopt the one-tier system. For this reason, for the informative purpose of Case (A), my opinion is to employ Board of Directors or *Conselho de Administração*, as long as it does not affect any aspect of the translated texts. This is because, even if the content is different in practice, using the familiar term makes it easier to have a general idea of the SL term. On the other hand, using the original SL term with an accompanying short explanation should be recommended when it is translated in Case (B).

5.7. 過半数 *kahansū*; majority; *maioria*

This term rather stresses the cultural difference between Japanese and Portuguese. In Japanese, when one mentions ‘majority’, it covers all the situations where a majority votes for the same option – i.e., it can be the case with half the votes plus one, as well as two thirds or four fifths. Therefore, if the majority is to be two thirds, it is necessary to specify this in Japanese. On the other hand, there are basically three specific expressions for majority in Portuguese, which are especially relevant in Parliament: *maioria simples* (majority of the deputies present), *maioria absoluta* (majority of the all the members, whether or not they are present at the vote) and *maioria qualificada* (when the vote in favour exceeds two thirds or four fifths of the members). When translating from Japanese to Portuguese, if one picks the wrong term, it may affect the result of the translation. Therefore, for the merely informative purpose of Situtation (A), selecting simply the term ‘maioria’ may do. A more careful observation is necessary for Case (B), as it is essential to distinguish which of the three the SL term stands for.

5.8. Terms which require attention within a language

There were some Japanese terms found during my research that require certain legal knowledge that might cause some translational trouble. This is the case when the term in ordinary use gains another or more meanings in special contexts within the same language. It also requires legal knowledge. Alcaraz and Hughes (2014, pp. 159-160), who define these terms as ‘semi-technical’, warn the translator to pay special attention when choosing a term from possible options, and to be specially prepared not to take anything for granted, giving some examples (partly omitted):

> **(a) Defence:**
> General meaning: the contrary of ‘attack’, e.g. ‘Italian football puts the emphasis on defence’.
> Legal meaning 1: synonymous with ‘reply’ or ‘answer’, e.g. ‘If no defence is filed within 15 days, the plaintiff may apply for judgement in default’.

Legal meaning 2: referring to the defendant and their counsel, e.g. 'The defence based its case on the testimony of two key witnesses'.
Legal meaning 3: special ground of defence or plea alleging mitigating circumstances, e.g. 'The accused set up a defence of temporary insanity'.

(b) Discharge:
General meaning: synonymous with 'unload, disencumber, free', e.g. 'The ship was discharged its cargo'.
Legal meaning1: synonymous with 'annual, avoid', e.g. 'The contract will be deemed to be discharged if any of these conditions are not satisfied'.
Legal meaning2: synonymous with 'perform/performance', e.g. 'The manager was dismissed for serious misconduct in the discharge of his functions'.
Legal meaning3: synonymous with 'acquit, free, acquittal', e.g. 'In view of the accused's age and previous behaviour, the magistrate who had found him guilty granted him an absolute discharge'.
Legal meaning4: a special case of point 3 above, e.g. 'The bankrupt's liability is terminated when the court makes an order of discharge'. (pp. 159-160)

As these examples above show, this type of term may have, in addition to at least one general meaning, one or more (sometimes multiple) legal meanings, as seen above. Bearing this fact in mind, it is fundamental to examine the following 'semi-technical' terms found in the corpus and decide if they are used with a general meaning or a legal meaning.

5.8.1. 社員 *shain*; 'partner' ≠ 'employee'

One example found in this study was the term 社員 *shain*. This word is normally used to mean 'employee' in an ordinary context. However, in the context of the Companies Act, it is used in a sense of 'partner' or 'investor'. One needs to understand this double-meaning, or at least have the 'sensitivity' to detect it and wonder if this word, usually used in ordinary circumstances, has other meanings. Understanding this

term correctly is important to avoid generating possible misunderstanding, as the difference between the status of an ‘investor’ and that of an ‘employee’ is not small.

5.8.2. 謄本 *tōhon*: ‘(certified) copy / transcript’ = complete copy

Generally, 謄本 *tōhon* stands for ‘complete copy’. Traditionally speaking, when one is required to submit this document, what is required is an official documentary copy with all the data recorded in the original register. In today’s digitalized society, however, 謄本 *tōhon* in the real meaning has technically disappeared, as the registration in written form has vanished. What used to be called 謄本 *tōhon* is currently called ‘履歴事項全部証明書 Certificate of compete historical records’. However, the term has so penetrated Japanese daily life that it is still being used with frequency. Although it can be regarded as a relic of the analog period of the past, the fact that it is still being used in practice should be respected and should be translated as such. Nonetheless, a translator should pay attention and choose the right term (‘謄本 *tōhon*’ or ‘歴事項全部証明書 Certificate of compete historical records’) in order to minimize confusion derived from the translation.

5.8.3. 抄本 *shōhon*: ‘extract copy’ = partial copy

In contrast to 謄本 *tōhon*, 抄本 *shōhon* means an official ‘partial’ copy. It is a certified copy of a part of the information extracted from the original register. There is only this term to indicate a partial copy; however, it became clear from the present research that it may refer to multiple documents. The MoJ in Japan suggests four types of ‘official documentary copy’, including the above mentioned ‘履歴事項全部証明書 Certificate of compete historical records’. This would mean therefore, that the rest of the three types are all considered as the ‘partial copies’. In my opinion, a translator needs to understand that there are three hypotheses when the term 抄本 *shōhon* is

mentioned, and sometimes selecting a more specific term (i.e. one of the three types) would help produce a better and precise translation.

5.9. Terms peculiar to a specific legal system

There are also many terms and concepts that exist in a specific legal system. For example, 合資会社 *Gōshi gaisha* is a peculiar business structure in the Civil Law system that does not exist in the Common Law system. The concepts such as 持分会社 *Mochibunkaisha* and 'kansayaku' can be found only in the Japanese legal system. A 'Limited Liability Company', on the other hand, is a specific business form in the USA. 合同会社 *Gōdō gaisha* was modelled after this American business structure and is acutally translated as 'Limited Liability Company' in general, but in fact their features are not completely the same. The managerial position called 'kansayaku' is also one of the unique posts in Japanese companies. It is habitually translated as 'auditor' but if one looks more carefully into this post, one will recognize that its role is not only auditing but also enhances supervision and its job is carried out with a cooperation of the Board of Directors. The uniqueness of this role was also demonstrated in the past when the term 'kansayaku' used to be left as it is in Japanese even in translations. It was also found that 公証人 *kōshonin* is a specific profession in Civil Law countries and the accepted equivalent English term 'notary public' does not mean the same as the Civil Law 'notary'. Moreover, it is also worth noting that even between two Civil Law countries – Japan and Portugal – there are some outstanding differences between the meanings of the terms. The example of Board of Directors demonstrated that each country has its policy regarding the corporate governance and some countries leave the options of governance model to each company. It is therefore important to research which governance system the company has chosen when it is rendered into another language.

All of these terms can turn out to be pitfalls when a translator attempts to transfer them into another language. The translator needs to pay special attention to them in order to interpret the message correctly so that the best term can be selected. The

objective of the present investigation is to warn translators about this matter and to point out the need to specify these terms so that the pitfalls will be avoided in the future.

5.10. Results regarding the key questions

Let us now return to the five key questions presented in Chapter 2 in order to summarize the analysis and identify the results of the research and to present the conclusion.

Question1: What are the implications of using two different Civil Law systems in translation?

It appears that there are some implications even within the same legal systems, namely between the Japanese and Portuguese systems. The general organization of business structures such as 合名会社 *Gōmei gaisha*, 合資会社 *Gōshi gaisha,* and 合同会社 *Gōdō gaisha* is identical. However, on a closer look, there was no entity that has exactly the same characteristics as the other. The observation in this study showed that each term could find a relatively close 'equivalent' term between Japanese and Portuguese, but none of them was completely correspondent. For example, 合名会社 *Gōmei gaisha* and 合同会社 *Gōdō gaisha* are relatively close to the corresponding Portuguese terms, *Sociedade em Nome Coletivo* and *Sociedade por Quotas*, respectively, but there is a difference in the minimum number of members. With the 合資会社 *Gōshi gaisha*, and its closest term in Portuguese, *Sociedade em Comandita Simples*, the minimum number of members corresponds but a gap is found in the management of the members. Similarly, the equivalent of the profession called 監査役 'kansayaku' also cannot be found in Portuguese, and nor can 監査役会 'kansayaku-kai', as it is a particular occupation in Japan. The professions 公証人 *kōshōnin* in Japan and *notário* in Portugal not only do not correspond even within the Civil Law system, but also their tasks and scope do not correspond in practice. All these findings demonstrate that there are differences even within the same legal systems. They reveal that even when the

overall organization is identical, the detailed contents of the laws are adapted and transformed according to the socio-cultural aspects of each nation. Therefore, it is still essential to study and compare the concepts even if the two belong to the same legal systems.

Question 2: What are the implications of using English as a 'bridge' language in translation between two Civil Law systems?

The analysis showed how Common-Law-based English used as a 'bridge' language in translation between Civil-Law-based Japanese and Portuguese affects the interpretation of the translated texts. A typical example found was 合資会社 *Gōshi gaisha*, which is a unique business form that originally exists only in the Civil Law system. By rendering it via English, the concept of the Common Law system may be introduced into the original context and this may have an inflluence. The other difference can be found in the business governing body: the Anglo-Saxon *one-tier* and the continental European (mainly German) *two-tier* systems. One may become confused when comparing the two governing systems if one does not have this knowledge. Eventually it may bring serious consequences to communication.

Question 3: What are the implications of using UK and USA English in legal settings?

One of the distinctions observed between the UK and the USA was the national legal scheme. The federal system is prominent and is influential in the USA, while there is no such system in the UK. It is especially apparent in the tax system. For example, a 'Limited Partnership' in the USA, which is generally treated as a 'Partnership', may be recognized as a 'Corporation' in certain states, which implies double-taxation. On the other hand, a 'Limited Partnership' in the UK is always treated as a 'Partnership', which means that it can always avoid double-taxation and enjoy the advantage of the so-called 'pass-through' taxation. The difference between the two English-speaking nations was also found in subjects such as the Board of Directors and notary/notary public.

Knowing these facts may help a translator explain this difference to clients and avoid possible misunderstanding.

Question 4: Do different types of English cause any confusion when they are used as a 'bridge' language?

To state the conclusion first, yes – there is a possibility that different types of English may induce confusion in communication, for example in the combination of two business forms in the USA and the UK: 'Limited Liability Company' and 'Limited Liability Partnership', respectively. These two terms serve as equivalent terms of the Japanese 合同会社 *Gōdō gaisha* but are actually different. In short, their starting point is different, but they arrive at the same goal. Many of the USA 'Limited Liability Companies' are generally considered as 'Corporations', but they are treated as 'Partnerships' when it comes to taxation, allowing the 'pass-through' taxation in this way. The UK 'Limited Liability Partnerships', on the other hand, are 'Partnerships'; therefore, they enjoy the 'pass-through' taxation. Despite the denomination, however, the entity has a legal personality and its nature is that of a company in practice. Depending on the situation, a lack of this perception may significantly alter the message in translation. This risk of confusion also became clear with other terms which were found to be different between the cultures of these two English-speaking countries.

Question 5: Are there any specific points to which special attention should be paid?

The analysis has revealed that there are several terms specifically used in a certain legal context in each country. The aforementioned 合資会社 *Gōshi gaisha* is one of them. Additionally, the Japanese 'kansayaku' was found to be a profession specific to the Japanese system. Its role as corporate auditor as well as supervisory board member does not fit into either profession in other countries. The role of 公証人 *kōshonin* and corresponding profession as well as the Board of Directors were found to be not necessarily the same even within the same legal system. Attention should be also paid to

terms such as 社員 *shain*, 謄本 *tōhon* and 抄本 *shōho*, that have different meanings in a legal context. To give an example of the term 社員 *shain*, it gains a meaning of 'partner / member of partnership' in the Commercial Law context, and does not signify 'employee' in the ordinary meaning. If a translator lacks this knowledge, a translation may result in wrong information.

5.11. Discussion

Knowledge of these peculiar terms is essential for translators so that they can develop a translation strategy to provide an expression as close as possible to the original term. Preparation and research are therefore very important and making effective use of English as reference helps a great deal, especially when the language pair is not common and does not include English. Nevertheless, the terms found showed how English may affect the interpretation of original terms and induce confusion.

As demonstrated throughout the analysis, it became clear that there are multiple interpretations of legal concepts in each legal system. Many of them reflect the historical and social background. It is not difficult to imagine the barrier those peculiar terms may create when they are translated into another language. It is also easy to understand that the situation is more complex when the transfer is attempted via another language with a different legal system – e.g. English. Choosing an inapproriate term may bring serious consequences in these circumstances. In the business sphere, an inadequate choice of even a single term may have a critical legal and/or financial impact. For instance, imagine that a Portuguese client is expecting to establish a new business in Japan and intends to gather as much information regarding taxation as possible through translated documents. If the translated text fails to provide the information regarding the differences of business structures in Japan as well as of taxation – possibly due to the use of English as a bridge language, the client may come to know later, after having already established a business in Japan, that the payment of corporate tax is required, which may eventually affect the business financially. Considering the fact that, as in Japan, the business entities are treated as corporate bodies in Portugal, this scenario may

not be very realistic. It is not difficult, however, to imagine that, if mistranslation happens, a considerable degree of confusion may possibly be caused around the interpretation of information that may result in an unnecessary waste of energy and time. Similarly, suppose that there is a Japanese client who is looking to establish a business in Portugal in the form of a 'Partnership Company' similar to the Japanese one. If the client is expecting the same conditions as the Japanese form and (for some reasons) is not aware of the fact that some of the conditions are only available in Japan – such as: all the members can be involved in management of the business –, the client may incur legal or/and managerial trouble later, if the information is insufficiently translated. Inappropriate choice of terms may lead to these situations.

The present study is one of the few (possibly the first) attempts to explore the case of translation between Japanese and Portuguese with English interference as an intermediary language. It has revealed that, in the majority of the examples above, very often the SL term, the referential term in English (very often even between the USA and the UK English), and the TL term do not represent the same concept. As far as I can discover, no reference has been found concerning a comparative analysis of legal terms with three languages, comparing the influence of English reference terms. Moreover, the challenge was to collect the evidence that demonstrates the influence brought by English as a bridge language. This situation is increasingly common and further contributions are expected. From the legal terminology viewpoint, the examples found in the present study revealed the issues of cross-cultural study of legal terms. It is hoped that all the details of the analysis and the results derived from the above will contribute to build more references not only in these languages but also in solving translation issues in practice.

It is also expected that this research will contribute to legal translation studies, especially in relation to Japanese. Investigations and discussions on translation studies in Japan are hoped to be more active compared with those in the EU. There are a lot to explore in the translation studies regarding Japanese. In the viewpoint of language pair, studies relating to languages other than English are few and in relation to investigation field, the number of those focused on legal sphere is expected to improve. There is some

research on legal translation in the Japanese context, such as Cheng and Sin (2016); however, most of the existing studies found discussed specific domains or glossaries and dictionaries, not taking an approach to present the problems of legal translations in general. This is one of the reasons why the reference list of this study does not include many direct references with regard to Japanese legal translation.

It would be possible to find more examples in the corpus. For instance, it is not difficult to imagine that more similar issues may emerge from the domain of 株式会社 *Kabushiki gaisha* ('Stock Company' in the MoJ's translation). However, this domain was excluded from the present investigation, since this theme involves such complex micro-structures that it would be possible to write another PhD thesis with this theme alone. The terms analysed in this study are the major ones that shape the law in question. The various distinctions found in these major terms suggest that there should be more to come. The multiple examples found in a single law that are not exactly the same as the translated term, most of them key terms that embody the main theme of the law, leaves a clear warning against generally recognized equivalents. Nonetheless, further research is required to reinforce the result of this study, not only in this legal domain, but also in other scientific fields in other language pairs.

For the purpose of this study, attention was focused specifically on the area of terminology. One should not forget, however, that there are many other features that make the study of legal texts a specialized discipline that eventually characterizes each legal system. For example, legal style is one of them. The two legal systems involved in this study are fundamentally different in style. As was explained earlier, Common Law tends to be long and more descriptive, with more detailed prescriptions, whereas Civil Law tends to be more general and synthetic, organized by general rules without details (千代田, 2004, p. 13). These characteristics come from how the Law is organized and they also influence the writing style and language of court decisions (Cao, 2007, p. 29). For this reason, there is a need for analysis from a phraseological and structural point of view. If problems are identified, they point to alerts of possible translation complications in similar situations of legal translation. No further examination was carried out in the present investigation on this point. However, further

research should be carried out to find whether or not English legal style is affecting the style of documents in other legal systems.

Conclusion

The analyses conducted throughout the preceding chapters made two things clear: (1) the differences lie not only in the basic legal system families such as Common Law and Civil Law, but also in the socio-cultural background of each country; and (2) the fact that English – even multiple types of English – are being used as a medium of communication may evoke perplexity over mutual understanding. The former point was explicit especially when the Japanese and Portuguese systems were compared. Given the scarce references existing concerning this specific language pair, this investigation therefore contributed more available data to translation studies, by not only examining the phenomenon and features but also by offering detailed examples of issues. Despite the fact that both systems belong to the same Civil Law system in general, the terms and their concepts did not necessarily correspond to each other. One cannot blindly accept that all the legal concepts are thoroughly shared or are even the same between the two nations. This proves "how deeply rooted legal knowledge is in socio-cultural values and national cultures" (Scarpa, 2013, p. 71). Taking the materials of this legal domain alone, several cases could be observed. This fact implies that it is not difficult to imagine that the same issue can also be found in other domains. This raises an innovative question about the conceptual – and therefore terminological – commonality within the same legal systems. In other words, it gives a warning to legal translators that disparities exist in "legal language and practice among different national legislations, whether based on Common Law or Civil Law" (Scarpa, 2013, p. 72).

When the concept of the source language and that of the target language do not correspond, the process of finding an equivalent becomes more complex. The complexity grows even more when another language with a different legal background intervenes as a vehicle of communication. This is the situation mentioned in the latter point: using English as a reference may turn out to be a risk. While English is playing a greater influential role as an intermediary language than ever before "in international and intercultural commercial and legal settings" (Scarpa, 2013, p. 71), not many studies have been conducted regarding concrete cases. Focusing on the actual situation of such

cases has opened a new question: might the elements brought by the intermediary language possibly influence the translation as well as the reader's interpretation to a greater or lesser extent? The present investigation has come to prove that employing English as a reference language could bring even more confusion than focusing only on the SL and the TL. Although this research focused on the terminological level, it can be generally stated that the objectives of the present investigation were globally achieved. The examples found and their qualitative analysis demonstrated that there is an influence of English as a bridge language. The data and the methodology used were also effective, since various cultural discrepancies were found in the corpus data; that was possible by comparing the two corpora on the same subject in the two languages and their repective translations into English, as well as by a detailed examination of the adequacy of terminological relations. In this sense, it can be inferred that this study contributes as one of the rare yet leading references concerning the matter related to the intermediary role of English.

In this connection, the ability to identify the function of the target text and choose the appropriate equivalent term is fundamental. As a general observation, translators should be able to ascertain the situation and objective of the document, and depending on them, should flexibly alter the expression or term. The terms of business entities demonstrated throughout this study, apart from the exceptional situation, show that adding a descriptive explanation to the translated term would be the best solution.

Although this may serve as a step closer to legal translation and the role of English as a bridge language in legal settings, additional research is necessary to substantiate the fundamental ideas behind this study. Further research is needed to explore in more detail whether English used as intermediary language always affects the translation, or whether the same or similar cases can be found in other language pairs. Using English as a conversion tool will increase, at least in the near future.

It is my sincere wish to have been able to demonstrate the importance of verifying the relevant linguistic, cultural, social and historical background of the languages involved, in order to make sure that the parties involved 'are talking about the same thing'.

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Appendix

Appendix 1

Parallel corpus of Company Act of Japan and its provisional English translation provided by Ministry of Justice of Japan

Appendix 2

Parallel corpus of Commercial Company Act of Portugal and its provisional English translation provided by Portuguese Securities Market Commission (Comissão do Mercado de Valores Mobiliários)