

## Corporate Aspects of Trading and Investing Portugal

### 1. INTRODUCTION

The following is a short guide to the incorporation and management of Public Limited Companies (*Sociedades Anónimas*) and Private Limited Companies (*Sociedades por Quotas*), and of key aspects pertaining to company officers' liability and taxation of profit. This short guide is not a legal opinion and does not substitute a legal consultation and recourse to the law.

There are other types of commercial companies in the Portuguese Legal System, such as mixed liability companies (*sociedades em comandita*) and general partnerships (*sociedades em nome colectivo*). However, as they do not provide the required coverage in terms of liability etc., these are relatively unused forms of company and of little economic relevance.

### 2. METHODS OF MARKET ENTRY IN PORTUGAL

The two most common forms of commercial companies are the private limited company and the public limited company. There is also legislation that regulates companies activities in specific areas, such as financial markets, holding companies, regional development, real estate management and investment, group purchasing, risk capital, money and foreign exchange brokerage, property management, investment companies, leasing, sport, factoring, financial credit, credit purchasing and single-proprietor limited liability enterprises.

#### 2.1 PUBLIC LIMITED COMPANY

The capital is divided into shares with a minimum par value of € 0.01 each. The shareholder's liability is limited to the value of shares which he or she has subscribed to. In public limited companies, the payment of up to 70% of the nominal share capital may be deferred.

#### 2.2 PRIVATE LIMITED LIABILITY COMPANY

The capital is divided into quotas with a minimum par value of €100.00 each. Quotas are not represented by certificates. When there is a subsequent increase of capital, each partner subscribes a new quota or increases their initial quota. Creditors can only claim against the company's share capital. However the members can be liable for the company's debts, if their direct responsibility is stipulated in the company's articles of association (which is very unusual).

In private limited companies, the payment up of up to 50% of the nominal capital may be deferred.

#### 2.3 SINGLE MEMBER PRIVATE LIMITED COMPANY

This type of company has only one member, who holds the company's entire share capital.

The rules regarding Single Member Private Limited Companies are the same as those governing the Private Limited Company.

The only specific rule is that in order for this type of company to admit more members, it must change its legal type and that natural persons or corporations may only hold quotas in not more than one Single Member Limited Liability Company.

## 2.4 BRANCH OFFICE

A branch is a permanent representation of a company, domestically or overseas, that carries out the company's business but has no legal existence in its own right.

## 2.5 EUROPEAN COMPANIES (SOCIETAS EUROPAEA)

European Companies (*Societas Europaea*) can operate in any EU member state without the need to establish branches in EU countries in order to carry on the company's business.

## 3. FORMATION OF A LIMITED LIABILITY COMPANY

### 3.1 MINIMUM SHARE CAPITAL

#### **Private Limited Company**

The minimum capital for a private limited liability company is €5,000 and cannot fall below that figure during the entire life of the company.

Some business activities require companies with a higher minimum capital. These minimum levels are stipulated in the specific legislation pertaining to these companies, which include, for example, credit institutions and financial companies.

#### **Public Limited Company**

The nominal minimum share capital of a public limited company is €50,000.

Some business activities require companies with a higher minimum capital. These minimum levels are stipulated in the specific legislation pertaining to these companies, which include, for example, credit institutions and financial companies.

#### **Single Member Private Limited Company**

A Single Member Private Limited Company must have the same capital on incorporation as a Private Limited Company (€ 5.000).

### 3.2 NUMBER OF PARTIES

#### **Private Limited Company**

In a Private Limited Company the minimum number of members on incorporation is two. However, there are Single Member Limited Companies with just one member, who is either a natural person or a legal person/corporate - who owns the entire share capital.

#### **Public Limited Company**

In a Public Limited Company, the minimum number of shareholders on incorporation is five. However, the law does provide for companies with only two shareholders when one of them is the State.

Regarding the procedures of setting up a company:

The incorporation procedures for commercial companies (except when the incorporation is subject to special approval or when the initial capital is in assets or when creating a European Company) may be fully accomplished in one day, regardless of the location of the company's head office. The members have only to choose from one of the available pre-approved company names and official standard company bylaws. All formalities are dealt with the Commercial Registry Office.

The general procedures to incorporate a company include the following steps:

- request the Company Name and Taxpayer Number;
- deposit the Share Capital for the Company in a bank, in compliance with the aforementioned amounts, depending on the type of company to be created;
- if a foreign entity is to have a holding in a company in Portugal, it is required to register as a non-resident entity with no activity in Portugal with the National Registry of Companies (*Registo Nacional de Pessoas Colectivas*);
- notarial deeds of incorporation are no longer required. By incorporating a company the parties (or the single member in case of a Single Member Private Limited Company) have just to draw up the articles of association in writing and have their signatures notarized. Only if the share capital is paid up in kind by any of the members with an asset, the transfer of which must be effected by a public notarial deed (such as a real estate), is a public notarial deed required for the incorporation;
- register the incorporation at the Commercial Registry Office;
- register the company at the Tax and at the Social Security Authorities.

## **4. MANAGEMENT AND SUPERVISION OF A LIMITED LIABILITY COMPANY**

### **4.1 PRIVATE LIMITED COMPANY**

The company is managed by one or more statutory directors, who may or may not be members of the company.

Statutory Directors must be private individuals and if a legal person / corporation is appointed as a Statutory Director, it must in turn appoint a private individual to represent it.

As far as decision-making powers are concerned, the General Meeting makes all relevant company decisions and the Statutory Directors are responsible for the daily management of the company.

So far as supervision is concerned, auditing is optional in a Private Limited Company. However, the company must appoint a qualified auditor (*Revisor Oficial de Contas*) if it has 50 employees, total net revenue of 3.000.000 Euros or has total net assets of 1.500.000 Euros, or more, in two consecutive years.

## 4.2 PUBLIC LIMITED COMPANY

A Public Limited Company is usually managed by a Board of Directors, appointed in the Articles of Association or at a Shareholders General Meeting.

However, companies with a share capital of less than 200.000 Euros can appoint a single Statutory Director instead of a Board of Directors.

## 5. STATUTORY DIRECTORS LIABILITY OF A LIMITED LIABILITY COMPANY

The liability of the Statutory Directors under the Portuguese Company Code (PCC) is a vast and complex subject:

### 5.1 THE LIABILITY OF STATUTORY DIRECTORS TOWARDS THE COMPANY

- a) **Article 72/I** of the PCC establishes that Directors are answerable to the Company for loss and damage to the same, caused by acts or omissions in breach of legal or contractual duties, unless they can prove they were not at fault;
- b) **Article 73** of the PCC lays down that Directors are jointly and severally liable to the Company. This means that any of the Directors may have to answer to the Company for the act in question. Internally, amongst the Directors themselves, redress may legitimately be sought from one or more of them up to the extent of their liability. However, the burden of proof lies with the Director, who claims to be less at fault;
- c) According to **article 75** of the PCC, the Company may bring a claim against Directors, within six months after a General Meeting (Shareholders) resolution approved by simple majority that decides to make such a claim;
- d) If the Company itself does not make a claim, Shareholders representing at least 5% of the share capital, or 2%, if the matter involves a company listed on a stock market, may sue the Directors, on behalf of the Company (**article 77** of the PCC). The most common procedure, however, is for a Company to bring the claim against the Director that caused loss and damage to it.

### 5.2 THE LIABILITY OF STATUTORY DIRECTORS TOWARDS THE SHAREHOLDERS AND THIRD PARTIES

According to **article 79**, Directors are also liable to the Shareholders and third parties for loss and damage caused directly to them in the course of their duties. Such liability is also personal, joint and several but more restricted than that provided in the PCC with regard to relations between the Directors and the Company.

### 5.3 THE LIABILITY OF STATUTORY DIRECTORS TO COMPANY CREDITORS

The Directors are also liable to the Company's creditors when the assets of the company are insufficient to pay the outstanding debts, by virtue of culpable breach of legal or contractual provisions intended to protect such creditors, (**article 78** of CPP).

Company creditors may be subrogated to such rights to damages, as the Company may be entitled to.

If the company is insolvent, the insolvency administrators may enforce the creditors' rights.

## 5.4 LIMITATIONS TO STATUTORY DIRECTORS LIABILITY

The articles of association and resolutions of either the Board of Directors or the General Meeting may extend or broaden the terms of civil liability of Directors, provided that such clauses are legally valid.

According to **article 74** of the PCC, however, any provision in the articles of association or elsewhere that excludes or limits the liability of Directors is null and void.

Notwithstanding this, the right of the Company to damages for loss and damage caused by Directors can be excluded or limited when this is decided by a previous General Meeting, provided that the decision was not contested by Shareholders holding at least 10% of the share capital.

Moreover, the fact that a duly convened General Meeting has decided to approve the accounts and management decisions of the executive bodies does not signify that they have renounced all or any rights to indemnity on behalf of the Company. However, if the facts that determine liability have been expressly brought to the attention of the Shareholders before such approval, and the General Meeting still approves the accounts and management reports, the Company is deemed to have renounced to all and any rights to compensation.

## 6. TAXATION OF PROFITS

The standard rate of tax on company profits in the general taxation regime is 25%.

In the case of a foreign company with no permanent establishment in Portugal, as defined in Article 5 of the Tax Code (fixed installation or permanent representation used for the exercise of any commercial, industrial or agricultural activity), the corporation tax rate is also 25%, except for:

Type of Income	Tax rate
<ul style="list-style-type: none"><li>Income from intellectual or industrial property;</li><li>Provision of information on experience gained in the industrial, commercial or scientific sectors;</li><li>Technical assistance regarding experience gained in the industrial, commercial or scientific sectors;</li></ul>	15%

Type of Income	Tax rate
<ul style="list-style-type: none"> <li>Income from the use or concession to use agricultural, industrial, commercial or scientific equipment;</li> <li>Commissions for any type of contract mediation, and income from the provision of services.</li> </ul>	15%
<ul style="list-style-type: none"> <li>Income from debt securities and other investment income, except for profits distributed by entities subject to IRC and the amount allocated to associates by division of profits;</li> <li>Income from entities covered by the simplified tax regime;</li> <li>Income from entities whose head office or effective management is in Portugal, and whose main activity is not commercial, industrial or agricultural in nature;</li> </ul>	20%
<ul style="list-style-type: none"> <li>Prizes from raffles, lotteries or lottos, as well as any amounts or prizes distributed in draws or contests.</li> </ul>	35%

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