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## CENTRAL AND EASTERN EUROPE DESK

### EDITORIAL

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"Leading Law Firm in Czech Corporate Law"  
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## DOING BUSINESS IN PORTUGAL AND CZECH REPUBLIC

### Portugal Today



Portugal is the westernmost country of mainland Europe and is bordered by the Atlantic Ocean to the west and south and by Spain to the north and east and also encompasses two autonomous Atlantic regions, notably the Azores and Madeira archipelagos. Portugal has an area of 92,090 km<sup>2</sup> and 10,676,910 inhabitants (2008 estimate). It is a founding member of the OECD and NATO and is member of the European Union since 1986.

The Portuguese service sector has increased substantially in recent decades. The same can be said about the industry sector, such as the software and automotive sector. In 2007, agriculture, forestry and fishing generated 2,5% of gross-value added (GVA), in comparison with 24% in 1960, and created 11,6% of jobs, whereas industry, construction, energy and water generated 28,3% of GVA. The service sector accounts for two thirds of the working population and generates almost 70% of the GVA.

In addition, the manufacturing sector, too, has undergone significant changes: The traditional manufacturing has changed dramatically moving from high dependence on textiles, footwear, among other industries, to new sectors which

### The Czech Republic Today



Since the Velvet revolution in 1989, the Czech Republic has undertaken important political, social and economic reforms and has evolved into a fully developed market economy and a parliamentary democracy.

With an area of 78,860 km<sup>2</sup> and population of 10,2 million inhabitants, the Czech Republic is one of the most advanced "transition" economies. It is a fully fledged member of the European Union (since 1 May 2004), NATO (since 1999), OECD and is integrated into international organisations such as the WTO, IMF, EBRD.

Its strategic location in the very heart of Europe, an excellent access to other European markets complemented with stable economy, educated workforce and competitive infrastructure are the features that have attracted substantial FDI inflows since 1990.

Foreign direct investment in all sectors and from all countries is welcome and there are no restrictions on the level of investment or ownership.

The Czech Republic offers a wide range of investment opportunities in real estate as well as in specific sectors such as high-tech



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ADVOKÁTNÍ KANCELÁŘ

# CENTRAL AND EASTERN EUROPE DESK

In 2007, Foreign Direct Investment inflows to Portugal corresponded to a gross value of 30 billion Euro, which was the third best figure since 1996.

are growing dynamically and involve a larger incorporation of technology, such as motor vehicles and components, electronics, pharmaceuticals and new technologies. Portugal's model has been changing from one based on and to one focused on public consumption and public investment to one focused on exports, private investment, and development of the sector.

In 2007, Foreign Direct Investment inflows to Portugal corresponded to a gross value of 30 billion Euro, which was the third best figure since 1996. In that year, the main recipients of Foreign Direct Investment (FDI) were manufacturing, real estate and trade, which combined corresponded to 80% of total FDI for 2007.

The major foreign investors (87% in 2007) belong to EU. The Euro area countries accounted for 70% of total FDI in 2006 and 2007. The Top 5 foreign investor in 2007 were all Member States of the EU, namely Germany, the United Kingdom, the Netherlands, Spain and France.

As regards current trends in FDI investment in the Czech Republic 2008 brought a fundamental change to composition of new investments.

Despite the marginal growth in 2008, which is due to the worldwide economic /financial crisis, in 2007, the National GDP grew 1,9%. This increase in national GDP was mainly due to an increase of the companies' investments and of the export of goods and services – which nowadays is represented on more than one third to non EU countries, namely emerging economies' countries with which Portugal has been establishing and deepening privileged economical relationships, such as Angola and Brasil. Furthermore, the decrease of the public deficit, from 6% of the GDP in 2005 to 2,5% in 2007 and 2,2% (OECD estimate) for 2008, also gave reasons for optimistic economic forecasts, notwithstanding the current global crisis scenario, which affects all countries worldwide.

manufacturing, business support services and technology centres (one of the main priorities), science and research, tourism. Furthermore the Czech Republic may also offer attractive investment opportunities in its financial services sector.

Position of the Czech Republic as an attractive destination for FDI can be demonstrated by the fact that over 99,000 Czech firms across all sectors are now supported by foreign capital. The Czech Republic has introduced investment incentives to stimulate a FDI inflow and recently enables access to state support. The implementation procedures have been further eased in order to facilitate investment. The Czech Republic offers to both new and existing investors investments incentives, business support through several schemes (e.g. Supplier Development Programme, promotion of the creation of new industrial zones) and other measures, including support to small and medium size enterprises (SME).

As regards current trends in FDI investment in the Czech Republic 2008 brought a fundamental change to composition of new investments. For the first time ever that year, the Czech Republic gained more projects involving research and development or services than manufacturing.

The small, open and export-driven Czech economy grew at a rate exceeding 6% annually from 2005-2007 and the strong growth continued throughout the first three quarters of 2008. Despite the global financial crisis, the conservative Czech financial system has remained relatively healthy.



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Renato Ferrão  
Detail  
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## Doing Business in Portugal

Portugal is a member of the European Union since 1986, being integrated in the Euro-Zone since its implementation. Hence, its national law, notably its business law, is in line with the European applicable common norms, namely those deriving of the freedom of establishment of undertakings' rights.

Accession of the Czech Republic to the European Union is also reflected in the process of harmonizing Czech legislation with wider legal EU framework, both prior to its accession and after it.

### Basic Legal Aspects

Portugal is a member of the European Union since 1986, being integrated in the Euro-Zone since its implementation. Hence, its national law, notably its business law, is in line with the European applicable common norms, namely those deriving of the freedom of establishment of undertakings' rights. Therefore, in general, according to Portuguese law, there are no restrictions on foreign investment and businesses.

### Conducting Business – Legal Forms

#### 1. Commercial Companies

Doing business in Portugal is mainly carried out by means of two different legal types of commercial entities, which are the (i) private limited liability company – *Sociedade por Quotas* -, and the (ii) public limited liability company - *Sociedade Anónima*.

Portuguese Commercial Companies are governed by the Commercial Companies Code (*Código das Sociedades Comerciais*), hereinafter CSC.

Subsequent to the CSC, there are five types of commercial companies:

- Limited Liability Company/ Quota Company;
- Public limited liability company;
- General Partnership ;
- Limited Partnership;
- Limited Partnership with Share Capital/ Partnership Limited by Shares

#### a) Limited Liability Company / Quota Company (*sociedade por quotas*)

This is the type adopted by the majority of small and medium sized Portuguese companies. The minimum share capital required is € 5,000,00, being divided into so-called quotas and contributions being made in cash or in kind. The minimum par value of one share (quota) is € 100, 00. The liability of the shareholders for company's debts is limited. Portuguese private limited liability companies are, as a rule, incorporated by two or more shareholders.

Portuguese law also enables the existence of single-shareholder limited liability companies.

The name of a limited liability company needs to contain the word "Limitada" or the abbreviation "Lda" and the words "sociedade unipessoal" - or the word "unipessoal" in front of the word "Limitada" or the abbreviation "Lda" - ,

## Doing Business in the Czech Republic

### Basic legal aspects

Accession of the Czech Republic to the European Union is also reflected in the process of harmonizing Czech legislation with wider legal EU framework, both prior to its accession and after it. Harmonization of legislation as well as direct applicability of the EU legislation in the Czech Republic create positive environment for carrying out business activities and investment, for Czech as well as foreign persons and legal entities.

As for conducting business activities in the Czech Republic, there are two principal codes of legislation– the Commercial Code and the Trade Act, both applicable to Czech and foreign persons and entities. Czech legislation concerning commercial activities does fully reflect EU key principle - freedom of establishment. Therefore, foreigners may conduct business in the Czech Republic on the same conditions as Czechs.

### Conducting Business – Legal Forms

The Czech legal system enables conduct business activities in several legal forms. There is no statutory obligation to use a particular corporate structure (except for some specific case, e.g. in financial services). Business presence in the Czech Republic of a foreign entity is generally possible by either setting up a Czech legal entity as a local subsidiary or by setting up a local branch; other (less-formal) types of business cooperation are also possible, such as: cooperative, silent partnership, unincorporated association and sole proprietorship (entrepreneur).

Corporate entities under the Commercial Code are:

- Joint stock company (*a.s.*)
- Limited liability company (*s.r.o.*)
- Limited partnership company (*k.s.*)
- Unlimited partnership (unlimited liability company) (*v.o.s.*)

### Registration principle

All corporate entities are to be founded by a foundation deed or founding contract (agreement). A company must obtain trade licences (business licences) before its starts its business activities and must be registered with the Commercial Register. Registration

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E.U. citizens may now purchase Czech real estate as individuals, without the need to establish a Czech corporate entity which was previously the case for all foreigners.

Subsequent to Council Regulation on the Statute for a European Company (Council Regulation (EC) n°2157/2001) and Decree-Law n° 2/2005, of 4th January, there is the possibility to incorporate in Portugal as a European Public Company (SE).

in case of single-shareholder limited liability companies.

## **b) Public limited liability Company (*Sociedade Anónima*)**

Public limited liability's capital is divided in shares. As in private limited liability companies (and except which concerns the special regime applicable to sole-shareholder public limited companies), the shareholders' liability is limited – Shareholders' private assets are not liable towards company's debts.

The minimum number of shareholders for incorporation is five. However, as stated, under some circumstances, a joint-stock company may be incorporated with a sole shareholder as long as this shareholder is a company.

The minimum capital required is € 50,000 and the minimum nominal value of one share is 0,01 €. Contributions may be made either in cash or in kind.

Instead of a board of directors, a single director might be appointed in companies which capital that does not exceed € 200.000,00.

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## **c) Partnership (*sociedade em nome colectivo*)**

Like all other types of Commercial Companies in Portugal, the General Partnership is a legal entity and can therefore act in its own name, acquiring rights and incurring liabilities on its own behalf. However, besides the company's assets, the partner's assets too may be challenged to respond subsidiary before creditors to pay for the company's debts.

Contributions to this type of commercial company may be made either in cash or in kind (e.g. labour). The name of a General Partnership must include the name of all, some or one of the partners. In the second and third case, the General Partnership's name must end with a reference that points to the existence of other members (e Companhia or & C.ia).

## **d) Limited Partnership (*Sociedade em Comandita Simples*)**

The Limited Partnership is a legal entity in which at least one member is subject to unlimited personal liability for the partnership's obligations (general partner/ *sócio comanditado*), unlike the other partners (limited partners/ *sócios comanditários*), whose liability is limited

process takes five business days.

Lawyers, based on a power of attorney, may assist in setting-up a company or they may arrange the entire foundation, including registration of the company with the Commercial Register. "Ready-made companies" are also available in the Czech Republic.

## **Joint Stock Company (*akciová společnost – a.s.*)**

A joint stock company is a business structure generally used for larger investment and capital intensive projects. A joint-stock company can be set up by two or more legal entities or individuals or by a single legal entity. Registered capital is CZK 2,000,000 at minimum (approx. EUR 80,000) and is divided into publicly traded shares (either registered or bearer shares; in certified or uncertified (paperless) form).

A joint stock company is founded by either a Foundation Deed (in case of one shareholder) or by Memorandum of Association (Articles of Incorporation). The corporate structure of a joint stock company is described in its Articles of Association (By-laws).

A joint stock company is characterised by an unlimited number of shareholders, a sole shareholder is also possible. Obligatory governing bodies are the general meeting, board of directors and supervisory board. The company's business name must contain the abbreviation "a.s."

## **Limited Liability Company (*společnost s ručeným omezením – s.r.o.*)**

A limited liability company is very similar to a private limited company and is the most common type of legal entity. It can be established by one or more individuals ("shareholders" or "members" or "participants"), but not more than 50. Minimum registered capital is CZK 200,000 (approx. EUR 8,000) and minimum contribution of a partner is CZK 20,000 (approx. EUR 800). However, in the future, there is an intention to enable creation of limited liability companies with even smaller (almost insignificant) amount of capital.

Obligatory governing bodies are similar to those in joint stock companies, namely: general meeting, supervisory board and one or more directors (executives) of the company. The company's business name must contain the abbreviation "s.r.o."



Foreign companies that intend to conduct business in the Portuguese market and do not intend to incorporate a fixed corporate structure may do so by means of establishing a branch (sucursal).

to the amount of capital subscribed by each of them.

The managing function is exercised by the general partners. There is no minimum capital requirement. The Partnership's name must include at least the name of one general partner and the words *em Comandita or & Comandita*.

**e) Limited Partnership with Share Capital/ Partnership Limited by Shares (*Sociedade em Comandita por Acções*)**

In the second type of limited partnership there is also a distinction between one or more general partners - with unlimited personal liability and exclusive managing powers - and limited partners, with one important specific characteristic: the capital contributed by the limited partners must be divided in shares, i.e., the limited partners shall be shareholders. The minimum share capital is € 50,000 and Partnership's name shall include at least the name of one general partner and the words *em Comandita por acções or & Comandita por acções*.

**2. Alternative investment vehicles**

**a) Branch office/ Representative office**

Foreign companies that intend to conduct business in the Portuguese market and do not intend to incorporate a fixed corporate structure may do so by means of establishing a branch (sucursal). Since branches have no autonomous legal entity, as they are considered an extension of the Foreign Company, this one remains liable for the obligations arising from the agreements executed by its branch office.

**b) A.C.E. (*Agrupamento Complementar de Empresas*) Enterprise Group**

The A.C.E. Enterprise Group (Law n° 4/73, of 4th de Junho, as amended by Decree-Law no. 36/2000, of 14th March) is a legal entity, which creation was influenced by the business type "groupement d'interêt économique", foreseen and governed by French law.

The A.C.E. Enterprise Group is an entity established by way of a contract entered into between natural persons or pre-existing legal entities, which collaborate - without prejudice to its legal personality - in order to improve their activity and/ or their results or achieve a common goal.

As an alternative, business can be carried out in the form of a European Economic Interest Grouping (EEIG). This business form is regulated by Council Regulation CEE no. 2137/85, of 25th July, Decree-Law no. 148/90, of 9th May and, subsidiary, by the A.C.E. Enterprise Group legal regime (Law no. 4/73, of 4th of June).

**Unlimited Partnership (*Unlimited Liability Company*) (*veřejná obchodní společnost – v.o.s.*)**

On the basis of a partnership agreement, at least two individuals or legal entities ("partners") may create a limited or unlimited partnership. Unlimited partnership is typical for carrying out business activities connected closely to the individual partners. There is no statutory requirement as regards minimum registered capital because of the strict unlimited liability of the company partners (all partners are jointly and severally liable for the obligations of the company). Any partner, unless stated otherwise in the partnership agreement, may act on behalf of the company. The company's business name must contain the abbreviation "v.o.s".

**Limited Partnership Company (*komanditní společnost – k.s.*)**

As a compromise, a limited partnership company presents a type of company having some characteristics of an unlimited partnership companies as well as some of a limited liability company. Partners of this type of legal entity may be divided into two groups: general partners and limited partners (in order to set up such business form, there must be at minimum one general and one limited partner). General partners are fully liable (jointly and severally, as in the case of unlimited partnership), but the liability of limited partners is the same as in a limited liability company. On the other hand, only limited partners must provide a contribution of at least CZK 5,000 (approx. EUR 200) and only general partners may act on behalf of the company. The company's business name must contain the abbreviation "k.s".

**Branch Office**

In order to carry out business activities in the Czech Republic, it is not necessary to set-up a company. Foreign entrepreneurs (legal entities) may conduct their business activities in the Czech Republic by setting up a branch of their foreign registered company, which is to be registered in the Commercial Register. Such a branch may, generally operate in the same way as any other legal entity except for some specific types of business activities, e.g. in the financial services sector.

**Other business structures**

Business activities may be conducted also via other types of business structures such as:

- cooperative (legal entity with five or more individual members, or at

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### 3. Non commercial juridical structures

#### a) Civil Company (*sociedade civil*)

A civil partnership, by the adoption of a Civil Company, may be established under the regulations of the Civil Code by at least two members for the development of an economic activity without a commercial purpose<sup>3</sup>. The civil company is governed by Articles 980-996 of the Portuguese Civil Code. Even though civil companies cannot have a commercial purpose, Portuguese law enables them to adopt a commercial form (Article 1 no. 4 CSC). In this case, the rules governing commercial companies are also applicable to such companies. For instance, civil companies that adopt a commercial form shall file for commercial registration (*registo comercial*) at the local trade registry (**Conservatória do Registo Comercial**).

#### b) Professional Partnership

There are professional partnerships in Portugal that are subject to specific regimes, notably law firms (*sociedades de advogados*; Decree-Law n° 224/04 of 10th December), and companies of chartered accountants - *sociedades de revisores oficiais de contas*, regulated by Articles 94-122 of Decree-Law n° 487/99 of 16th November 1999 - which are both special types of civil companies.

#### c) Associations

Foreign entities are finally also freely entitled to participate and become members of Portuguese associations, being these civil law and non-profit envisaged entities ruled at Portuguese Civil Code, which are destined to uphold the best interests of its partner's best interests.

least two members that are legal entities; members may join or quit the cooperative without any impact on its existence);

- silent partnership (cooperation based on a written contract between a "silent partner" and an entrepreneur; silent partner brings the capital and receives a share of profit in return);
- association (cooperation based on an agreement of two or more individuals or legal entities which is not considered to be a legal entity under the Czech law);
- sole proprietor (entrepreneur) carrying out business activities on the basis of a valid trade licence or other permission.



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