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CENTRAL AND EASTERN EUROPE DESK

DOING BUSINESS IN PORTUGAL AND HUNGARY

EDITORIAL

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PLMJ

“Portuguese Law Firm of the Year”

*Chambers Europe Awards for Excellence 2009
& IFLR Awards 2006 & Who's Who legal Awards
2006, 2008, 2009*

“Best Portuguese Law Firm for Client
Service”

Client Choice - International Law Office, 2008

“Best Portuguese Tax Firm”

*International Tax Review - Tax Awards
2006, 2008*

SzecsKay Attorneys at Law

“Hungarian Law Firm of the Year”

IFLR Awards 2007

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 km² 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

Hungary Today



The Republic of Hungary (in Hungarian: Magyar Köztársaság or Magyarország) is a country located in the Carpathian Basin in Central Europe with an area of 93,030 km² and a population of approx. 10.03 million. The capital of Hungary is Budapest, which is Hungary's political, cultural, commercial, industrial and transportation center. Budapest is the largest city in Hungary.

Besides the capital city, Hungary is divided into 19 counties. There are also 23 towns with county rights such as Debrecen, Szeged, Győr, Miskolc, Nyíregyháza, Székesfehérvár and Pécs, which are also very important commercial and industrial centers.

Hungary has been a member of the European Union (EU) since May 1, 2004 and NATO since 1999. Hungary is also a member of OECD and the Schengen area.

The Hungarian economy is an open, export-oriented economy and its market is part of the European single market. In Hungary, almost 70% of import comes from and almost 80%



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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.

Hungary made many important steps to provide a more favorable environment for the economy and it is predicted that the Hungarian economy will be even more competitive in the near future than it was before the financial crisis.

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.

of export goes to other EU Members States. The official currency is the Hungarian Forint (HUF), but it is a very important goal of Hungary to join to the Eurozone.

In 2007, the Portuguese foreign direct investment (FDI) reached 95.8 M EUR and the FDI-stock was approx. 191.6 M EUR. This data reveals the great potential for Portuguese companies to invest in Hungary. Those Portuguese companies already present on the Hungarian market are generally interested in the construction industry, public utility development, real estate, telecommunication, cork processing, winery, and car sales and leasing. Among others, the following Portuguese companies are active in Hungary: Consulgal (underground reconstruction); Mota (construction and public utility development); EDP and Matos (alternative energy); BES and Banco Primus (banking services).

The global financial crisis significantly affected the Hungarian economy and resulted in a decrease of the Hungarian GDP in 2009. However, Hungary made many important steps to provide a more favorable environment for the economy and it is predicted that the Hungarian economy will be even more competitive in the near future than it was before the financial crisis.



Fátima Mendonça
Detail

From the collection of
the PLMJ Foundation



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.

Of course other types of business cooperation are possible as cooperatives, European Cooperative Societies (SCE) and European Public Limited Companies (SE).

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 Hungary

Basic Legal Aspects

When Hungary joined the EU on May 1, 2004, the legal framework of doing business in Hungary was harmonized with EU legislation, so naturally the direct applicability of certain EU legislation (Lisbon Treaty, Regulations etc.) makes the legal framework of carrying out business and investment in Hungary more similar to that of other Member States. Based on EU principles, investors, entrepreneurs from other Member States of the EU or the European Economic Area (EEA) may conduct business under the same conditions as Hungarians.

The basic acts concerning establishment of business activities are the Act on the Investment of Foreigners in Hungary (Act XXIV of 1988), the Act on Business Associations (Act IV of 2006, the "**Company Act**") and the Act of Registration of Companies (Act V of 2006). In addition to the above, the Act on Branch Offices and Representative Offices of Foreign Companies (Act CXXXII of 1997, the "**Branch Office Act**") must also be taken into account in connection with starting a business in Hungary.

Conducting Business - Legal Forms

According to the Company Act, a business can be started in the following forms:

- . general partnerships (kkt.)
- . limited partnerships (bt.)
- . limited-liability companies (kft.) and
- . public and private limited companies (zrt. or nyrt.).

Foreign companies can also establish branch offices and representative offices in Hungary.

Natural persons may also conduct business as private entrepreneurs or in the form of sole proprietorships.

Of course other types of business cooperation are possible as cooperatives, European Cooperative Societies (SCE) and European Public Limited Companies (SE).

General Rules

We will now focus only on general partnerships, limited partnerships, limited-liability companies, public and private limited companies, branch offices and representative offices.

Any such company must be registered in the company register of Hungary.

Lawyers must be involved when establishing a company, as the founding documents must be countersigned and the company must be represented by a lawyer before the Court of Registration.

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.

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).

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

Generally, the Court of Registration has 15 working days to decide on registration requests; however, general partnerships, limited partnerships, limited-liability companies and private limited companies can be established by applying the standard deed of foundation or articles of associations. In such case, the deadline for the registration is 1 working hour. The registration proceedings are fully carried out by an electronic application.

Lawyers must be involved when establishing a company, as the founding documents must be countersigned and the company must be represented by a lawyer before the Court of Registration.

Limited Liability Companies (*korlátolt felelősségű társaság - kft.*)

A limited liability company ("LLC") is a common corporate form in Hungary. It has a separate legal personality. The minimum initial capital required is HUF 500,000 (approximately EUR 1,850), which may consist of cash contribution and in-kind contribution. An LLC may be founded by one or several private individuals or business entities. The ownership interest in an LLC is known as a "quota".

The supreme body of an LLC is the so-called "quotaholders' meeting", which consists of the members/owners (i.e. quotaholders) of the company. If the company operates as a one-member LLC, there is no quotaholders' meeting. In such case, the founder passes resolutions in writing.

An LLC is generally administered by one or more managing director(s). If there is more than one managing director, their respective signature rights can be either individual or joint. The managing director(s) is/are entitled to decide upon any issue that does not fall within the exclusive competence of the quotaholders' meeting.

The company's business name shall contain the designation "korlátolt felelősségű társaság" or its abbreviation "kft".

Public or Private Limited Companies (*nyilvánosan működő részvénytársaság or zártkörűen működő részvénytársaság - nyrt. or zrt.*)

Public or private limited companies are business associations founded with a share capital (subscribed capital) consisting of shares of a pre-determined number and face value, in the case of which the obligation of members (shareholders) to the public limited company extends to the provision of the face value or the issue price of shares. With the exceptions defined in the Company Act, shareholders shall not bear liability for the obligations of a public limited company.

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).

A public or private limited company is generally administered by the Board of Directors. Instead of the Board of Directors, a private limited company may be administered by the Chief Executive Officer.

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 Ações*)

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 ações or & Comandita por ações*.

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' intérêt 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).

Limited companies may be established privately or open to the public and, consequently, may operate in the form of public or private limited companies.

The minimum share capital of a private limited company (zrt.) is HUF 5,000,000 (approximately EUR 18,520), which may consist of cash contribution and in-kind contribution. A private limited company may be founded by one or several private individuals or business entities.

The minimum share capital of a public limited company (nyrt.) is HUF 20,000,000 (approximately EUR 74,075), which may consist of cash contribution and in-kind contribution.

The supreme body of a public or private limited company is the so-called "general meeting", which consists of the members/owners of the company. If the private limited company operates as a one-member company, the sole member (founder) passes its resolutions in writing.

A public or private limited company is generally administered by the Board of Directors. Instead of the Board of Directors, a private limited company may be administered by the Chief Executive Officer.

The corporate name of the company must include the designation "részvénytársaság" (limited company) as well as an indication as to whether it is private ("zrt.") or public ("nyrt.").

General Partnerships (*közkereseti társaság - kkt.*)

A general partnership is not a very common corporate form in Hungary, since members have unlimited joint and several liability.

By virtue of the articles of association for establishing a general partnership, the members thereof undertake to jointly engage in business operations with unlimited joint and several liability, and to make the capital contribution necessary for such activities available to the partnership.

There is no minimum capital requirement for general partnerships. The company's business name must include the designation "közkereseti társaság" or the abbreviation "kkt".

Limited Partnerships (*betéti társaság - bt.*)

A limited partnership is a very popular corporate form in Hungary, particularly for running smaller business. As with general partnerships, there is no minimum capital requirement but at least one member (general partner; in Hungarian: *beltag*) shall have unlimited liability.



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.

Foreign companies may carry out their activities through branch offices or representative offices in Hungary.

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 purpose³. 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.

By virtue of the articles of association for establishing a limited partnership, the members thereof undertake to jointly engage in business operations, where the liability of at least one member (general partner) for the obligations not covered by the assets of the partnership is unlimited, and is joint and several with all other general partners, while at least one other member (limited partner) is only obliged to provide the capital contribution undertaken in the memorandum of association, and, with the exceptions set out in the Company Act, is not liable for the obligations of the partnership.

The company's business name must contain the designation "betéti társaság" or the abbreviation "bt".

Branch Offices or Representative Offices

Foreign companies may carry out their activities through branch offices or representative offices in Hungary.

A branch office (in Hungarian: fióktelep) is an organizational unit of a foreign company, without legal personality, vested with financial autonomy and registered as an independent form of company in Hungarian company registration records as a branch office of a foreign company. A foreign company is entitled to conduct entrepreneurial activities through its branch office or offices registered in Hungary pursuant to the provisions of the Branch Office Act.

A representative office (in Hungarian: kereskedelmi képviselő) is also an organizational unit of a foreign company that is not involved in business activities in its own name, but which is registered as an independent business entity and is engaged - in the name and on behalf of the foreign parent company - in the mediation, preparation and conclusion of contracts, provision of information to clients and partners and other related client service activities.

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