

Establishing a Business in Portugal

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LEGAL SYSTEM

1. What is the legal system in your jurisdiction based on (for example, civil law, common law or a mixture of both)? Does your jurisdiction operate a federal or unitary system?

Basis of Legal System

Portugal has a code-based civil law legal system. The main sources of law in Portugal are:

- Constitutional laws.
- International law comprising the:
 - rules and principles of general or common international law;
 - rules set out in duly ratified or approved international agreements;
 - rules issued by the competent bodies of international organisations to which Portugal belongs, if this is laid down in the respective constituent treaties; and
 - provisions of EU treaties and the rules issued by its institutions in the exercise of their respective responsibilities.
- Ordinary laws.
- EU law. As Portugal is a member of the EU, EU applies according to the provisions of EU law such as the Treaty on the Functioning of the European Union (TFEU) and the Lisbon Treaty and, ultimately, as interpreted by the Court of Justice of the EU (CJEU). National courts are considered as ordinary courts of the EU and can submit questions concerning the interpretation of EU treaties and the validity and interpretation of acts of the EU institutions, bodies, offices or agencies to the CJEU under the preliminary ruling procedure.
- Instruments with equivalent effects to those of laws, such as:
 - acts approving international conventions, treaties, or agreements;
 - generally binding decisions of the Constitutional Court declaring measures to be unconstitutional or illegal;
 - collective labour agreements and other collective instruments regulating labour relations.
- Regulations or legislative instruments of lower status than primary legislation, whose purpose is to supplement laws and fill out the details so that they can be applied or implemented.

Federal or Unitary System

Portugal is a sovereign state and Portuguese jurisdiction operates in a unitary system which also includes two autonomous regions with their own political and administrative statutes and self-government institutions, the Azores and Madeira archipelagos.

The legislative competence of the autonomous regions is confined to defined matters and limited in that the autonomous regions only

have competence in matters that are not reserved to the Portuguese entities that exercise sovereignty, which are the:

- President of the Republic.
- Assembly of the Republic.
- Government.
- Courts.

BUSINESS VEHICLES

2. What are the main forms of business vehicle used in your jurisdiction? What are the advantages and disadvantages of each vehicle?

Limited Liability Company by Quotas (*sociedade por quotas*) (LLCQ)

Description. An LLCQ must be incorporated with at least two partners. However, it can have only one partner for up to one year. It is also possible to incorporate a company with a sole partner, either an individual or a company, that will hold the entire share capital. This type of company is a single shareholder limited liability company (*sociedade unipessoal por quotas*) and this term must be included in the company name.

Advantages/Disadvantages. Advantages are that:

- The minimum share capital is EUR1 (for companies with a sole quotaholder), EUR2 (for companies with two quotaholders) and so on. The minimum nominal value of the quotas is EUR1.
- Company assets and personal assets are separate.
- The quotaholders are not liable to the creditors of the company, only to the company itself: each quotaholder is liable for the payment of its own contributions and, on a subsidiary basis, is jointly liable with the others for the payment of the contributions of the other quotaholders.
- It is easier to obtain funds and investments.

Disadvantages are that:

- There is shared control of the company (except for the companies with a sole quotaholder).
- When the company is fully owned by a single quotaholder, where the members of the company's corporate bodies are liable to the company, the sole quotaholder can be jointly and severally liable with the members.
- A quotaholder cannot include business losses in their tax return.

Limited Liability Company by Shares (*sociedade anónima*) (LLC)

Description. An LLC must have at least five national or foreign shareholders (individuals or companies). However, the Portuguese Companies Code (PCC) allows the incorporation of an LLC by a company that will be the sole owner of the shares representing the entire share capital.

Advantages/Disadvantages. The advantages are:

- Company assets are separate from shareholders' personal assets.
- The liability of shareholders towards third parties is limited to the amount of their shares.
- The transfer of shares is easier.
- It is easier to obtain funds and investments.

Disadvantages are:

- The share capital must be at least EUR50,000.
- The company's corporate control is widely dispersed.
- Greater complexity in the incorporation and dissolution of the company.

General Partnership (*sociedade em nome coletivo*)

Description. General partnerships must have more than one partner with subsidiary liability in relation to the partnership and joint and several liability in relation to the other partners.

Advantages/Disadvantages. Advantages are:

- Joint and several liability between partners.
- The admission of working partners.
- There is no minimum amount of share capital.

Disadvantages are:

- Partners are jointly liable for the partnership's debts secondary to the partnership itself.
- Personal and corporate assets are not separated.
- Personal assets can be used in the event of insufficient partnership assets.

Limited Partnership (*sociedade em comandita*)

Description. A limited partnership is a type of mixed partnership in which there are general partners (*sócios comanditados*) (who provide services or goods) and limited partners (*sócios comanditários*) (who provide capital and manage the company).

A limited partnership can be either:

- Simple (*sociedade em comandita simples*): this is the more common type, where the capital is not represented by shares; there must be at least two partners and, in general, the provisions on general partnerships are applicable.
- By shares (*sociedade em comandita por ações*): the capital is represented by shares; there must be at least five limited partners and one general partner; the contributions made by limited partners cannot be in the form of services and, in general, the provisions on LLCs are applicable.

In a limited partnership, each of the limited partners is only liable for their contributions and general partners are liable on the same basis as the partners of a general partnership.

Advantages/Disadvantages. Advantages are that there is:

- Individual and limited liability of general partners.
- Joint and several liability among partners.
- Distribution of the company's control among the partners.

Disadvantages are that:

- The share capital cannot be less than EUR50,000.
- There is joint and several liability among partners.

Co-operative (*co-operativa*)

Description. Co-operatives are autonomous legal persons, freely established, with variable capital and membership, which, through the co-operation and mutual assistance of their members and in compliance with the co-operative principles, aim to satisfy their economic, social or cultural needs and aspirations on a non-profit basis. Co-operatives can be of the first degree (those whose members are natural or legal persons) or higher degrees (unions, federations and confederations of co-operatives). The number of members of a co-operative is variable and unlimited, but it cannot generally be less than three in first degree co-operatives and two in higher degree co-operatives.

Advantages/Disadvantages. The advantages are that:

- The liability of co-operative members is limited to the amount of the subscribed share capital. However, the co-operative statutes can establish that the liability of co-operative members is unlimited, or limited with regard to some matters and unlimited with regard to others.
- Different agenda from profit-based companies.

Disadvantages include that the co-operative's control is shared between the members].

Individual Limited Liability Establishment (*estabelecimento individual de responsabilidade limitada*) (EIRL)

Description. The EIRL is a legal form of company without legal personality, set up by a single individual.

Advantages/Disadvantages. Advantages include:

- Full corporate control.
- Normally, personal assets are separate from the company's assets, which are allocated to the economic activity to be developed.

Disadvantages include:

- The minimum capital must be at least EUR5,000.
- Two thirds of the capital must be in cash.
- In some cases, personal and company assets can be merged.

Sole Proprietorship (*empresário em nome individual*) (ENI)

Description. An ENI is someone who sets up a company of which they are the sole owner. These companies are usually used for small businesses, with a low investment and a low risk.

Advantages/disadvantages. Advantages are that:

- They are easy to incorporate and dissolve.
- There is no minimum amount of capital.
- They may offer reduced tax costs.
- The owner has full corporate control.

Disadvantages are:

- There is no separation of personal and corporate assets.
- It is more complicated to obtain funds.

Societas Europaea

In Portugal, it is not common to use these as a business vehicle.

ESTABLISHING A PRESENCE FROM ABROAD

3. What are the most common options for foreign companies establishing a business presence in your jurisdiction?

Incorporating a (Subsidiary) Company

Description. A foreign company can incorporate a (subsidiary) company in Portugal by choosing one of the following corporate types:

- LLCQ with a sole shareholder.
- LLCQ.
- LLC.

Reasons for Use. An LLCQ with a sole shareholder enables a foreign company to incorporate a new company 100% held by that foreign company. However, an LLCQ with a sole shareholder cannot fully hold another LLCQ.

The foreign company can hold a majority of an LLCQ, provided that there is at least one other shareholder (which can be a minority shareholder, with no formal minimum threshold being required). The foreign company can also incorporate a new LLC 100% held by that foreign company.

Setting up a Branch

Description. A branch is a permanent establishment (PE) or a permanent representation, through which the activity of the foreign company is wholly or partially carried on, under the management of the latter. A branch of a foreign company does not have legal capacity.

Reasons for Use. It is used when a foreign company wants to establish a PE or permanent representation in a foreign country to pursue the same activity as the foreign company.

Advantages/Disadvantages. Advantages include:

- A working or share capital is not mandatory.
- The branch operates as the permanent representation of the parent company.
- All the resolutions are adopted by the corporate bodies of the parent company.
- There is no board of directors. Typically, the representation powers are attributed to one or more representatives of the branch.

Disadvantages include:

- Absence of legal capacity.
- The parent company is liable for the obligations arising from the agreements entered into by the branch and takes on full and unlimited liability for its activities.
- The liability of the parent company for the branch's debts is unlimited.

The choice between setting up a branch or a company in Portugal is determined essentially by commercial and operational reasons, since the costs and timings of opening a branch are broadly similar to those for incorporating a company.

4. How can an overseas company trade directly in your jurisdiction?

A company that does not have its operational head office in Portugal but intends to exercise its activity in the country for more

than one year must establish a permanent representation (incorporate a subsidiary or set up a branch) and comply with the provisions of Portuguese law on commercial registration.

Portugal is a member of the EU and the World Trade Organization. Its internal laws and regulations regarding trading are aligned with the international standards and principles.

5. What are the formalities for setting up a partnership?

General Partnerships

Set up. General partnerships are set up by the registration and publication of their articles of association (AoA) with the Commercial Registry Office.

Applicable Legislation/Regulation. Articles 175 to 196 of the PCC govern general partnerships.

Partnership Agreements. Partnership agreements (*acordos parassociais*) can be concluded, but they are neither compulsory nor a necessary formality for setting up a partnership.

Liability of Partners. Each partner is liable to the company for their respective contribution and is responsible for the fulfilment or completion of the contribution (whether in cash, in kind and/or in work). The partners are liable to creditors for the partnership's (pecuniary) obligations subsidiarily in relation to the partnership and jointly and severally between themselves.

Assets. The partnership's assets are held by the partnership itself.

Legal Personality. General partnerships have legal personality.

Taxation. For a partnership not subject to the Portuguese tax transparency rules, see *Question 26*.

Limited Partnerships

Set up. Limited partnerships are set up by the registration and publication of their AoA with the Commercial Registry Office.

Applicable Legislation/Regulation. Articles 465 to 480 of the PCC govern limited partnerships.

Partnership Agreements. Partnership agreements can be concluded, but they are neither compulsory nor a necessary formality for setting up a partnership.

Liability of Partners. Each partner is liable to the company for their respective contribution and is responsible for the fulfilment or completion of that contribution, whether in cash, in kind and/or in work for general partners, and in cash or in kind for limited partners. General partners are liable to the partnership's creditors on the same basis as the partners of a general partnership, and limited partners are liable only up to the value of their contributions.

Assets. The partnership's assets are held by the partnership itself.

Legal Personality. Limited partnerships have legal personality.

Taxation. See *Question 26*.

6. What are the formalities for setting up a joint venture?

Structure

Joint ventures (JVs) in Portugal can be set up as one of four structures:

- Consortium (*consórcio*).
- Unincorporated partnership (*associação em participação*).

- Complementary group of companies (*agrupamentos complementares de empresas*).
- European economic interest grouping (*agrupamento europeu de interesse económico*) (EEIG).

These structures can be divided into co-ownership arrangements, JVs with unincorporated bodies, and JV agreement (see below).

Co-Ownership Arrangements

A complementary group of companies can be classified as a co-ownership arrangement where natural or legal persons and companies, without prejudice to their legal personality, group together to improve the conditions under which they pursue or obtain results in their economic activities.

In addition, an EEIG can also be classified as a co-ownership arrangement whose purpose is not to make profits for itself but to facilitate or develop the economic activities of its members and to improve or increase the results of those activities.

JVs with Unincorporated Bodies

An unincorporated partnership can be classified as a JV with unincorporated bodies, defined as an association by one party with a third party's economic activity, where it participates in the profits or in the profits and losses of that activity.

JV Agreement

The consortium, regulated under Decree-Law No. 231/81 of 28 July, is defined as a JV agreement between two or more natural or legal persons that carry out an economic activity and undertake to jointly carry out a specified activity or make a specified contribution for any of the purposes defined by law.

7. Are trusts (or a local equivalent) available in your jurisdiction?

Trusts, as a property right held by one party for the use of another, are not recognised under Portuguese law except in the Madeira free zone (*zona franca*). However, there are other methods which can establish a difference between legal ownership and beneficial ownership, such as fiduciary agreements.

FORMING A PRIVATE COMPANY

8. How is a private limited liability company or equivalent corporate business vehicle most commonly used by foreign companies to establish a business in your jurisdiction formed?

Regulatory Framework

The regulatory framework for companies is set out in the PCC.

Tailor-made/Shelf/Numbered Companies

Companies with a commercial purpose incorporated under the PCC can only adopt one of the forms listed in Article 1(2) of the PCC: general partnership, LLCQ, LLC, simple limited partnership, or limited partnership by shares. Despite this, the future shareholders of the private company have considerable freedom to modify the company's corporate regime.

The LLCQ is the most common type of private company in Portugal.

Formation Process

The process includes the following steps:

- Choice of the corporate name, corporate object, and head office of the company.

- Request for the admissibility certificate to the Portuguese National Registry of Legal Entities.
- Application for the Portuguese taxpayer numbers for the foreign directors of the company, if applicable.
- Drafting of a proposal for the subsidiary company's AoA.
- Execution of the incorporation document.
- Appointment of the subsidiary company's accountant.
- Registration of the subsidiary company with the Commercial Registry Office.
- Opening of the company's bank account.
- Submission of the subsidiary's Ultimate Beneficial Owner (UBO) Declaration to the Portuguese Beneficial Owner Central Registry.
- Submission of the statement regarding the company's beginning of activity with the Portuguese Tax Authorities.
- Registration of directors with the Portuguese Social Security Authority in Portugal.

Alternatively, it is possible to opt for a turnkey/on-the-spot company (*Empresa na hora*): only details of head office, scope of activities, share capital, shareholders and board members must be provided.

Company Constitution

Following the formation process, the following steps shall be adopted:

- Opening of the company's bank account.
- Submission of the UBO statement before the Central Register of the Effective Beneficiary (RCBE) (*Registo Central do Beneficiário Efetivo*).
- Submission of the statement regarding the company's beginning of activity with the Portuguese Tax Authorities.
- Registration of directors with the Portuguese Social Security Authority in Portugal.

FINANCIAL REPORTING

9. What financial or tax reports must the company submit each year?

Companies

Financial reporting includes:

- An annual review of the company's financial situation must be carried out, and through the presentation of a management report and accounts must be approved by the general meeting which must be held within three months from the end of the financial year. After being approved, the accounts must be deposited with the Commercial Registry Office within six months from the end of the financial year.
- The annual corporate tax (*Imposto sobre o Rendimento das Pessoas Coletivas*) (IRC) return must be submitted by 31 May of the following year to that the income regards (the date can vary for companies with a financial year other than the calendar year).
- Monthly value added tax (VAT) returns must be filed for companies with an annual turnover of at least EUR650,000 (otherwise, VAT returns must be filed quarterly).
- An annual statement of accounting and tax information (IES) must be sent, by electronic data transmission, by 15 July (the

date can vary for companies with a financial year other than the calendar year).

Branches of Overseas Companies

Despite not having legal capacity, branches of overseas companies are considered a PE. They are therefore subject to the Portuguese tax legislation and in general to the rules described above under *Companies*.

TRADING DISCLOSURE

10. What are the statutory trading disclosure and publication requirements for private companies?

The corporate name of LLCQs must end with the word *limitada* or by its abbreviation *Lda*.

The corporate name of LLCs must end with the words *sociedade anónima* or by its abbreviation *S.A.*

In addition, when the equity capital of a company corresponds to half or less than half of its share capital, the company must indicate the amount of equity capital in all its external acts.

11. How do companies execute contracts or deeds?

The AoA must provide the manner in which the company is bound. For most businesses, the legal formalities are considered fulfilled by the signature of a private document. However, there are certain businesses that require formalisation by means of a public deed or authenticated private document.

MEMBERSHIP/SHAREHOLDERS

12. Are there any restrictions on the minimum and maximum number of members?

See *Question 2*.

MINIMUM CAPITAL REQUIREMENTS

13. Is there a minimum investment amount or minimum share capital requirement for company formation?

See *Question 2*.

14. Are there restrictions on the transfer of shares in private companies?

The general rule for LLCs is of free transferability of shares. However, the AoA can provide certain restrictions to the free transfer of shares (only those that are expressly permitted by law).

For LLCQs, the company's consent is required for transfers of quotas between persons other than spouses, ascendants, descendants, or quotaholders. However, the AoA can impose other restrictions or waive the statutory restrictions.

SHAREHOLDERS AND VOTING RIGHTS

15. What protections are there for minority shareholders under local law? Can additional protections be given? Is liability limited to the value of shareholders' shares?

The PCC offers certain protections to minority shareholders, such as:

- Specific majorities (see *Question 17*).
- Special voting rights in LLCQs (see *Question 16*).
- Right to convene a shareholders'/quotaholders' general meeting and determine its agenda, when requested by shareholders/quotaholders representing at least 5% of the company's share capital.

Other protections can be provided by the AoA.

For shareholders' and quotaholders' liability, see *Question 2*.

When the company is fully owned by a single quotaholder/shareholder, the following exceptions to the limited liability regime apply:

- If the members of the company's corporate bodies are held liable to the company, the sole quotaholder/shareholder can be jointly and severally liable with the the corporate members.
- If the sole quotaholder causes/forces any of the members of the company's corporate bodies to carry out or fail to carry out an act, it will also be jointly and severally liable with them if those members are held liable to the company for the act or omission.
- When a company is declared bankrupted, the sole quotaholder is liable for the company's obligations if it can be proved that the assets of the company were used for purposes other than the fulfilment of its obligations.

An additional liability regime applies to companies that are fully owned by another Portuguese company (as its single quotaholder/shareholder). In this case, the parent company is also liable for the debts/liabilities of the affiliated company if specific requirements are met.

16. Are there any statutory restrictions on quorum or voting requirements at shareholder meetings? Must quorum or voting rights be proportionate to shareholdings?

LLCQ

The general rule for LLCQs is that each cent of the quota's nominal value counts as a vote. The AoA can give a special voting right to certain quotaholders where each cent of the quota's nominal value counts as two votes, if the quotaholder's quotas do not represent more than 20% of the company's share capital.

LLC

The general rule for LLCs is that each share counts as a vote, even though the AoA can determine otherwise. The AoA can determine that:

- A vote corresponds to a certain number of shares combined (if all the company's shares are included and at least EUR1,000 of the share capital has right to a vote).
- Votes above a certain number and issued by the same shareholder are not counted.

Generally, there is no statutory quorum for general shareholders' meetings, except when the shareholders' meeting is deciding on matters that require specific voting majorities (see *Question 17*), in

which case at least one third of the company's share capital must be represented on the date of the first convening.

17. Are specific voting majorities required by law for any corporate actions (for example, increasing share capital, changing the company's constitution, appointing and removing directors, and so on)?

The PCC establishes some specific voting majorities, for example a majority of:

- Three-quarters is required to decide on the winding-up or on the increase of the share capital of a LLCQ.
- Two-thirds is required to decide on the merger, demerger, transformation, winding-up, and increase of the share capital of an LLC.

However, the company's AoA can require other majorities for certain corporate actions, but cannot determine a lesser majority than that determined by law.

18. Can voting majorities required by law be disapplied to protect a minority shareholder (for example, through class rights, weighted voting or super-majority veto rights)?

Voting majorities required by law cannot be disapplied. However, superior majorities can be required by the AoA.

SECTORAL RESTRICTIONS

19. What are the conditions or restrictions on establishing a business in specific industry sectors? Are there industry sectors in which it is not permitted to establish a business?

Portuguese law does not have any list defining which business activities are prohibited. Law No. 88-A/97 of 25 July regulates the access of private enterprise to certain economic activities and requires certain activities to be subject to concession agreements. Examples of these are the:

- Collection, treatment and distribution of water for public consumption.
- Collection, treatment and disposal of urban wastewater.
- Collection and treatment of urban solid waste.
- Rail transportation activity operated under a public service scheme.
- Operation of seaports.

Industrial activities are governed by the Responsible Industry System (*Sistema da Indústria Responsável*) (SIR), approved by Decree-Law No. 169/2012 of 1 August, which aims to prevent industrial risks, safeguard public health and workplace safety, and promotes an appropriate environmental and urban planning protection. Annex I to the SIR defines the types of business which are considered industrial activities.

Certain industrial activities are subject to specific environmental law regimes, including those relating to environmental impact assessments, industrial emissions, and use of water, among others. These regimes may require specific licences and permits to be obtained before the operation of an industrial establishment.

There are also several EU directives and regulations that set conditions applicable to the operation of certain industrial

activities, which must be considered by operators carrying out their activity within these sectors, for example, the food industry and manufacture of materials and articles intended to come into contact with food.

FOREIGN INVESTMENT RESTRICTIONS

20. Are there any restrictions on foreign shareholders/company members?

There are no restrictions on foreign shareholders/company members, but they must hold a Portuguese taxpayer identification number.

21. Are there any exchange control or currency regulations? Are there any registration requirements under anti-money laundering laws?

Exchange Control or Currency Regulations

There are no restrictions or regulations on international exchange money operations.

However, any person transporting EUR10,000 or more in cash into or out of a non-EU state must declare it to the customs authorities (*Decree-Law No. 295/2003 of 21 November*). Additionally, banking institutions must inform the Bank of Portugal, for statistical purposes, of any transactions that exceed EUR100,000 involving a foreign account.

Anti-Money Laundering Laws

The money laundering legal framework contains both criminal and regulatory/compliance provisions.

Money laundering is a criminal offence under Article 368-A of the Portuguese Criminal Code.

Compliance provisions are set out in the following laws:

- Law No. 83/2017 of 18 August, which partially implements the Fourth EU Anti-Money Laundering Directive ((EU) 2015/849) (AML 4), and Council Directive (EU) 2016/2258.
- Law No. 89/2017 of 21 August, which implements Chapter III of AML4.
- Law No. 97/2017 of 23 August, which regulates the implementation and enforcement of restrictive measures adopted by the United Nations or the EU.
- Law No. 92/2017 of 22 August.
- Decree-Law No. 61/2007 of 14 March.
- Executive Order No. 345-A/2016 of 30 December.
- Resolution of the Council of Ministers No. 88/2015 of 1 October.
- Law No. 5/2002 of 11 January.

Other Recording and Reporting Requirements

Under Portuguese corporate and tax law, companies must keep records and supporting documents for 12 years. The records for operations subject to Portuguese income tax must be held in an establishment or facility located on Portuguese territory. Both share companies and quota companies must submit annual (or quarterly in the case of public companies) accounting statements (*see Question 9*).

Under Law No. 89/2017, companies in Portugal must file their information and the information of their UBO in the RCBE.

The following are under a duty to report any suspected financial crime to the competent criminal authorities:

- Any employee of a public entity.
- Members of the supervisory board and audit committee of commercial companies

(Articles 422 (3) and 423-G (3), PCC.)

22. Are there restrictions on foreign ownership or occupation of real estate, or on foreign guarantees or security for ownership or occupation?

There are no restrictions on ownership or occupation of real estate by foreign citizens.

From a Portuguese legal perspective, in general, there are also no restrictions on foreign guarantees or security for the purpose of ownership or occupation of real estate.

An investment made directly in Portugal of more than EUR10,000 must be reported to the Bank of Portugal.

There are no restrictions on ownership or occupation of real estate by UK citizens. However, travel or residency restrictions may now apply, in the light of Brexit and the 2019 novel coronavirus disease (COVID-19) pandemic.

DIRECTORS

23. Are there any general restrictions or requirements on the appointment of directors?

This analysis will focus exclusively on LLCQs and LLCs. Certain entities (such as credit institutions) can be subject to special requirements that are out of the scope of this Q&A.

In general, directors must be natural persons, whether or not they are shareholders, with full legal capacity.

There are no statutory limitations as to nationality or residence. Directors can be foreign persons resident abroad, provided that they have a Portuguese taxpayer identification number. Directors who are not resident in the EU must have, in addition to a Portuguese taxpayer identification number, a tax representative residing in Portuguese territory.

In listed companies, the proportion of persons of either gender newly appointed to a company's management and supervisory body cannot be less than:

- 20% from the first elective general meeting after 1 January 2018.
- 33.3% from the first elective general meeting after 1 January 2020.

(Law No. 62/2017 of 1 August).

There are no diversity quotas or relevant disclosure requirements.

Corporate directors are only expressly permitted in LLCs. If a legal person is appointed as a director, it must appoint a natural person to exercise the office in its own name. The legal person is jointly and severally liable with the appointed person for the actions of the latter.

In LLCQs, the absence of an express legal permission for the appointment of a legal person for the role of manager has raised doubts among scholars as to its admissibility.

A person who, as a result of culpable insolvency, has been disqualified by the court from exercising a commercial activity for between two and ten years, or from holding any position as a member of a management or supervisory body of a commercial company, cannot be appointed as a director.

Other persons who are ineligible to be appointed as directors for public law reasons are judges and public prosecutors, among others.

Having a criminal record is not an impediment to appointment as a director.

The law does not impose limits on the number of directorship holdings. The AoA can, however, provide for such limits.

Directors are not legally required to hold shares of the company in which they are appointed, however the AoA can require directors to hold qualifying shares.

Directors must not exercise an activity competing with that of the company without the consent of the shareholders.

BOARD COMPOSITION

24. What are the legal requirements for the composition of a company's board of directors?

Structure

In LLCQs, the management of the company is entrusted to one or more managers (*gerente/gerência*). The company can have a supervisory board, but only if the AoA provides for it. This body is always optional in an LLCQ. If there is no supervisory board, the company is obliged to appoint a statutory auditor if two of the three following limits are exceeded in two consecutive years:

- Balance sheet total: EUR1.5 million.
- Total net sales and other income: EUR 3 million.
- Number of employees on average during the financial year: 50.

In LLCs, the board structure varies according to the corporate governance model adopted:

- Latin model (the most commonly used in Portugal):
 - board of directors (or a sole director, provided that the company's share capital does not exceed EUR200,000); and
 - a supervisory board (or a sole auditor).
- German model:
 - executive board of directors (or a single executive director, provided that the company's share capital does not exceed EUR200,000);
 - a general and supervisory board; and
 - a statutory auditor.
- Anglo-Saxon model:
 - board of directors (comprising an executive committee and an audit committee); and
 - a statutory auditor.

Number of Directors or Members/Shareholders

In LLCQs, the company is managed and represented by one or more managers.

In LLCs, the board of directors comprises the number of directors established in the AoA. The AoA can determine that the company has only one director, provided that the share capital does not exceed EUR200,000.

Employees' Representation

In private companies, employees do not have a statutory right to board representation.

RE-REGISTERING AS A PUBLIC COMPANY

25. What are the requirements for a business to re-register as a public company or when does an entity become a reporting issuer?

LLCs can acquire the status of company open to public investment (*sociedade com o capital aberto ao investimento público*) (soon to be known as a public company (*sociedade aberta*)).

Public companies are defined in general as LLCs whose equity capital is open to public investment. They are governed by the PCC rules applicable to LLCs and by the relevant provisions of the Portuguese Securities Code.

The following are considered to be public companies:

- A company incorporated through an initial public offering for subscription specifically addressed to individuals or entities resident or established in Portugal.
- A company that issues shares or other securities that grant the right to their subscription or acquire shares that have been the object of a public offer for subscription specifically addressed to individuals or entities resident or established in Portugal.
- A company that issues shares or other securities that grant the right to their subscription or acquisition and are or have been listed on a regulated market situated or operating in Portugal.
- A company that issues shares that have been sold by public offer for sale or exchange in a quantity greater than 10% of the company's capital directed specifically at individuals or entities resident or established in Portugal.
- A company created as a result of the demerger of a public company or a company that incorporates, through merger, all or part of its net equity.

When one of the situations referred to above occurs, the company automatically acquires the status of a public company, no judicial or administrative decision being required for this purpose.

Membership

See Question 2.

Share Capital

See Question 2.

The law does not provide for a minimum number of shares held by the public. A public company can lose this status when a shareholder, as a consequence of a takeover, reaches a holding of more than 90% of the voting rights.

There are no net asset requirements.

Other Key Requirements

Listed companies (*sociedades cotadas*), that is, issuers of shares admitted to trading on a regulated market (*sociedades emitentes de ações admitidas à negociação em mercado regulamentado*), are subject to a more stringent regime, namely in terms of requirements.

In Portugal, there is currently only one regulated market for the trading of shares, Euronext Lisbon.

Listing requirements in the Portuguese regulated market can be found in the Portuguese Securities Code, in regulations approved by the Portuguese Securities Market Commission (*Comissão do Mercado de Valores Mobiliários*) (CMVM), and in the Euronext Rule Books.

TAX

26. What main taxes are businesses subject to in your jurisdiction?

IRC

Generally, IRC is levied on the:

- Worldwide income of Portuguese tax-resident legal entities.
- Profits attributable to a PE of a non-resident entity.
- Portuguese sourced income obtained by non-resident entities with no PE in the Portuguese territory.

The current standard IRC rate is:

- 21% in Portugal mainland.
- 14.7% in the Autonomous Region of Madeira.
- 16.8% in the Autonomous Region of Azores.

For small and medium enterprises in Portugal mainland, a reduced rate of 17% is applicable on the first EUR25,000 of taxable income, with the surplus taxed at the standard rate of 21%.

A municipal surcharge is levied by the municipalities at variable rates up to 1.5% of the taxable profit of the year, being the actual rate defined on an annual basis according to the decision of each municipality.

Taxpayers are also subject to a state surcharge of:

- 3%, for taxable income from EUR1.5 million to EUR7.5 million.
- 5%, for taxable income from EUR7.5 million to EUR35 million.
- 9%, for taxable income exceeding EUR35 million.

Generally, an annual IRC return for the current tax year must be submitted by May 31 of the following year.

VAT

VAT is generally levied on the supply of goods and services, imports and intra-EU acquisitions of goods, as well as on services provided to non-resident entities.

For Portugal mainland, a standard VAT rate of 23%, an intermediate VAT rate of 13%, and a reduced rate of 6% apply. The VAT rates are 22%, 12% and 5% in the Autonomous Region of Madeira, and 18%, 9% and 4% in the Autonomous Region of Azores.

Monthly VAT returns must be filed by businesses with an annual turnover of at least EUR650,000 (otherwise, VAT returns must be filed quarterly).

Real Estate Transfer Tax

Real estate transfer tax (*Imposto Municipal sobre Transmissões Onerosas de Imóveis*) (IMT) is levied on the transfer of immovable property located in Portuguese territory over the highest of the taxable value of the immovable property or the transaction value. IMT is assessed at a progressive rate up to 7.5% on urban residential properties and at 6.5% for other urban properties.

Property Tax

Property tax (*Imposto Municipal sobre Imóveis*) (IMI) is due on immovable property owned on 31 December and paid in the following year, in one, two or three instalments, depending on the tax value of the property. IMI is due on the taxable value of the property. The applicable rates for urban properties are defined annually by each municipality and range from 0.3% to 0.45%.

Additional property tax (*Adicional ao Imposto Municipal de Imóveis*) (AIMI) is assessed on the total taxable value of residential

properties or land for construction located in Portugal held by the taxable person on 1 January of each year at a rate of 0.4%. AIMI is assessed in June of each year and must be paid by the end of September.

Stamp Duty

Stamp tax is levied on deeds, contracts, documents, titles, books, papers and financial operations and is usually payable by the entity which has an economic interest in the operation.

27. What are the circumstances under which a business becomes liable to pay tax in your jurisdiction?

Tax Resident business

Corporations and other entities with their head office or place of effective management in Portugal qualify as tax resident and IRC is levied on their worldwide income.

Non-tax Resident Business

Companies without their head office or place of effective management in Portugal are considered non-resident entities. Profits attributable to a Portuguese PE of a non-resident entity, as well as Portuguese sourced income obtained by a non-resident entity with no PE in the Portuguese territory are subject to tax in Portugal.

As a rule, any fixed place of a business through which an entity performs its commercial, industrial or agricultural activity can qualify as a PE.

In general, Portuguese PEs of non-resident entities are subject to Portuguese taxes under the rules applicable to Portuguese companies.

28. What is the tax position when dividends or profits are remitted abroad?

Dividends paid by Portuguese resident companies to foreign companies are generally subject to IRC withholding tax at a rate of 25%. However, dividends that a Portuguese resident company grants to a foreign company that meets all the following conditions are exempt from withholding tax:

- The foreign company is resident in another EU member state, in a member state of the European Economic Area bound by EU taxation rules, or in a state with which Portugal has in force a double tax treaty (DTT).
- The foreign company is subject to, and not exempt from, a tax provided in the Parent-Subsidiary Directive (2011/96/EU) or a similar tax which tax rate is not less than 12.6% (60% of the Portuguese IRC rate of 21%).
- The foreign company held, direct or indirectly, a minimum of 10% of the share capital or voting rights of the entity that grants the dividends.
- This participation is held uninterrupted during the year preceding the distribution of dividends.

A special anti-abuse rule can be applied.

This regime does not apply if the Portuguese tax resident company that distributes the dividends has not fulfilled its declarative obligations concerning the RCBE or if the declared beneficial owner or any beneficial owners have their residence or domicile in a blacklisted jurisdiction as defined by the Portuguese law, unless the Portuguese tax resident company that distributes the dividends proves specific conditions defined in the law.

Withholding tax can be also eliminated or reduced if a DTT is in force.

29. What thin-capitalisation rules and transfer pricing rules apply?

Net financing expenses are only deductible for IRC purposes up to the higher of the following limits:

- EUR1 million.
- 30% of the tax earnings before interest, taxes, depreciation, and amortisation (EBITDA).

Any excess financing expenses of a given tax year may be deductible in the subsequent five tax years, provided that, together with the net financing expenses of the year, those limits are not exceeded. Whenever net financing expenses do not exceed 30% of the company's EBITDA, the unused part increases the maximum deductible amount in the following five years, until its full deduction.

Under the Portuguese transfer pricing regime, transactions carried out between a taxable person and any other related entity, whether or not subject to IRC, must be subject to terms or conditions substantially identical to those that would normally be agreed, accepted and practised between independent parties in comparable transactions.

The transfer pricing regime applies to:

- Commercial transactions, including any operation or series of operations regarding tangible or intangible assets, rights or services, even if carried out within the scope of any agreement, namely the sharing of costs and the provision of intra-group services.
- Financial operations and corporate restructuring or reorganisation operations that involve changes in business structures, the termination or substantial renegotiation of existing contracts, especially when they involve the transfer of tangible or intangible assets, rights over intangible assets, or compensation for emerging damages or lost profits.

GRANTS AND TAX INCENTIVES

30. Are grants or tax incentives available for companies establishing a business in your jurisdiction?

Incentives

Portugal provides for a set of attractive tax incentives to encourage investment in the country, such as:

- Contractual Tax Incentives for Productive Investment.
- Tax Regime for Investment Promotion (RFAl).
- System of Tax Incentives for Research and Business Development (SIFIDE).
- Conventional Remuneration of Share Capital.
- Urban Rehabilitation.
- Purchase and Resale of Real Estate.
- Collective Investment Undertakings Special Regime.

Relevant Authority. The relevant authorities are the:

- Tax and Customs Authority (*Autoridade Tributária e Aduaneira*).
- Investment Tax Incentives Coordination Council (*Conselho de Coordenação dos Incentivos Fiscais ao Investimento*) (Contractual tax benefits for productive investment).

- National Innovation Agency (Agência Nacional de Inovação).
- System of Tax Incentives for Business Research and Development (*Sistema de Incentivos Fiscais à Investigação e ao Desenvolvimento Empresarial*) (SIFIDE).

Application Details. Applications for contractual tax incentives for productive investment should be submitted electronically to one of the following:

- Trade and Investment Agency (*Agência para o Investimento e Comércio Externo de Portugal*) (AICEP).
- Treasury and Debt Management Agency (*Agência de Gestão da Tesouraria e da Dívida Pública*) (EPE).
- Public Agency for Competitiveness and Innovation (*Agência para a Competitividade e Inovação*) (IAPMEI, IP).

An SIFIDE application must be made to the National Innovation Agency.

Useful Websites

For more information, see:

- https://info.portaldasfinancas.gov.pt/pt/docs/Conteudos_1pagina/Pages/portuguese-tax-system.aspx.
- <https://portugalglobal.pt/EN/InvestInPortugal/tax-incentives/Pages/tax-incentives.aspx>.
- [www.iapmei.pt/PRODUTOS-E-SERVICOS/Incentivos-Financiamento/Beneficios-fiscais-\(1\).aspx](http://www.iapmei.pt/PRODUTOS-E-SERVICOS/Incentivos-Financiamento/Beneficios-fiscais-(1).aspx).
- www.ani.pt/en/funding/fiscal-incentives/sifide/.

EMPLOYMENT

31. What are the main laws regulating employment relationships?

The most important Portuguese laws that regulate employment relationships are the Portuguese Constitution and the Portuguese Employment Code. This code sets out most of the main matters that regulate the employment relationship. The Portuguese employment system is also influenced by EU law.

Some other matters are regulated by other specific laws, such as the:

- Social Security Contributory Code.
- Legal Framework on Employment and Social Security Administrative Offences.
- Legal Framework on Age and Invalidity Retirement.
- Legal Framework on Health and Safety at Work.
- Legal Framework on the Compensation of Accidents at Work and Occupational Diseases.

Collective bargaining agreements are also of great importance in the Portuguese employment system.

Foreign Employees

Portuguese legislation applies to all employees regardless of their nationality.

Under EU law, the employer and the employee can choose the law applicable to the employment contract. However, this choice of law must not result in depriving the employee of the protection afforded to them by mandatory provisions that would apply in the absence of choice.

As a general rule, in the absence of choice, if the employee habitually works in Portugal, the employment contract will be governed by Portuguese employment law.

Employees Working Abroad

Portuguese law does not prevent nationals from working in any other country. If they work abroad under the posting (secondment) rules, they are subject to Portuguese law.

Any employee posted to another country is entitled to the working conditions provided by law and will be covered by any collective bargaining agreements with overall effectiveness, whenever these are more favourable to the employee than those generally applicable in the place of work, on the most significant employment matters.

Mandatory Rules of Law

Even if the parties choose a law other than Portuguese law, and the employee is habitually working in Portugal, the employee is still protected by provisions that cannot be derogated from by agreement under Portuguese law.

The provisions of the law or of any applicable collective bargaining agreements can generally only be derogated from if they establish a more favourable situation for the employee.

Some provisions, including dismissal requirements and the grounds for termination of employment contracts, can never be derogated from.

32. What prior approvals (for example, work permits, visas, and/or residency permits) do foreign nationals require to work in your jurisdiction?

A citizen from a third country (a non-EU or non-Schengen Treaty member state) is only allowed to start working in Portugal if they have a work visa/residence card. In practice, foreign nationals can only start working for a company after the visa/residence card has been issued. The main Portuguese authority responsible for admissions is the Foreign Nationals and Borders Service (*Serviço de Estrangeiros e Fronteiras*) (SEF).

Nationals of third countries who are resident in an EU member state and are regularly employed by an EU company and who travel to Portugal as part of this employment relationship to provide services, do not require a residence visa or a limited stay visa. However, they are required to give notice of their presence in Portugal to the SEF within three days of their arrival in the country.

Work Permits/Residency permits

The Portuguese Immigration Law establishes various residence/work permits or visas, according to the purpose of the stay.

A residence permit can be temporary or permanent. If it is temporary, the residence card issued to the foreign national is valid for one year from its issue date and is renewable for successive two-year periods. A permanent residence permit has no validity period. However, it must be renewed every five years or whenever the identification information registered in the card changes.

The main permits/visas provided for by Portuguese law for foreign workers are:

- **Highly qualified employee resident permit.** Applying for a highly qualified employee resident visa is the fastest way to obtain a residence permit for work in Portugal, provided it is proved to the immigration authorities that the employee will do highly qualified work and has the necessary academic qualifications.
- The issuance of the visa should not take more than two/three months. Once it is issued, the applicant can travel to Portugal and an appointment can be scheduled to convert the visa into a highly qualified employee residence permit. This permit will be issued within a maximum of three months from the

appointment date. In some consulates, an interview with the consul may be required.

- **Dependent employee residence permit.** For this type of residence permit, a residence visa for employment purposes must be obtained first. This visa allows its holder to legally enter Portugal and to convert the visa into a residence permit. The decisions on residence visa applications do not usually take more than 90 days and the conversion of the visas into permits is a mere formality.
- Before a residence visa for employment purposes can be granted, the employer must have advertised the job at the Portuguese Employment Institute with no suitable Portuguese or EU candidate being able to take the job.
- **Independent employee residence permit.** See dependent employee residence permit.

UK citizens are now considered to be third-country citizens, which means that the above types of work permits will apply to them.

EU Citizens

EU citizens have the right to request a residence card for their family members from outside the EU. This type of residence application requires fewer documents than the ones required for non-EU citizens.

This request must be submitted by the EU citizen, who must also attend the appointment, to collect the biometrics data.

The residence card is valid for five years (the same validity as the EU certificate of the applicant).

The holders of this type of residence permit are able to live and work in Portugal and to travel freely around the Schengen Area.

PROPOSALS FOR REFORM

33. Are there any impending developments or proposals for reform that concern any of the issues covered in this Q&A?

The Government has started a public consultation process based on its *Green Paper on the Future of Work*. This document lists the topics on which bases the government intends to change employment legislation. At this stage, there is only a plan of intentions to enable concrete proposals to emerge from consultation with the various stakeholders.

Additionally, the increasing number of people working from home due to the COVID-19 pandemic requires a new legal framework.

The government also intends to regulate working on digital platforms and wants to attract more "digital nomads" (people working digitally from a location other than their home country) in the context of the global market, by improving the tax and employment environment.

Extending the social protection systems for workers not covered by employment contracts and the measures to reduce undeclared work are also points of action.

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