Portugal

Legal overview

Executive Summary

Portugal is located in the westernmost point of the European continent, featuring one of the biggest Exclusive Economic Zones in Europe. A member of the European Union (EU) and bordering the Atlantic Ocean, it is considered to be the western entry gate to Europe, offering several opportunities for foreign investment.

Expanding operations to Portugal has many benefits, including gaining access to EU markets, as well as Portuguese speaking regions such as Brazil, Angola and Macau.

Regarding the predominant types of corporate companies in the country, private limited liability companies ("sociedades por quotas") and public limited liability companies ("sociedades anónimas") are by far the most common due to the shareholders' limited liability which safeguards their personal assets.

Foreign investment is not subject to any special rules or registrations, although specific activities may require investors to comply with certain regulations. Therefore, setting up a company in Portugal is fairly quick and easy, and it is increasingly possible to complete parts of the process over the internet.

Registered companies

The most common way for foreign enterprises to establish a business in the country is to create a branch office or incorporate a subsidiary company. Individual investors can also incorporate a company or, alternatively, may choose other investment options, although this is very rare.

A branch office ("sucursal") is a permanent and stable representation of a foreign company in the country, which does not hold legal personality and, although some range of autonomy is recognised, it is subject to the company's guidelines. Branch offices must be registered at the Commercial Registration Office and other formalities will also have to be fulfilled.

A subsidiary company is, however, an independent and legal person in its own right, bearing its own name and having its own share capital and accounts. It is required to be incorporated and registered, as any other company, and it shall take the form of a private limited liability company ("sociedade por quotas"), sole shareholder private limited liability company ("sociedade unipessoal por quotas") or public limited liability company ("sociedades anónimas").

Concerning individual investors, those wanting to set up a business in Portugal may also incorporate a company. Alongside this option, individuals can also act as sole traders or choose to incorporate as an individual limited liability establishment, although the latter two choices are very uncommon ways of conducting business here.

Aside from corporate companies, investors are free to incorporate as unlimited liability general partnerships ("sociedades em nome colectivo") or unlimited liability limited partnerships ("sociedades em comandita"), which also require registration. However, due to the unlimited liability of at least one of the partners, these forms of doing business are currently nearly non-existent.

Classification of companies

As mentioned before, the main way for foreign investors to conduct business in Portugal is through a corporate company. The major factors which determine the most suitable company type for every given situation are the minimum share capital and number of shareholders required, and how much they control the company.

Private limited liability companies ("sociedades por quotas"), mainly used for small and medium size businesses, are the most common type of companies in the country. In order to be incorporated, they require at least two shareholders. Shareholders' liability is limited to the extent of their respective equity in the company.

Public limited liability companies ("sociedades anónimas") are generally associated with big enterprises. These companies require at least five shareholders, although one public limited liability company may incorporate another public limited liability company on its own. As in private limited liability companies, shareholders are only liable to the extent of their respective share value. Concerning the share capital, EUR50,000 is the minimum amount required.

All corporate companies must be incorporated and registered, which is traditionally executed with the help of lawyers. It invol-

ves a series of formalities and the gathering of different kinds of documents.

Aside from this process, shareholders may alternatively choose the ‘on-the-spot’ firm (“balcão da empresa na hora”) or the online firm (“empresa online”) procedures, which provide them with a pre-drafted version of the articles of association and a range of pre-approved corporate names to choose from. Both methods allow investors to set up a company in less than an hour and are less costly.

Articles and memorandum of association

The most important document of a company is its articles of association (commonly known in Portuguese as “estatutos”), which are required in order to register the company. These are attached to the memorandum of association, which is the company’s incorporating document signed by all the shareholders.

The articles of association outline the basic rules governing the company and must state relevant matters such as the shareholders’ names and the initial equity, object and type of company, corporate name, location of the registered offices and the share capital. Other elements and clauses may be added as long as they comply with the law.

Aside from this regulatory document, shareholders are free to sign shareholders’ agreements, which are independent from the articles of association, although interconnected. These may regulate matters such as agreements on voting rights and the selling and acquisition of shares.

Corporate capital

Corporate capital is divided into stakes, which are named according to the type of company. For instance, in the case of private limited liability companies and sole shareholder private limited liability companies, the corporate capital is divided into “quotas”; however, in the case of public limited liability companies they are called “acções” (shares).

In every corporate company, the shareholders’ initial contributions are included in the company’s articles of association. As a general rule, the amount of corporate capital owned by an individual shareholder will directly influence the number of votes they can cast and, thus, dictate how much control they have over the company.

One core characteristic that sets each kind of corporate capital apart is its ability to be transferred to another person and the terms under which this transfer may occur e.g. by sale, donation or death. "Quotas" are usually privately sold among legal persons and individuals, while shares ("acções") are regularly traded on the stock market, at least with regard to listed companies.

Generally, the amount of corporate capital owned by shareholders will also limit the extent of their liability.

Public offer of shares

One method of gathering the capital necessary to incorporate a public limited liability company is to launch an IPO (Initial Public Offer). In this situation, the initial shareholders (one or more people), or the so-called promoters, ask the public to subscribe to company's shares. If the IPO is successful, subscribers become shareholders, enabling the funding of the share capital. Portuguese law also sets out a detailed framework for a public offering for the acquisition of shares.

General meetings

The rules that apply to shareholders' meetings vary depending on the type of company. These rules dictate when and how general meetings take place, setting out some conditions on the validity of this corporate body's decisions.

In the case of public limited liability companies, an ordinary general meeting shall be held once a year in order to deliberate on matters such as the approval of the annual management report and financial statements for the previous year. Particular cases may demand the convening of extraordinary general meetings; one or more shareholders can also request a general meeting, provided that they represent at least 5% of the share capital.

For private limited liability companies, as a general rule, general meetings must comply with the same legal framework as public limited liability companies.

Directors and managers

Public limited liability companies with a share capital no greater than €200,000 may appoint, in general, only one manager and, regardless of the number of directors, this must be a physical person with full legal capacity, rather than a legal person. Therefore, in the event of a legal person being chosen to be director, it must

appoint a physical person to exercise the office on their behalf, notwithstanding that the first is jointly and severally liable for the actions of the latter.

Private limited liability companies are required to have at least one manager which also must be an individual with full legal capacity.

It should be noted that directors and managers are not subject to any kind of nationality based restrictions. They cannot be personally liable for the company's debts, except in the case of a breach of legal or contractual rules.

Financing of a company

The financing of a company may occur in a varied number of ways, such as:

- Capital contribution from shareholders (share capital);
- Loan, debt and bank finance; and
- Grants.

Commencement of business

Before a company is effectively able to start operations, several requirements must be fulfilled. As previously mentioned, companies must be incorporated and registered, which requires various actions and documents. Alongside these two major steps, other actions, such as registering with the Portuguese Social Security Administration and the Tax Administration, will be required before the commencement of business.

The timeline of this entire process usually takes about two weeks; however, it is faster to use the 'on-the-spot' firm ("empresa na hora") or the online firm ("empresa online") procedures.

Mergers and acquisitions

In short, mergers may occur in two different ways: through merger by acquisition ("fusão por incorparção") or through a regular merger ("fusão").

In a regular merger, the participant companies' assets are globally transferred to a new company. As a result, shareholders of both companies receive shares of the newly formed company.

However, in a merger by acquisition, the acquired company essen-

tially becomes part of the acquiring company, thus the shareholders of the former gain shares of the latter. Special rules apply if the acquiring company owns at least 90% of the shares of one or more of the acquired companies.

In order to successfully achieve a merger, participant companies must follow various steps, some of which require registration.

Corporate insolvency

The main goal of Portuguese insolvency law is to satisfy the creditors by recovering the insolvent company's business; only if that does not appear to be possible is the company liquidated and the amount received distributed to the creditors.

According to Portuguese law, as a general rule, a company that cannot comply with its obligations shall apply to be declared insolvent. Failing to comply with this duty may result in legal and criminal consequences.

For companies in a difficult economic situation or on the verge of insolvency, it is possible to apply for a special recovering process called "PER" ("Processo Especial de Revitalização").

Whatever the case may be, an insolvency administrator will be appointed in most circumstances. This administrator will be responsible for overseeing the PER and for managing and liquidating the estate if the company does become insolvent.

Aside from the aforementioned procedures, companies facing solvency problems may apply to "SIREVE" ("Sistema de Recuperação de Empresas por Via Extrajudicial"), which is an extra-judicial process, aiming to promote the recovery of companies through the creation of an agreement between the company and all or some of its creditors.

Winding up of companies

The dissolution of a company usually results in its liquidation. This event may occur as a result of the shareholders' decision, or it may be a legal or contractual consequence of some sort. For example, once a company is declared insolvent or reaches the end of its period of activity set out in the memorandum of association, it will immediately be dissolved and liquidated.

In the case of company insolvency, the liquidation generally takes place after the creditors' approval of the Insolvency Administra-

tor's report indicating the liquidation path. From that moment on, the Insolvency Administrator starts the liquidation of the insolvency estate by selling its assets and paying the creditors.

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Tax overview

Company registration

Every new business, whatever its legal form, must register with the Commercial Registration Office in Portugal. The Commercial Registration Office systems are not automatically connected with the system of the Portuguese tax authorities for registration for tax purposes. This registration has to be done separately with the tax authorities.

Setting-up taxation

There are no setting-up costs in terms of taxation in Portugal, except for a small fee for registering the company in the Commercial Registration Office.

National current benefit taxation

Corporate income tax

Taxable profits of both companies and branches doing business in Portugal are subject to 17% corporate income tax rate over the first EUR 15,000 of profit and 21% over the excess.

Other taxes (VAT, property taxes)

VAT is levied at a standard rate of 23% for most goods. A reduced rate of 6% applies to food, books and certain other necessities. There is a zero rate for the export of goods. Certain medical services, banking services and school education are exempt from VAT.

VAT is charged on the transaction value. The tax collected by the business from its customers is paid to the tax authorities on the basis of a tax return, which is filed monthly and quarterly. VAT charged to the business (and paid to other businesses) is deductible from the VAT payable. A negative balance of these amounts is reported or refunded.

Treaties for the avoidance of double taxation

General rules

Portugal has a wide range of double tax treaties.

The wide double taxation treaty networks cover almost all the industrialised countries and a number of others. Apart from the number of treaties, the rates negotiated for withholding tax rates are often lower than other countries manage to obtain.

Benefit distribution (national withholding taxes, international tax exemption options)

Portugal levies a dividend withholding tax on profit distributions. This rate may be reduced on the basis of Portuguese legislation, double tax treaties or the EU Parent-Subsidiary Directive.

Exemption on dividends and capital gains obtained by a Portuguese company

The regime applies to direct, or direct and indirect minimum 10% participations in share capital or in voting rights, held for a minimum period of 24 months. In the case of dividends not entitled to exemption, a credit for the underlying tax paid by eligible direct or indirect subsidiaries, as well as a credit for juridical double taxation on withholding tax applied to the dividends, may be granted.

Exemption on dividends paid to non-resident entities

This exemption applies to participations in Portuguese companies in the stated conditions (e.g. minimum 10% participation, for at least 24 months), provided that the shareholder is resident in the EU, EEA or in a Treaty Country (check the DTT network here)

Tax treatment of losses

Losses may be carried back one year and carried forward for five years subject to certain conditions.

Employer obligations (salary taxes, social security)

In general, an employer is obliged to deduct income tax including social security from payments to employees and to pay this to the tax authorities. Deducting and paying the correct amount of income tax is the responsibility of the employer

Income tax and social security are normally paid on a monthly basis before the 20th of the month following receipt of the benefit or wages by the employee.

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