



**& ASSOCIADOS**  
SOCIEDADE DE ADVOGADOS R.L.

# ESTABLISHING A BUSINESS ENTITY IN PORTUGAL

by Mouteira Guerreiro, Rosa Amaral & Associados, R.L.

October 2013



**MOUTEIRA GUERREIRO, ROSA AMARAL**  
**& ASSOCIADOS**  
SOCIEDADE DE ADVOGADOS R.L.

[www.mgra.pt](http://www.mgra.pt) | [mgra@mgra.pt](mailto:mgra@mgra.pt)

#### LISBOA

Avenida Praia da Vitória  
n.º 48, 3.º Dto.  
1050-184 Lisboa  
T + 351 213 595 090  
F + 351 213 595 099

#### FARO

Rua de Santo António  
n.º 2 A, 1.º andar  
8000-283 Faro  
T + 351 289 894 030  
F + 351 213 595 099

#### PONTA DELGADA

Largo de S. João  
n.º 18, 1.º andar  
9500-106 Ponta Delgada  
T + 351 296 304 350  
F + 351 296 286 213

## TABLE OF CONTENTS

- CHAPTER I: Introduction
- CHAPTER II: Types of Business Entities
- CHAPTER III: Steps and Timing to Establish
- CHAPTER IV: Governance, Regulation and Ongoing Maintenance
- CHAPTER V: Foreign Investment, Thin Capitalisation, Residency and Material Visa Restrictions

## **I. INTRODUCTION**

Portugal has *circa* 10,6 million resident inhabitants and most of its population lives in sunny coastal areas. Important cities include Lisbon, Oporto (in the north), Coimbra (in the center), Faro (in southern Algarve), as well as Ponta Delgada (in the Azores) and Funchal (in Madeira).

Portugal is a Republic since 1910, having in force the same Constitution since 1976. The President, the Parliament, the Government and the Courts are the representatives of the sovereign country, and both the President and the Parliament are chosen through general democratic elections. The Government is normally formed by the party who wins the election for Parliament.

The Constitution separates the Legislative power, which is generally attributed to the Parliament, the Executive power lies with the Government and the Judicial power is let to the Courts.

Portugal entered into European Union in 1986, is part of the Schengen area and adopted the Euro since its creation, as result of an integration process which last milestone is the Treaty of Lisbon.

Portugal is also a founding member of the Community of Portuguese Language Countries, the international organization that aggregates all Portuguese speaking countries.

Portuguese main industries include tourism, seafare economy, forrest, petrochemistry, cement production, automotive, electrical and electronics industries, textile, footwear, furniture, beverages & food industry, leather & cork. Pharmaceutical, IT, renewable energies and aerospace industry are strong upcoming sectors.

With modern infrastructures and technologies, Portugal is nowadays a business friendly jurisdiction, being the right interface to invest in Europe and in Portuguese Language Countries.

## **II. TYPES OF BUSINESS ENTITIES**

### **II.1. General Considerations and Companies Types**

The basic legal framework on Portuguese corporate business organization is codified in the Companies Code ("*Código das Sociedades Comerciais*"), the Commercial Registry Code ("*Código do Registo Comercial*"), the Securities Code ("*Código dos Valores Mobiliários*"), the Commercial Code ("*Código Comercial*") and the National Companies Registry Office regime ("*Registo Nacional de Pessoas Colectivas*").



There are five different types of commercial companies in Portugal.

These five different types of companies are the following: the public limited liability company (by shares - "*sociedade anónima*"), the private limited liability company (by quotas - "*sociedade por quotas*"), the partnership ("*sociedade em nome colectivo*"), the limited liability partnership ("*sociedade em comandita simples*") and the limited liability partnership with share capital ("*sociedade em comandita por acções*").

The first two types of companies are by far the most common, the last three having proved to be less flexible and suitable to modern business needs.

## **II.2. The Public Limited Liability Company (PLC)**

As previously mentioned, the PLC ("*Sociedade Anónima*" or "*S.A.*") is one of the two most common investment vehicles used in Portugal with the purpose of establishing business and commercial transactions. It ensures the limitation of shareholders liability to the amount of their investment in the company - their participation in its share capital - and qualifies these participations as negotiable securities.

Shares may be listed on the Lisbon Stock Exchange ("*Bolsa de Valores de Lisboa*") or remain under private commerce.

As a general rule, a PLC must be incorporated by a minimum of five individual or corporate founding shareholders. Exception is made, being required only one founding shareholder, when all outstanding capital stock is subscribed and held by another corporation since the incorporation. Also, only two founding shareholders are required when the State, or a State holding company, owns more than 50 % of the capital stock.

Shares can either be nominative or bearer (depending on whether the issuer has the ability to be constantly informed of the identity of the respective holders) and may be represented by book entries or certificates (depending on whether they are represented by registrations in an account or by paper documents).

Shares are mandatorily nominative if (i) they are not fully paid up, (ii) by-laws foresee restrictions on its transfer, or (iii) shareholders are required under the bylaws to deliver additional cash or material contributions to the company.

Except for legal or company bylaws prohibition, the issuer may decide on the conversion of securities as to their form of representation. Also, and except for legal, bylaws or provisions resulting from special conditions established for each issue, bearer shares may, at the holder's initiative and expense, be converted into nominative and vice-versa.

Decree-Law 49/2010 of May 19, 2010, has introduced in the Portuguese legal scenario, along with the shares with par or nominal value, shares without par value, in order to facilitate capital increase scenarios. Thus, a share shall have a minimum value of EUR 0,01 (par value or issue value).

There are two types of shares:

- ordinary shares (“*acções ordinárias*”) which entitle holders to dividends and to a portion of the assets upon winding up, subject to the rights attributed to any existing preferred shares.
- preferred shares (“*acções preferenciais*”) which award special rights to their holders, usually broader rights than the ones attributed to ordinary shares. The bylaws may authorize the PLC to issue two types of preferred shares:
  1. non-voting preferred shares (“*acções preferenciais sem voto*”) which confer, if they have nominal or par value, preferential rights to their holders to receive an annual payment of not less than 5% of the shares' par value, payable as a dividend out of distributable profits. If not, the annual payment is calculated by reference to the value of the issue of the shares reduced of its premium, if any. These shares have also priority over ordinary shareholders in the event of company liquidation. If authorized by the bylaws, corporations may issue non-voting preferred shares up to a maximum of 50% of its registered share capital;
  2. redeemable preferred shares (“*acções preferenciais remíveis*”) which are redeemable at a fixed time date or when established by shareholders' general meeting. Only shares which are fully paid up can be redeemable. Redemption must be made at par value or according to shares issue value (in case of shares without par value), unless bylaws provide for the payment of a premium.

Shares in a PLC are freely transferable, except where the respective bylaws set forth restrictions on its transferability. These restrictions may consist of a right of first refusal or pre-emption right in favour of the remaining shareholders and right of prior consent. With respect to the transfer of shares, a distinction must be made between the transfer of nominative shares and the transfer of bearer shares. The former may be transferred by a written declaration of the owner addressed to the keeper of the PLC's share registry. Bearer shares may be transferred by simple delivery of the share certificates, possession of which confers on the holder all shareholders' rights. The bylaws may not prohibit the transfer of shares otherwise permitted by law, being that transfer may only be restricted within the terms of the relevant legal provisions.

A minimum capital stock of EUR 50.000,00 is required for incorporation of a PLC. It can be formed either by private subscription of the entire capital stock or through public subscription of the shares.

The share capital of a PLC must be paid up by means of contributions in cash or in non-monetary assets (contributions in kind) and the legal minimum capital must be fully subscribed at all times. However, in a PLC, the capital stock does not have to be fully paid up at the time of its subscription. Indeed, only a minimum of 30% of each shares' nominal value must be satisfied at that time. Within five years of the incorporation, the remaining part of capital stock must be fully paid up.

As a general rule, a PLC is allowed to acquire and hold its own shares, but only up to a maximum of 10 % of its total registered share capital. The voting and economic rights inherent to these shares are suspended as long as they are owned by the company itself, except for the right to receive the correspondent additional number of shares in case of stock capital increase by incorporation of reserves.

Finally, share capital increases, as any other amendment to the company's bylaws, shall be approved by shareholders' meeting. Nevertheless, bylaws can authorize the board of directors to decide on share capital increases in cash within certain limits.

### **II.3. The Private Limited Liability Company (LTD)**

The LTD ("*Sociedade por Quotas*" or "*Lda.*") has traditionally been the investment vehicle used in Portugal for small business, usually of family nature. The partners are jointly and severally liable to fulfil the company's entire quota capital, but their liability extends no further than that. This type of business entity does not allow participations to be represented by shares (since capital stock is divided into quotas) and thus may not be listed on the Lisbon Stock Exchange.

The private limited liability company incorporation needs only two partners, regardless of being individual or corporate. There may exist, however, companies with a sole partner (individual or a company) which are named "*Sociedade Unipessoal por Quotas*" and that basically have the same regime as a regular limited liability company but with certain particularities with respect to the relationship between the sole quota-holder and the company and the possible enlarged liability of the former. Generally this sort of company is used for small family business.

A minimum quota capital is no longer required to incorporate an LTD company (it used to be EUR 5.000,00). The contribution of each quota-holder does not have to be fully paid up at the moment of the incorporation of the company. Quota-holders may defer the payment of their contributions until the end of the first financial year or until another date to be set forth in the respective bylaws but no longer than 5 years after incorporation. The minimum value attributed to a quota is EUR 1,00.

As a general rule, a quota can only be transferred by private or public deed under the company's express consent or under court order, unless the prospective transferee is another quota-holder, transferor's spouse or the following person in line of succession. This legal regime can be differently regulated in the bylaws.

#### **II.4. The Single-Member Private Limited Companies (SMLTD)**

As referred above, LTD companies may be incorporated by a single partner, whether an individual or another company ("*Sociedade Unipessoal por Quotas*").

Some legal limitations are set forth: (i) an individual can only be partner of a unique SMLTD, i.e., can not hold another company of this kind, and (ii) a LTD can not have as sole partner a SMLTD.

This type of company may be incorporated as such since the beginning or may result from the concentration of all the quotas of a regular LTD in a single quota-holder. This does not prevent the possibility of being converted into a regular LTD if a new partner comes into scene.

The sole quota-holder may appoint other people as managers or manage the company him/itself.

Any agreement between the sole quota-holder and the company shall aim the implementation of the company's scope and must be executed in written form. Otherwise, such agreements will be deemed as null and void, and the sole quota-holder will be unlimitedly liable for them.

In case the company becomes bankrupt and provided that the sole quota-holder has complied with the above mentioned rules, his/its personal assets will not be liable for the payment of the company's debts.

In the remaining aspects, the rules applicable to the regular LTD also apply to this type of company, apart from those which only make sense with regard to a plurality of partners (*e.g.*, general meeting' resolutions).

#### **II.5. Holding Companies**

The current legal framework for holding companies is set forth in Decree-Law 495/88, of December 30, 1988, as amended.

A holding company must be organized either as a PLC ("*S.A.*") or as a LTD ("*Lda.*") and its corporate name shall include the reference "*Sociedade Gestora de Participações Sociais*" or "*SGPS*".

The sole corporate purpose of a holding company legally permitted is to own and manage capital stock (shares or quotas) of other companies as an indirect form of carrying out business activities. Generally, the holding company is required to hold a minimum of 10 % of the capital stock (with voting rights) of its subsidiaries and must keep such participation at least for one year.

However, this rule is subject to a number of limitations. An SGPS may invest in smaller holdings (less than 10 % of the voting rights):

- up to an amount not exceeding 30 % of the investments made in larger holdings;
- when each participation's purchasing value is at least of EUR 5.000.000,00;
- when the purchase results from the target company's merger or demerger; and
- when it has formalized a managerial subordination agreement with the target company, under which the management of the subordinated company's business activities is entrusted to the SGPS.

Under special circumstances and provided that some requirements are met, the holding company is allowed to provide technical management services to all or some of the partially held companies in which the SGPS has a minimum holding of 10 % or with which the SGPS has formalized a managerial subordination agreement.

Depending on the type of investment some holding companies can be subject to Bank of Portugal (*"Banco de Portugal"*) supervision along with other non-banking financial institutions or to the Insurance and Pension Funds Supervisory Authority (*"Instituto de Seguros de Portugal"*). Others are subject to the supervision of the Tax Authority (*"Inspeção-Geral de Finanças"*).

Bank of Portugal supervision is mandatory where the company holds, direct or indirectly, the majority of voting rights in one or more credit or financial institutions.

Regardless of the legal form adopted, it is required that every holding company appoints a certified chartered accountant or an audit company.

## **II.6. The Limited Liability Individual Undertaking**

An individual entrepreneur may also limit his liability to the firm's registered capital through the incorporation of a limited liability individual undertaking (*"Estabelecimento Individual de Responsabilidade Limitada"* or "E.I.R.L.") which regime is foreseen in Decree-Law 248/86, of August 25, 1986, as amended.

The minimum capital for an EIRL is EUR 5.000, 00, two thirds of which must be paid in cash and deposited in a blocked account with a local bank until the deed of incorporation is registered with the Companies House. Twenty percent of after-tax profits must be allocated annually to a legal reserve until the amount in such reserve corresponds to at least 50 % of the EIRL's registered capital.



## **II.7. Branches / Representation Offices**

A foreign company intending to conduct business activities in Portugal for more than one year may do so through the establishment of a subsidiary (or affiliate) in Portugal, except if operating under the freedom of provision of services. The subsidiary will have to vest one of the above outlined types of company, and will be an autonomous legal entity with a separate corporate personality.

Any foreign company wishing to operate in Portugal without resorting to a subsidiary is legally required to establish a Portuguese branch (“*sucursal*”) or other local permanent representation (“*representação permanente*”) and to comply with the appropriate registration requirements. Differently from subsidiary entities, branches are not autonomous legal entities nor do they have a separate corporate personality, reason why the foreign company will always be liable for its operations and debts in Portugal.

## **III. STEPS AND TIMING TO ESTABLISH**

Anyone intending to incorporate a Portuguese company must apply for the approval of the company's proposed corporate name and for the granting of a tax payer number with the National Companies Registry Office.

Since the last reform of the Companies Code (2006), and as a general rule, public deed of incorporation is no longer mandatory being sufficient a private deed of incorporation, provided that the signatures of the founding partners are duly certified by a public notary or a lawyer. In addition, the referred Reform has introduced the incorporation of companies through electronic tools (e.g., internet).

Before the execution of the company's incorporation agreement, the capital stock should be deposited in a Portuguese Bank, except in case of deferred contributions in the terms mentioned above. Also, in case the company's capital stock is not fully paid up in cash, the relevant assets (contributions in kind) should be subject to prior evaluation by an independent chartered accountant, whose report must be referred to in the incorporation deed.

Afterwards, company's deed of incorporation must be registered with the Companies House (“*Conservatória do Registo Comercial*”). Upon registration and other official communications (as Tax and Social Security Authorities), the company becomes a separate legal entity capable of having its own assets, rights and obligations.

The records are kept by the Companies House and are of public access. Certificates disclosing the facts registered for a specific company can be issued at any time (the process has been facilitated since corporate records are available through web network).

All registered corporate facts are also subject to publication in the official website of the Ministry of Justice (<http://publicacoes.mj.pt>).

In Portugal, companies are not, as a consequence of incorporation, required to have any insurance policies. However, if the company has or will have any employees, it must have a workers accidents insurance policy. Moreover, the carrying out of certain activities will render companies subject to specific mandatory insurance requirements.

Company shall register itself with the Tax Authority and the Social Security Services within 15 days after incorporation and must serve a notice to Portuguese Labour Department whenever a worker is hired by the company.

With the new procedures recently implemented by the Government (called “*Simplex Program*”), it is possible to conclude this process in one day.

#### **IV. GOVERNANCE, REGULATION AND ONGOING MAINTENANCE**

PLC's management and supervision must take one of the following three forms. The first one, most commonly used in Portugal, refers to an organization formed by a board of directors (“*conselho de administração*”) and a sole supervisor or supervisory board (“*fiscal único*” or “*conselho fiscal*”). A second form of organizing corporate management consists of a board of directors containing an audit committee (“*comissão de auditoria*”). It also includes a certified chartered accountant (“*revisor oficial de contas*”) for supervision functions. Finally, there is a third form, which comprises an executive board of directors (“*conselho de administração executivo*”), a general and supervisory board (“*conselho geral e de supervisão*”), as well as a certified chartered accountant. In addition, a PLC whose shares are listed on stock exchange market must appoint a secretary (“*secretário*”).

PLCs with a maximum registered share capital of EUR 200.000,00 may choose to be managed by a sole director (“*administrador único*”) rather than having a board.

On the other hand, the shareholders of a PLC gather and vote resolutions in general meetings. They must gather ordinarily once a year or whenever they are convened by the chairman of the general meeting upon request of the management or the supervisory body or upon request of one or more shareholders holding at least 5% of the entire share capital (special meetings). Under specific circumstances, the law also allows the audit committee, the general and supervisory board, the supervisory board and the court to summon shareholders for a general meeting.

The shareholders' meetings must be convened by a notice published in the official website of the Ministry of Justice (<http://publicacoes.mj.pt/>) or, in certain cases where all shares are nominative and the bylaws foresee such possibility, by registered mail or by e-mail to shareholders having expressed their prior written consent. The notice shall be published with at least 1 month or sent 21 days in advance as to the date of the general meeting, and shall mention, amongst other information, general meeting's agenda.

Notwithstanding the above, a general meeting may be convened and held without complying with the referred prior formalities, provided that all shareholders are physically present or duly represented and unanimously express their consent to gather and take resolutions on a particular subject (universal meetings). In addition, Portuguese law also allows shareholders to pass resolutions without all attending physically and simultaneously the general meeting, provided that the resolutions at stake are approved by unanimity of the votes and laid down in writing.

Last reform of the Portuguese Companies Code (2006) introduced the possibility of holding general meetings by resorting to telematic means (combination of telecommunications and informatics - transmission of voice and image in simultaneous is usually required) also called "virtual meetings". The shareholders and the company can benefit from this new way of gathering provided that the respective bylaws do not prohibit such mechanism.

In a PLC, there is a minimum presence of voting share capital for shareholders to approve valid resolutions - the gathering quorum. For certain relevant decisions, such as bylaws amendments, stock capital increases or reductions, mergers, spin-offs, liquidation and winding up, etc. it is mandatory that the quorum represents one third of the entire share capital on first call.

Resolutions are passed by a simple majority of votes cast of all those attending/represented in the shareholders' meeting, except for those relevant decisions mentioned in the preceding paragraph where a qualified majority of two thirds of the votes cast is required. Bylaws can provide for higher quorums as well as qualify voting requirements.

Differently, LTD's management comprises one or more managers ("*gerentes*"). As a general rule, an audit committee or a sole supervisor is not mandatory, but the company is allowed to have one. Indeed, the accounts on this type of company do not need to be checked by a certified chartered accountant, unless two of the following limits are exceeded during a period of two consecutive years:

- total balance sheet value: EUR 1.500.000,00;
- total net sales and other income: EUR 3.000.000,00; and
- Average annual workforce: 50.

The majority of the regime of the PLC is applied to LTD general meetings. The main exceptions refer to summons' formalities -notice must be sent by the manager to quota-holders by registered mail 15 days in advance as to the date of the general meeting - and to voting quorum for bylaws amendments and winding up of the company - where a qualified majority of three-quarters corresponding to the capital stock is required, unless the bylaws foresee a higher majority.

As far as requirements for local shareholders/directors are concerned, please note that currently all individuals or corporations holding a participation in a Portuguese company, as well as any director or manager of a Portuguese company must have or apply for a national taxpayer number with our local authorities.

Finally, a brief note concerning licensing procedure: prior to the starting up of any commercial activity in Portugal, the Municipality should be consulted to ascertain whether the planned activity is subject to any special licensing procedure.

Thus, in case the commercial establishment needs a particular license for operating, the Municipality is the entity responsible for monitoring this process. In fact, Municipal authorities generally have sole jurisdiction on licensing commercial establishments.

Commercial licensing is governed by the legal regime for construction in urban sites, as set out in Decree-Law 555/99 of December 16, 1999, as amended.

There is a special regime for commercial establishments and warehouses handling food products as well as other non-food commercial establishments and service providers whose operations involve health and safety risks. These regulations are set out in Decree-Law 259/2007, of July 17, 2007.

Also, the installation and operation of these establishments must comply with the the requirements set forth in specific laws, depending on the products traded.

As a general rule, owners are required to obtain authorisation from the Municipality or Trade Associations with regard to opening hours, and they must inform the "CRSS - *Centro Regional da Segurança Social*" (Regional Centre for Social Security) of any workers hired before they start working.

The application for registration of commercial establishments must be submitted with the "DGAE - *Direcção-Geral das Actividades Económicas*" (Directorate-General for Economic Activities) or the nearest "DRE - *Direcção Regional do Ministério da Economia e da Inovação*" (regional office of the Ministry of the Economy and Innovation) or with the relevant Trade Association.



In addition, Decree-Law 48/2011, of April 1, 2011, within the scope of the *Simplex* Program and aiming to improve the responsiveness of Public Administration in meeting the needs of citizens, with lower costs and promoting safety and speed of business, revolutionized the licensing procedure for certain business premises, by creating the Zero Licensing (“*Licenciamento Zero*”) figure.

*Licenciamento Zero* is therefore intended to reduce administrative costs and eliminate licenses, permits, inspections and *a priori* constraints for specific activities, replacing them with systematic actions of surveillance and accountability mechanisms *a posteriori* on the economic agents.

The simplification begins with the creation of a simplified procedure for the installation and modification of food and beverage establishments, trading goods, services and storage.

As a result, previous administrative permission is now completely replaced for a mere prior notification served to the “*balcão único electrónico*” (e-administrative spot), also called “*balcão do empreendedor*” (entrepreneur spot) accessible through the website [www.portaldapresa.pt](http://www.portaldapresa.pt).

As mentioned, certain licensing procedures are simplified or eliminated, such as:

- private use of the municipal public domain for certain purposes, such as installing an awning, an exhibitor or other support information, the placement of a planter or a waste container;
- map of office hours and its amendments;
- registration and posting of commercial advertisements, subject to the rules of public space occupation.

Furthermore, the said Decree-Law eliminates the licensing procedure for certain economic activities, according to which a system of prior control is no longer applicable, such as the sale of tickets for public shows in commercial establishments and the performance of auctions in public places.

The installation of an establishment included in the list annexed to Decree-Law 48/2011 is now only subject to a prior notification addressed to the Mayor and to the General Director of Economic Activities. With this prior notice and payment of the fees due, the owner is allowed to immediately open and operate the establishment, exploit the warehouse or begin its activity, as applicable.

Also, the modification of an establishment due to the change of the activity/service is only subject to a prior notice submitted with the “*balcão do empreendedor*”. As per the closure of business, it must be reported in the following 60 days.

## V. FOREIGN INVESTMENT, THIN CAPITALISATION, RESIDENCY AND MATERIAL VISA RESTRICTIONS

### **V.1. Foreign Investment**

Foreign investment in Portugal has strongly increased in recent times, especially since Portugal became a member of the European Union. The necessary adjustments that were made so that Portugal could be included in the founding group of countries of the European currency had a strong effect on the Portuguese economy.

This economic stability, together with the tourism's potential has been decisive for investment in Portugal. In addition, Portugal's traditional presence in Africa and Brazil, is an advantage in the establishment of commercial contacts and business opportunities across these expanding markets.

Among others, note four major advantages to invest in Portugal:

- (i) Strategic access to markets. The combination of Portugal's economic opening, strong ties with the EU and unique geostrategic location, make it a natural gateway to world markets. Portugal's ties with the African continent, Brazil and transatlantic link with the USA provides a low cost effective internationalization base.
- (ii) Cost competitive, qualified and flexible workforce Portuguese employees are known for their versatility and commitment to work, along with a positive attitude towards the adoption of new technologies and practices.
- (iii) Excellent environment to live and work. The country has safe urban centers and suburbs. This environment that promotes a freedom impression to anyone that decides to live in Portugal. All major international studies consider Portuguese cities on the top of the ranking for conducting events and conferences.
- (iv) Infrastructure. During the past decade, Portugal has invested heavily in modernizing its communications infrastructure. The result was an extensive network of land, air and maritime route facilities.

We may also enumerate ten other additional reasons to invest in Portugal:

- One of the lowest operational costs in Western Europe;
- A founder member of and full participant in the European Monetary Union;
- A superb investments track record, with many firms involved in new projects ;
- One of Europe's youngest and most enthusiastic workforces, with first rate training facilities;
- One of the world's best and most flexible incentives packages;
- High levels of productivity growth in both manufacturing and services;
- A wide range of sites and buildings at highly competitive prices that are ready to use;
- High quality support services for investors, both during or after investment;

- One of Europe's best records for industrial relations;
- A high quality of life with one of the old continent's lowest crime rates.

Also, there is a principle of equal treatment between foreign and domestic investors and thus there are no entry restrictions for foreign capital. In fact, the guiding principle of the Portuguese legal framework is to prohibit discrimination of the investment on the grounds of nationality.

Likewise, it is not required to have a national partner and there are no specific obligations for foreign investors to comply with. There are also no restrictions on the profits and/or dividends repatriation.

As Portugal is a member state of the European Union, an entrepreneur planning to invest in the country will neither have to submit to different rules from those governing domestic investment followed entrepreneurs. Therefore, as a general principle, there is no differential treatment between foreign and domestic investment in Portugal.

Notwithstanding the above, some reporting obligations must be fulfilled: foreign investors in Portugal are bound to report to the investment authorities within 30 days of the date of the investment. Also, in what regards an investment in Madeira or in the Azores, a foreign investor must register with the Planning and Finances Ministry.

In general terms, foreign and local companies are free to invest in any industry. However, there may be specific requirements, such as the granting of a concession contract when performing activities for the public administration sector.

Therefore, it is prohibited for private firms, except when licensed by a public entity through an administrative contract, the following economic activities:

- Drinking water collection, treatment and distribution, and disposal of urban waste water, both through fixed networks; and solid waste collection and treatment in the case of multi-municipal and municipal systems;
- Postal communications that constitute the public postal service;
- Rail transportation operated for public service;
- Seaports operation;
- Exploitation of natural resources of the subsoil or that may be considered public domain.

Likewise, foreign investment projects must be compatible with specific legal requirements if, in any way, they could affect public order, safety or health. Projects of this nature require an assessment of compliance with statutory requirements and prerequisites established under Portuguese law.

Included in this category are those concerning the production of weapons, munitions and war materials or those which involve the exercise of public authority. They must comply with legally mandatory conditions and requirements, thus requiring specific licenses.

Finally, it should be noted that some activities are subject to authorization restrictions before starting their operations in our territory, such as banking and insurance activities.

Foreign companies are also liable for taxes and other tariffs, including Income Tax (“*IRC*”), Value Added Tax (“*IVA*”), Vehicle Tax, Property Tax (“*IMI*”), among others.

Companies must also respect deadlines regarding social security payments, as well as payments payable by its employees.

The Treaty of the European Union establishes the free movement of capital, resulting in an overall framework of foreign investment within the EU, under the limits set by the subsidiary principle which is without prejudice of the legislation of certain Member States.

All restrictions on capital movements and payments between EU Member States are prohibited. Member States may, however, take justified measures with the aim of preventing breaches of its own legislation, including taxation and supervision of financial institutions.

EU countries may also provide procedures for the declaration of capital movements for administrative or statistical purposes, and take other justified actions on the grounds of public policy or public security. However, these measures and procedures should not constitute a means of arbitrary discrimination or a simulated restriction on the free movement of capital and payments.

## **V.2. Thin Capitalisation**

Generally, Portuguese law allows companies to be thinly capitalised, except for certain types of regulated entities which require a certain amount of paid-up share capital to be licensed to trade (e.g., banks and insurance companies).

In what concerns taxation rules for thin capitalisation, please note that where the indebtedness of a Portuguese taxpayer to a non-resident entity in Portugal or in an EU country with whom special relations exists (i.e. special relations exist if the non-resident entity has or can have substantial influence, directly or indirectly, in the management decisions of the resident entity) is deemed excessive, the interest paid in relation to the part of the debt considered excessive will not be deductible for the purposes of assessing taxable income.



Excessive indebtedness occurs where the value of the debts in relation to each of the entities is more than twice the value of the corresponding shareholding in the taxpayer's equity. Any disallowed interest is not re-qualified as a dividend for withholding tax purposes. This means that withholding tax should be levied on the full amount of the interest, including the interest related to the part of the loan that exceeds the 2:1 debt-to-equity ratio.

In cases where the 2:1 ratio is exceeded, the taxpayer may be able to avoid adjustments under the thin capitalisation rules where it can be shown that the same level of indebtedness could have been obtained with similar conditions from an independent party. Such evidence must be kept in the annual tax file of the company for 10 years. This option is not applicable where the indebtedness is towards an entity resident in a territory considered by Portuguese law as a territory with a clearly more favourable tax regime.

### **V.3. Residency and Material Visa Restrictions**

Today's law open the possibility for foreign investors to apply for a residence permit for investment activity, who have regular input into national territory, through a transfer of capital, job creation or purchase of real estate.

Holders of a residence permit for investment activity have the right to family reunification, access to permanent residence permit, as well as the Portuguese nationality, in accordance with the legislation in force.

In fact, nationals of other countries who decide to engage in an investment activity, personally or through a company, which lead, as a rule, in the completion of at least one of the following situations in the domestic territory and for a minimum period of five years may benefit from such visa:

- 1) Transfer of capital in an amount equal to or more than 1 million Euro;
- 2) Creating at least 10 jobs;
- 3) Acquisition of property of a value equal or more than 500.000 Euro.

This situation also covers holders of capital stock in a company based in Portugal or in another EU Member State with a permanent establishment in Portugal, provided their contributory situation is regularized.

\*\*\*

The information contained in this "Guide" is provided for informational purposes only and should not, under any circumstances, be understood as legal advice on any subject matter. Recipients of this document, clients or otherwise, should not act or refrain from acting on the basis of any content included in the document without seeking the appropriate legal advice from an attorney on their particular facts and circumstances. Mouteira Guerreiro, Rosa Amaral & Associados, Sociedade de Advogados R.L. expressly disclaims all liability for any possible damages caused by actions taken or not taken based on any or all the contents of this document.

This "Guide " and its contents are provided "AS IS" without warranty of any kind, either expressed or implied, including, but not limited to, the implied warranties of merchantability, fitness for a particular purpose, or non-infringement.

Reproduction, distribution, republication, and/or retransmission of material contained within this "Guide" is prohibited without prior written permission of Mouteira Guerreiro, Rosa Amaral & Associados, Sociedade de Advogados R.L.