



AN OVERVIEW OF THE PORTUGUESE CORPORATE SYSTEM

OVERVIEW

According to Portuguese Business Law, any person performing commercial activities through a productive organization shall incorporate a commercial company.

Commercial companies are legal entities performing an economic activity and, therefore, with an inherent profitable purpose. When a company lacks a profitable purpose, law denominates them as civil societies.

In Portugal, the Companies Code provides the types of legal entities which may be incorporated:

- general partnerships (“sociedade em nome colectivo”);
- private limited companies (“sociedade por quotas”);
- public limited companies (sociedade anónima);
- limited partnerships (“sociedade em comandita simples”); or
- limited partnership with shares (“sociedade em comandita por acções”).

The legal framework of each legal entity varies from each other, notably regarding the shareholder’s liability. Hence, it is of utmost importance that during the incorporation decision-making process all those differences are taken into consideration in order to

choose the legal entity most appropriate for the business purposes.

FRAMEWORK

The legal regime applicable to Portuguese companies set forth on the Portuguese Companies Code. In 2006, the legal framework was simplified to make it less burdensome and bureaucratic. Any person wishing to incorporate a company may decide in advance the type of legal entity based on its needs, such as the amount of capital and the shareholders' liability.

PRIVATE LIMITED COMPANIES

Private limited companies (“sociedade por quotas”) are the most common type of legal entity for small and medium enterprises, although larger enterprises also frequently opt for this type of legal entity, depending on some factors.

According to the Portuguese Companies Code, a private limited company may be incorporated with a minimum of two shareholders. However, a single person may also incorporate a single shareholder private limited company (“sociedade unipessoal por quotas”), which is partially subject to the same provisions.

Shareholders of a private limited company will be liable for the payment of their own equity contributions and, on a subsidiary basis, jointly liable with the other shareholders for the payment of their contributions. Thus, the shareholders of a private limited company are personally protected against risks, since their personal assets will normally not be accounted for the company's creditors (unless exceptional situations take place).

The company's name shall include the word “Limitada” or the abbreviation “Lda”, which means “Limited”. On what concerns the minimum requirements for share capital, the law does not impose a minimum amount, which means that each shareholder may hold one share with the par value of € 1.

SINGLE SHAREHOLDER PRIVATE LIMITED COMPANIES

The legal framework of the single shareholder private limited companies (“sociedade unipessoal por quotas”) is the same as the one applicable to the private limited company, except for the rules applicable to plurality of shareholders.

In this context, the main difference between a private limited company and a single shareholder private limited company concerns only the number of

shareholders – in the case that one additional shareholder enters the share capital of a single shareholder private limited company, this company will be transformed into a “regular” private limited company.

PUBLIC LIMITED COMPANIES

Public limited companies (“sociedade anónima”) are “pure capital legal entities”. Legally, any company incorporated under this form shall include in its name “Sociedade Anónima” or its abbreviation “S.A.”. It is usually said that a public limited company is a pure capital entity due to the clear separation between shareholders and members of corporate bodies, notably the company’s management and administration. For instance, the General Meeting of Shareholders can never interfere in the daily corporate governance of the company (except if requested so).

This type of legal entity is usually associated with major businesses.

A public limited company may be incorporated with a minimum of five shareholders (“working shares” are not allowed). However, it is possible to incorporate a public limited company

with a sole shareholder when all the share capital is paid up and held by another company.

Shareholder’s liability is limited to the value of their shares. Thus, assets belonging to the shareholders cannot, in principle, be seized to pay debts of the company.

According to the Portuguese Companies Code, public limited companies need to have a minimum share capital of € 50,000, either paid up in cash or in kind.

GENERAL PARTNERSHIP

General Partnerships (“sociedade em nome colectivo”) are legal entities whose general rules correspond to the rules applicable to private limited companies.

According to the Portuguese Companies Code, partnerships may be incorporated with a minimum of two partners. Under this type of legal entity, the law provides that they will be unlimitedly liable. Hence, if a company has been incorporated under a partnership scheme, its partners will be fully liable, which means they will have to respond and satisfy creditors with their personal assets, but only in case the assets of the company are not sufficient to cover the corresponding debts.

The company name of a partnership shall include the name of one of the partners followed by the word “e Companhia” or by its abbreviation “Cia”. Partnerships allow working contributions and there is not a minimum amount of share capital, granted that the creditors will be protected by the personal assets of the partners.

INCORPORATION PROCEDURE OF CORPORATIONS

The incorporation of companies, regardless of the legal form, requires the following operations:

1. **Application for a corporate name certificate.** If the shareholders do not want to choose a corporate name from the list offered by the National Register of Legal Entities and prefer to choose their own, they need to request beforehand the authorization for the name of the company.

For this purpose, it should be stated in the application form the desired company name, its corporate purpose and the address of its registered office. This certificate will also grant the Tax ID number/ VAT number of the company.

2. **Articles of association.** It is one of the documents required to incorporate a company. Articles of association may be more or less complex, depending on the type of company and the rules that founding shareholders wish to foresee therein.

3. **Beneficial Ownership Form.** This form derives from the rules imposed by Directive (EU) n.º 2015/849. When one of the shareholders is another legal entity, the Companies Registry Office demands full disclosure regarding the ultimate beneficial owners of the company.

4. **Registry and Official Publications.** The articles of association shall be registered in the Companies Registry Office in order to have legal effects towards third parties. For this purpose, the following documents shall be included:

- Company’s name certificate (as described above);
- Articles of association;
- Beneficial Owner Form;
- Auditor’s report regarding the contributions made in kind (if applicable);
- Acceptance statement of appointment by the Official Accountant or Auditor; and,
- Acceptance statement of appointment by the Substitute Auditor.

5. **Transfer of capital.** According to the Portuguese legislations, all Portuguese companies need to have an official Bank account through which all business financial flows need to be executed. The contributions to be made in cash shall be transferred to a bank account opened on behalf of the future company. In case there are contributions in kind, they will be subject to a valuation assessment, in charge of the statutory auditor, who will issue a report determining the value attributed to the assets eventually paid up. Contributions in cash may be deferred in all type of companies. In the case of public limited companies, a minimum amount of €1 needs to be fully paid up until the end of the tax year in which the company was incorporated.

The remainder share capital may be deferred for a period of 5 years. In the case of public limited companies, only 70% of the share capital may be deferred for a period of 5 years. The remainder 30% need to be fully paid up upon the incorporation of the company. Contributions in kind can never be deferred,

6. **Statement of commencement of activity.** Once the company has been registered in the Companies Registry Office, it needs to register its activity

before the Tax Authorities. For this purpose, the statement of commencement of activity needs to be submitted. This statement needs to bear the company's accountant stamp, and the proof of the Banking IBAN of the company shall be submitted too.

Lisboa, 22 de Fevereiro de 2019

Rogério M. Fernandes Ferreira
Tomás Calejo Abecasis
Pedro Miguel Callapez
Frederico Ferreira da Silva
(*Business Team*)



This Information is sent in compliance with articles 22 and 23 of Decree-Law no 7/2004, of 7 January, regarding unsolicited e-mails. If you wish to be removed from our mailing list and avoid similar future communications, please send an email with "Remove" to the email address newsletter@rffadvogados.com.

*

This Information is intended for general distribution to clients and colleagues and the information contained herein is provided as a general and abstract overview. It should not be used as a basis on which to make decisions and professional legal advice should be sought for specific cases. The contents of this Information may not be reproduced, in whole or in part, without the

*

Legal 500 – Band 1 Tax “Portuguese Law Firm” and Band 1 Tax “RFF Leading Individual” 2013/2014/2015/2016

Chambers & Partners – Band 1 “RFF Leading Individual” 2013/2014/2015/2016

International Tax Review – “Best European Newcomer” (shortlisted) 2013 / “Tax Firm of the Year” (shortlisted) 2014/ “Tax Controversy Leaders” 2014/2015 / “Indirect Tax Leaders 2015” / “Women in Tax Leaders Guide 2015” / “European Best Newcomer” 2016/ “Portugal Tax Firm of the Year” (shortlisted) 2017/“European tax Disputes of the Year” (shortlisted) 2017/ “European Indirect Tax Firm of the Year” (shortlisted) 2017

Best Lawyers – “RFF Tax Lawyer of the Year” 2014 / “Recommended Lawyers” 2015/2016

Who’s Who Legal – “RFF Corporate Tax Adviser of the Year” 2013/2015 / “Corporate Tax – Controversy” 2016 / “Corporate Tax section