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## AN OVERVIEW ON... COMPANY INCORPORATION

### OVERVIEW

According to Portuguese Business Law, any person performing commercial activities shall set up and legally incorporate a commercial company.

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

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

- the general incorporated partnership (“sociedade em nome colectivo”);
- the limited liability company (“sociedade por quotas”);
- the public limited company (sociedade anónima);
- the limited partnership (“sociedade em comandita simples”); or
- the limited partnership with shares (“sociedade em comandita por acções”).

The legal framework of each legal entity varies from each other, notably regarding shareholder liability. Hence, it is of utmost importance that during the incorporation decision making



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process all those differences are taken into consideration in order to choose the legal entity that better suits the business purposes.

#### FRAMEWORK

The legal regime applicable to Portuguese commercial companies is established in the Portuguese Commercial 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 qualities.

#### LIMITED LIABILITY COMPANY

Nowadays, the limited liability company ("sociedade por quotas") is the most common type of legal entity for small and medium enterprises, although larger enterprises also frequently opt for this type of legal entity.

According to the Portuguese Commercial Companies Code, a limited liability company may be incorporated with a minimum of two partners. However, a single person may also incorporate a single shareholder limited liability company, which is partially subject to special provisions.

Partners of a limited liability company will be liable for the payment of their own contributions and, on a subsidiary basis, jointly liable with the other partners for the payment of their contributions. In this way, the partners of a limited liability company are personally protected against risks since their personal assets will normally be protected (unless exceptional situations arise).

The company's name shall include the word "Limitada" or the abbreviation "Lda", which means "Limited". One of the most attractive features of this type of is that the minimum nominal value of the quotas can be of € 1, since 2011; undoubtedly, it has facilitated entrepreneurs to start a business in Portugal.

#### SINGLE SHAREHOLDER LIMITED LIABILITY COMPANY

The legal framework of the single shareholder limited liability company ("sociedade unipessoal por quotas") is the same as the one applicable to the limited liability company, excluding the provisions regarding shareholders.

In this context, the main difference between the limited liability company and the single shareholder limited liability company lies on the number of the partners and, thus, in the amount of share capital, even though in both regimes the minimum nominal value of each quota is of € 1.

#### PUBLIC LIMITED COMPANY

A public limited company ("sociedade anónima") is a "pure capital legal entity". Legally, any company incorporated under this form shall include in its name "Sociedade Anónima" or its abbreviation "S.A.". It has been said that a public limited company is a pure capital entity since it exists within its structure a clear separation between the shareholders and the members in charge of the company's management and administration.

For instance, the general assembly (body representing shareholders) cannot interfere in the daily corporate governance of the company (unless otherwise agreed upon).



Undoubtedly, this type of legal entity is usually associated with major businesses.

A public limited company may be incorporated with a minimum of five shareholders (not being accepted “industry partners”). However, it is possible to incorporate a public limited company with a unique shareholder when all outstanding capital stock is subscribed and held by another corporation since the incorporation.

Shareholder’s liability is restricted to the amount of their shares. Thus, assets attributed to the shareholders cannot be seized in an effort to repay debt obligations attributed to the company.

According to the Portuguese Commercial Companies Code, a public limited company may be incorporated with a minimum share capital of € 50,000.00, contributions can be made in cash or in kind (excluding industrial contributions).

### PARTNERSHIP

Partnerships (“sociedade em nome colectivo”) are legal entities whose members, called partners, agree to cooperate to advance their mutual interests; its denomination derives from the fact that it is indeed, the partners who hold the capital of the company. In this manner, it occurs that the managers of the company are also the partners.

Partnerships are the most common type of legal entity used by small and family enterprises. According to the Portuguese Commercial 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 and not only with the assets of the company as it occurs with the public limited company.

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 industrial 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 legal entities, regardless of the legal form, will lead to certain operations stated under the law:

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 Persons and would prefer to choose another one, then, they would need to apply before to obtain an admissible certificate.

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. After the issuance of the certificate, it will be valid for 3 months.

2. **Memorandum of association.** It is one of the documents required to incorporate a company, it encompasses the fundamental required upon which the company is



allowed to operate according to the Portuguese Commercial Companies Code.

3. **Register and Official Publications.** The memorandum of association shall be registered in the Commercial Register 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);
- Memorandum of association;
- Auditor's report regarding the contributions made in kind (if applicable);
- Evidence of payment of Property Transfer Tax;
- Acceptance statement of appointment by the Official Auditor; and,
- Acceptance statement of appointment by the Substitute Auditor.

When the registration process is concluded, the Commercial Registry Office will command the publication in the official website of the government. In the same manner, it will give notice to the National Register of Legal Persons.

Later, the Commercial Registry Office shall provide an access code to the commercial registration certificate.

4. **Transfer of capital:** 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 substantial system of assessment, in charge of the statutory auditor, who will issue a report stating the value attributed to the goods transferred. In the same way, if the deposit of the social capital has not been made at

the time of the company's incorporation, the shareholders shall give notice that it will be transferred to the equity of the company within 5 days by the end of the first fiscal year.

5. **Statement of commencement of activities.** Once the company has been registered in the Commercial Register, it shall be registered in the Tax Administration. For this purpose, it shall be submitted the statement of commencement of activities:

- Within the following 15 days after the date of submission in the Commercial Register (provision applicable to the companies obliged to be registered).
- Within the following 90 days after the registration in the National Register of Legal Persons (in case the company is legally obliged) and it is not subject to be registered in the Commercial Register.

Last but not least, the company will also need to submit a similar declaration to the Social Security.

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