



Pinto Machado, Carneiro Gomes & Associados
Sociedade de Advogados, RL

DOING BUSINESS IN PORTUGAL

Carlos C Gomes
Partner

PORTUGUESE COMPANY TYPOLOGY

Besides the fairly unusual EU legal formats, such as the Societas Europea (SE) or the European economic interest grouping (EEIG), which must have members in at least two member States, the main Portuguese business entity formats are as follows.

SOCIEDADE POR QUOTAS (LDA)

The “*Sociedade por quotas*” (Lda) is by far the most common type of business entity. This is a private limited liability company having the share capital divided into quotas” of at least 1 euro each. There is no minimum capital requirement, but it must have a minimum of 2 quota holders. The transfer of quotas is subject to registration with the Commercial Registry. An Lda may at any time elect to “upgrade” to an SA (see below). Should an Lda have a sole quota holder for more than one year, it must “downgrade” to a Unipessoal Lda (see “sole trader” below).

SOCIEDADE ANÓNIMA (SA)

The Sociedade Anónima (SA) is the second most popular legal format. It is a corporation/public limited company with a minimum capital of EUR 50,000, at least 30% of which must be paid up on incorporation. Capital is represented by freely transferable shares, which may be issued to the bearer, and, except where the founder is a non resident company, there must be an initial number of shareholders of not less than 5. The SA is the most demanding entity in terms of regulatory compliance and, irrespective of size, its accounts have to be audited annually by a certified auditor (Revisor Oficial de Contas), a requirement that only applies to other business entities in case they exceed a certain size or have a regulated activity (e.g. financial). The adoption of this format is compulsory for a company intending to be listed on the stock exchange.



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HOLDING COMPANY (SGPS)

Where an Lda or an SA is essentially a holding company, subject to applicable regulations it may adopt the additional legal status of a regulated holding company, called Sociedade Gestora de Participações Sociais (SGPS). The advantages of this legal status lie essentially in the tax benefits it confers.

REPRESENTATION OF NON-PORTUGUESE ENTITIES

Besides the local subsidiary company, the legal format of the representation in Portugal of a foreign entity depends on the business activity it intends to have in this country, as follows.

Except for residents of EU member countries (or EEA countries that have agreed to EU-type tax co-operation), it is legally mandatory for a non-resident entity that owns property in, or derives regular income from, Portugal but has no permanent establishment in the country to appoint a resident tax representative (representante fiscal).

A representative office (escritório de representação) is the registered local presence of a non resident business entity, for example for marketing purposes, but not carrying on any business transactions.

The branch (sucursal) of a non resident business entity is a permanent establishment that carries on a business activity in Portugal, its registration being mandatory should any such activity be carried on (or intended to be carried on) for more than one year. It is a local extension of the represented business entity, without separate legal personality, the management of the branch being performed under delegation of powers by the owning entity. It is in practice treated as a domestic company as regards taxation and compliance; but unlike other jurisdictions there is no requirement to file the “parent’s” accounts in Portugal, and unlike a domestic company the distribution of profits by the branch to the “parent” is not subject to any taxes. The foreign entity having a Portuguese branch is a popular structure for some types of investment, such as in real estate.



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SOLE TRADER AND INDEPENDENT PROFESSIONAL

A sole trader or independent professional may choose among one of 3 business entity formats: the Unipessoal Lda, which is essentially an Lda having a single quota holder; the Estabelecimento Individual de Responsabilidade Limitada (EIRL), which is a sole proprietorship in which the liability of the proprietor is limited to the assets allocated to the business; and the sole trader or independent professional having unlimited liability.

PARTNERSHIP

Partnerships may take on the format of a general partnership with unlimited liability of all members (Sociedade em Nome Colectivo), which is tax transparent; or of a partly limited partnership, either having no share capital (Sociedade em Comandita) or having a share capital (Sociedade em Comandita por Acções), which must have at least one unlimited partner (the general partner, called sócio comanditado, who contributes goods or services and takes on the management) and one or more limited partners (sócios comanditários), who contribute capital and have no management responsibilities. Another form of limited partnership is the Associação em Participação, an agreement (not subject to registration) under which a general partner (Associante) takes on the partnership management and has unlimited liability, and the limited partners (Associados) contribute capital, are entitled to profits and may or may not assume responsibility for losses, in accordance with the agreement. Certain professions, such as lawyers and certified auditors, may adopt profession-specific, tax-transparent, forms of partnership.

JOINT VENTURE

Joint ventures generally take on the form of either a consortium, which may have limited liability subject to certain legal requirements, or of an economic interest grouping (Associação Complementar de Empresas or ACE), which has unlimited liability.



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COOPERATIVE

Another form of association is the cooperative, an independent legal entity having limited liability, which may be freely established and whose aim must consist in meeting the economic, social or cultural needs of its members and not to seek profit for itself.

PORTUGUESE COMPANY NAMES

The usual company name format in Portugal is “[NAME] – [Business Activity], [Extension]”, but the business activity component is now optional and many newly incorporated companies are dropping it. As regards the extension, a quota company must end its name with Lda and an SA with SA. If the quota company has a single quota holder, then the name must end with “Unipessoal, Lda”.

In the event you do not have a preferred name, a "pre-approved name" will be adopted. This is a fantasy name from a list that is put together and regularly updated by the company registry office, from which anyone can choose a company name that will not be challenged for being confusable. Names on this list cannot be reserved and will be allocated on a first-come, first-served basis.

If a specific name is to be adopted, you can either adopt the name(s) of the main shareholder(s) or a fantasy name of your choice. In the latter case you should provide at least 3 alternative names, as the registrar has to ensure that it shall be unique and not confusable with an existing company name.

The name may be any name in any language, but it must in the Roman alphabet and must not be misleading, contain sensitive words, or suggest an activity subject to special authorisation (e.g. financial).

The name of a branch shall be the name of the parent entity followed by the word Sucursal or another Portuguese expression to the same effect.

PORTUGUESE COMPANY ARTICLES OF ASSOCIATION

Pinto Machado, Carneiro Gomes & Associados, Soc. Advogados R.L.
NIPC 510.544.118 – Capital social Soc. € 5.000
Matriculada no Conselho Geral da O.A. sob o nº 22/2012
Avenida da Liberdade n.º 258, 9.º andar- 1250 149 Lisboa - Portugal
Telefone: 210 937 042 Telefax 211 956 491
Email: info@pmcg.pt



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For Lda and SA companies, there is a standard official document, which allows for same-day incorporation and can be changed at any time by means of a relatively simple procedure. The use of a customised document on incorporation is not recommended as it leads to additional costs and a lengthier procedure.

DIRECTORS

There are no legal restrictions on the nationality or place of residence of Portuguese company directors. But please note that each of them has to have or obtain a Portuguese taxpayer identification number and that non-EU/EEA entities must have a resident tax representative.

Corporate directors are permitted, but in this case an individual representative of the corporate director must be appointed and registered with the registry office.

The binding powers of each director must be provided for on incorporation, the most common of which are “signing singly” or “signing jointly with one other director”.

It should be noted that under Portuguese law a company director can be personally jointly liable with the company in connection with any company's unpaid taxes and social security contributions that originated or became due during his/her term as a director. For this reason, the availability of nominee directors is very scarce, those available are relatively highly paid and as a rule will not issue general powers of attorney - only specific ones.

COMPANY SECRETARY

Only listed companies must have a company secretary (plus a substitute secretary). For other companies, this is optional, but it is recommended in the event that the company does not have a Portugal resident director. The secretary and the substitute secretary of an SA are appointed by either the founding shareholders on incorporation or by written resolution adopted by the board of directors. In the case of an Lda company, the secretary is appointed by the general meeting of quota holders. The secretary is appointed for the same term as that of the officers that



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appointed him/her.

The secretary must be an individual, must hold a “suitable academic degree” (e.g. be a solicitor) and, except in the case of companies belonging to the same group of companies, may not act as the secretary of more than 7 companies. The secretary has various functions under the law and the articles of association, which correspond broadly to those of the secretary of a common law company. The secretary may be particularly useful in the case of a company that has an unusual high need for legalised documents, as he/she is empowered by law to certify signatures or documents that would otherwise have to be certified by a Notary Public or by the Commercial Registrar.

PORTUGUESE COMPANY SHARE CAPITAL & SHAREHOLDERS

There is no minimum capital requirement for a quota (Lda) company or for the branch of a foreign company, but each quota of a Lda must be of at least 1 euro.

For an SA, the minimum capital requirement is €50k; and, if in excess of €200k, the company will be subject to special rules as regards its governance.

The share capital must be fully paid up before the end of the company's initial financial year.

There are no legal restrictions on the nationality or place of residence of the shareholders of a Portuguese company and they may be either individuals or corporate bodies. But please note that each of them has to have or obtain a Portuguese taxpayer identification number and that non-EU/EEA entities must have a resident tax representative. Belion Partners can obtain Portuguese tax id numbers under power of attorney and/or provide tax representative services.

PORTUGUESE COMPANY ACCOUNTANT & AUDITOR

A chartered accountant (técnico oficial de contas or TOC) should be appointed upon the incorporation of a company or the registration of a branch, so that he/she can sign and file the business activity commencement form with the tax authorities

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within the following 15 days.

A company's (or branch's) annual accounts must also be signed and filed by a chartered accountant.

Besides the accountant, a qualified auditor (Revisor Oficial de Contas or ROC) must also certify the accounts in the following cases:

- Where the company is an SA or a holding (SGPS) company;
- Where 2 of the following 3 conditions are met in two consecutive financial years: an annual turnover in excess of €3m; a balance sheet total value of more than €1.5m; more than 50 employees.

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