COUNTRY COMPARATIVE GUIDES 2023

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Portugal

DOING BUSINESS IN

Contributor

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This country-specific Q&A provides an overview of doing business in laws and regulations applicable in Portugal.

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PORTUGAL
DOING BUSINESS IN

1. Is the system of law in your jurisdiction based on civil law, common law or something else?

Similar to other European countries, the legal system in Portugal is a civil law system based on the Roman law tradition and written law. It is combined by codification of several laws as per follows:

i. Constitutional laws, which include the Republic Constitution, the separate Constitutional Laws and the Constitutional Revision Laws;
ii. Rules and principles of general or common international law, rules contained in international conventions duly ratified or approved, rules issued by the competent bodies of international organizations of which Portugal is a member, the provisions of the treaties governing the European Union and the rules issued by institutions in the exercise of their respective powers;
iii. Ordinary laws, which include the Laws issued by the National Parliament, the Government Decree-Laws and the Regional Legislative Decrees by the Legislative Parliament of the Autonomous Regions of Azores and Madeira;
iv. Acts with equivalent force to laws, such as those approving international conventions, treaties or agreements, Constitutional Court decisions expressly representing that they are unconstitutional or illegal with generally binding force, collective labor agreements and other instruments for the collective regulation of labor; and
v. Regulations, i.e., normative instruments of a lower grade than laws, which aim to detail and complement them in order to enable their application or execution.

As member of European Union, Portugal has adopted several laws based on the European Union directives and law and international treaties.

2. What are the different types of vehicle / legal forms through which people carry on business in your jurisdiction?

- Limited liabilities companies and branches are the most common vehicles through which people usually carry on business in our jurisdiction.
- Individuals or companies that intend to carry on a business activity in Portugal may acquire shares/quotas in a company already incorporated and which is carrying on already its business activity, or may decide to incorporate a new company under one of the corporate structures legally foreseen. The most common and usual types of legal forms adopted to incorporate a company in Portugal are “Sociedade Anónima” (“S.A.”) and “Sociedade por Quotas” (“Lda.”), which are limited liability companies, with legal personality separate and autonomous from their shareholders/quota holders. The liability of the company towards its creditors is limited to the assets of the company. In case of “Sociedade por Quotas“ this is the rule, unless otherwise is expressly foreseen in the articles of association.
- The legal form “Sociedade por Quotas“ comprises a lighter corporate structure than “Sociedade Anónima”, hence being more appropriate for short-term investments whilst “Sociedade Anónima” is usually recommended for enduring investments, namely represented by a large number of investors.
- In case of “Sociedade por Quotas”, the share capital is represented by quotas and the quota holders are jointly liable for all the share capital entry contributions. In case of “Sociedade Anónima”, the share capital is represented by shares, having the liability of shareholders limited to their respective shares paid/acquired.
- The share capital of these companies can be

fully owned by a sole shareholder whenever specific requirements legally foreseen are met. In case of “Sociedade por Quotas“ whenever the quota representing the entire share capital is held by one sole quota holder, the reference to such nature – “Sociedade Unipessoal por Quotas“ – requires to be added to the corporate name of the company, by means of which any third party becomes aware that it is a private limited liablity company having the entire share capital hold by one sole quota holder. This type of company adopts a more simple corporate structure.

- In case of “Sociedade Anónima” the minimum number legally foreseen for its incorporation is five shareholders, unless it is a legal person holding the entire shares representative of the company’s share capital, being in such case incorporated with a sole shareholder.
- There are other corporate structures foreseen under the Portuguese law for the incorporation of a new company such as “Sociedade em Nome Colectivo” and “Sociedade em Comandita”, which are rarely used, and both of them imply unlimited liability for their shareholders.
- Non-domestic companies may also carry on business activity in Portugal by setting up a branch. A branch is an extension of the foreign entity (parent company=, without having legal personality or autonomy; the parent company of a branch will be liable for its obligations and debts.
- Another vehicle option as a joint venture with a business already operating in Portugal, but without implying the incorporation of a company, nor the acquisition of shares/quotas in a company already incorporated, is the “Agrupamento complementar de empresas” (“ACE”); despite not having a separate legal personality from its members, the “ACE” is recommended usually to carry out specific projects; “Agrupamento de Interesse Económico” (“AEIE”) is also another joint venture option whenever the scope is to develop, improve or increase the economic activity of their members, namely provide centralized services for a group of companies; It involves entities from different European Union countries.
- As the above mentioned scenarios are subject to registration before the Commercial Registry, its legal effectiveness before third parties depends on the conclusion of the commercial registration.

3. Can non-domestic entities carry on business directly in your jurisdiction, i.e., without having to incorporate or register an entity?

- A non-domestic entity may intend to start promoting the business activity in the Portuguese market without setting up a legal structure by means of entering into commercial contracts such as agency, franchising or distribution contracts with a third party that is already carrying on business activity in Portugal.
- Another vehicle option will be a joint venture with an entity already operating in Portugal but without implying the incorporation of a company nor the acquisition of a shareholding is the “Agrupamento complementar de empresas” (“ACE”); despite not having a separate legal personality from its members, the “ACE” is recommended usually to carry out specific projects; “Agrupamento de Interesse Económico” (“AEIE”) is also another joint venture option whenever the scope is to develop, improve or increase the economic activity of their members, namely provide centralized services for a group of companies; It involves entities from at least two different European Union countries. “ACE” and “AEIE” are also subject to commercial registration.
- Pursuant to the applicable law, whenever non-domestic companies do not have their central management and control in Portugal and intend to carry on their business activity within the Portuguese territory for a period exceeding more than one year, they are required to set up a permanent representation/branch in Portugal and to comply with the legal provisions in force, namely and not limited, to commercial registration. A branch shall be considered as an extension of the foreign entity, without having legal personality or autonomy from the parent company that shall be liable for the branch’s obligations and debts.
- A non-domestic company may carry on business directly in Portugal through the acquisition of shares/quotas in the share capital of a Portuguese company or by means of the incorporation of a new Portuguese company.
- Without prejudice of any other applicable compliance rules, such as anti-money laundering and counter-terrorist financing regulations that are applicable to any

company or individual, either domestic or non-domestic, carrying on business activity in Portugal, as a rule, there are no restrictions from corporate legal perspective on foreign shareholders. As principle, there is no discrimination of investment on the basis of nationality. Corporate rules are applicable for foreign and Portuguese shareholders. There is no legal provision demanding a mandatory minimum number of Portuguese residents to act as shareholders but any shareholder requires to hold in advance a Portuguese registered taxpayer number.

- Despite there are no restrictions for the acquisition of shares in Portuguese companies, nor for its threshold, the ultimate beneficial owner ("UBO") applicable rules demand additional obligations of disclosure of information in the Central Registry of Beneficial Owners ("Registo Central do Beneficiário Efetivo"). It is the case of shareholders holding, directly or indirectly, more than 25% of the share capital in a Portuguese company, qualified as beneficial owners of the company.
- Depending on the nature of the business activity intended to be carried on, mandatory registration or authorizations may be additionally needed for specific business activities (licenses to operate or registrations/authorizations/notices under regulated activities).

4. Are there are any capital requirements to consider when establishing different entity types?

- In case of "Sociedade por Quotas", the share capital may be freely agreed by the quota holders under the articles of association and it shall correspond to the total amount of the quotas of each quota holders. The minimum nominal amount of each quota is € 1,00. Therefore, in case of a private limited liability company with the share capital fully owned by a sole quota holder ("Sociedade Unipessoal por Quotas") as per the legal provisions applicable, the share capital may have the minimum amount of one Euro. Unless otherwise expressly foreseen in the Incorporation Act regarding the deferred payment of initial contributions to be paid in cash, the total amount of the share capital has to be fully paid up in cash on the signature date of the Incorporation Act. Nevertheless, the quota holders may expressly represent and undertake under the Incorporation Act that the entire payments in cash will be paid up until the end of the first financial year.
- The minimum amount legally foreseen for the share capital of "Sociedade Anónima" is currently € 50.000,00. The share capital is divided into nominative/registered shares that may be physically represented (shares certificates) or electronically represented (book entry shares). In case of initial capital contributions paid in cash, 30% of the initial capital contributions must be paid immediately in the incorporation act, while the paying-in of 70% of the amount of shares may be deferred; the payment of the issue premium, when provision is made for one, cannot be deferred. Non-capital contributions must be fully paid up on the date of incorporation.
- In any of the above situations, initial capital contributions represented by services are not permitted. All assets in kind are subject to a prior report from an independent auditor.

5. How are the different types of vehicle established in your jurisdiction? And which is the most common entity / branch for investors to utilise?

- The most common vehicles in our jurisdiction are limited liabilities companies – either "Sociedade Anónima" or "Sociedade por Quotas" – and branches.
- The incorporation of a company and the setting up of a branch are subject to commercial registration. Transfer of quotas is also subject to commercial registration, whilst the sale and purchase of shares is subject to registration in the company's shares registration book.
- The incorporation of a new company – either as "Sociedade Anónima" or "Sociedade por Quotas" – starts with the approval of its corporate name before the competent Portuguese authority ("Registo Nacional de Pessoas Coletivas"). All foreign shareholders and future non-resident directors require to obtain, in advance, a Portuguese registered taxpayer number. If any of them are furthermore resident in a non-EU/EEA country, it shall be required to furthermore appoint in addition a tax representative who requires to be holder of a Portuguese taxpayer number. If

the taxpayer intends to avoid that situation and provided some requirements are fulfilled namely if he/she adhere to any of the dematerialized notification channels of the Portuguese Tax Authorities (electronic notifications and electronic mailbox),the taxpayer may be exempt from the requirement to appoint a tax representative resident in Portugal. However it should be noted that this exemption is not yet being applicable by authorities and the appointment of the tax representative is currently still being demanded. This rule is applicable also for the scenario of acquisition of quotas/shares in the share capital of a company already incorporated, as non-resident investors require to obtain, in advance, a Portuguese registered taxpayer number.

- The incorporation act shall be signed by quota holders/shareholders or by an attorney in fact duly empowered for that purpose, holding a specific power of attorney that requires to fulfil with certain formalities too. The incorporation act is usually a private written document containing the company's articles of association (which rules the company), signed by the new company's quota holders/shareholders or their representatives (signatures required to be legalized/ "authenticated"). It may be required to be executed as public deed whenever the shareholders contributions involve the transfer of real estate assets to the company. There is also a simplified procedure to incorporate companies executed by competent authority, based upon pre-approved template documents. The incorporation of a company is subject to the conclusion of the registration before the Commercial Registry followed by registration at the Central Register of the Ultimate Beneficial Owner. Prior to start carrying on its business activity it is required furthermore to conclude the opening of a bank account, the enrollment with the Portuguese Tax Authority and Portuguese Social Security Authority and, whenever applicable, the license/permits required for specific activities. A licensed accountant requires to be always appointed.
- A branch will have to carry on the same corporate activity of the parent company and adopt the same corporate name followed by the reference "Sucursal em Portugal" (which means "branch in Portugal"). It requires to have registered offices address and a branch's representative, without prejudice of having in addition attorney-in-facts too, empowered within the limits and extension of the respective power of attorney granted. For the setting up of the branch it shall be required to conclude (i) the submission and registration at the Commercial Registry, (ii) the submission of the initial declaration at the Central Register of the Ultimate Beneficial Owner, (iii) the opening of a bank account and (iv) the enrollment with the Portuguese Tax Authority and Portuguese Social Security Authority. A licensed accountant shall be also required to be appointed.

6. How is the entity operated and managed, i.e., directors, officers or others? And how do they make decisions?

- The "Sociedade Anónima" may have a board of directors or a sole director (whenever the company's share capital does not exceed € 200.000,00), plus a supervisory body or/and a statutory auditor. Alternatively, it may adopt a structure combined by board of directors with an audit committee and a statutory auditor or an executive board of directors, a general and supervisory board, and a statutory auditor.
- The management of limited liability companies incorporated as "Sociedade por Quotas" may be executed by one or more appointed directors ("gerentes"). If no director is appointed – either in the incorporation act or later in a General Meeting resolution – it shall be assumed that all quota holders intend to act also as directors of the company. The company's articles of association may foresee that the company has a supervisory body and whenever the company does not have a supervisory body, a statutory auditor must be appointed when certain thresholds are met regarding the company's total balance sheet, total net turnover, and average number of employees.
- The directors' resolutions are taken by the Board of Directors or by the management board, depending on whether it is a "Sociedade Anónima" or a "Sociedade por Quotas". However, certain decisions are mandatorily resolved by shareholders at a general meeting or by a written resolution.
- In case of branch, it is the branch's appointed representative who, under a power of attorney granted by the parent company, manages the daily activity.

7. Are there general requirements or restrictions relating to the appointment of (a) authorised representatives / directors or (b) shareholders, such as a requirement for a certain number, or local residency or nationality?

- There are no specific restrictions on foreign managers. However, it should be noted that any director, representative, quota holder, shareholder or registered attorney-in-fact of a Portuguese company is required to have in advance a Portuguese registered taxpayer number.
- Whenever the director, representative, quota holder, shareholder or attorney-in-fact to be appointed is a resident in a Non-EU/EEA country, a tax representative holder of a Portuguese taxpayer number requires furthermore to be appointed.
- In case of “Sociedade Anónima” the minimum number legally foreseen for its incorporation is five shareholders, unless it is a legal person holding the entire shares representative of the company’s share capital, being in such case incorporated with a sole shareholder. There are no restrictions to the maximum or minimum number of directors to be appointed, which will be the number foreseen in the company´s articles of association; A sole director may be appointed, provided that the share capital of the company does not exceed € 200.000,00. A company may execute the role of director and be appointed as such capacity, provided that it appoints an individual to act on their own behalf (rather than in the name of the originally appointed company).
- The appointment of directors and branch’s representative are subject to registration before Commercial Registry and for that purposes it is legally required to submit also a signed declaration from the appointed directors or branch’s representative expressly confirming their acceptance to such appointment and to act in such capacity and furthermore that they are not aware of any circumstance that could prevent them from acting in such capacity nor from performing the duties as company’s directors or branch’s representative, as it may be the case.
- There are no restrictions to the appointment of authorized representatives, unless the articles of association foresee otherwise.

8. Apart from the creation of an entity or establishment, what other possibilities are there for expanding business operations in your jurisdiction? Can one work with trade /commercial agents, resellers and are there any specific rules to be observed?

- From a corporate law perspective, there are no restrictions in expanding business operations in Portugal. Unless specifically foreseen in the articles of association, an entity or establishment is free to work with trade / commercial agents and resellers. However it should be within the business activity carry on by the company and which is expressly foreseen in the articles of association.
- Other option for expanding the business is the entering into commercial contracts such as franchising agreement, agency agreement or distribution agreement, or to promote a joint venture under ACE model.

9. Are there any corporate governance codes or equivalent for privately owned companies or groups of companies? If so, please provide a summary of the main provisions and how they apply.

The Corporate Governance Code revised in 2020 and published by the Portuguese Institute of Corporate Governance, is used as guidance and best practices to listed companies and privately owned companies, on several matters such as, transactions with related parties, conflict of interests, non-executive management, monitoring and supervision, executive management, evaluation on performance, remuneration and appointment, risk management, financial statements and accounting.

10. What are the options available when looking to provide the entity with working capital? i.e., capital injection, loans etc.

The options available for company financing are, among others:

i. third parties /banking loans of different natures;
ii. share capital increase subject to legal requirements;
iii. capital contributions;
iv. shareholders loans;

v. bond and equity issues.

11. What are the processes for returning proceeds from entities? i.e., dividends, returns of capital, loans etc.

Unless the articles of association or a general meeting resolution determines otherwise, half of the distributable profits of the financial year must be distributed to the shareholders/quota holders. Dividends cannot be distributed if necessary to cover losses or to comply with company reserves, mandatory by law and/or additional foreseen in the company's articles of association.

Any advance on the dividends must be foreseen in the articles of association, resolved by the management and can only be paid in the second half of the financial year and the amounts to be allocated as advances shall not exceed half of those that would be distributable.

Shareholders loans reimbursement depends on the contractual term (if any), otherwise may be reimbursed at any time. The shareholders loans are subordinated loans in case of company bankruptcy.

Capital Contributions ("Prestações Suplementares"), reimbursement must be approved by a general meeting and may only occur if the financial situation of the company allows it: company's equity cannot be less than the sum of the share capital and the legal reserve.

The share/quota must be fully paid. The capital contributions cannot be reimbursed after the company´s bankruptcy has been declared.

In any and all repayments and reimbursements to the shareholders/quota holders, the capital maintenance rule needs to be complied with: company's assets cannot be distributed to shareholders/quota holders if the equity of the company, including the net result is less than the sum of the share capital and reserves.

12. Are specific voting requirements / percentages required for specific decisions?

The law requires specific voting percentages/and requirements for the decision, among others, regarding amendments to the articles of association, including capital increase and decrease; merger; split-offs; company transformation; dissolution and liquidation.

Depending on the company type the majorities will be of 2/3 (company by shares) of the votes or 3/4 (company by quotas) of the votes.
The majorities also depend if the resolution is taken in a first or second call of the general meeting and specif percentages of shareholders must be present or represented.

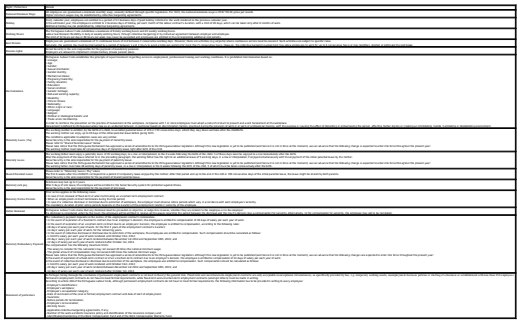
13. Are shareholders authorised to issue binding instructions to the management? Are these rules the same for all entities? What are the consequences and limitations?

The management must comply with and execute shareholders/quota holders resolutions.

Nonetheless, in company by shares, the shareholders and management have specific competences and thus shareholders cannot take decisions in management matters, that would be considered null and void.

In company by quotas the quota holders may in some cases take resolutions in management matters.

14. What are the core employment law protection rules in your country (e.g., discrimination, minimum wage, dismissal etc.)?



15. On what basis can an employee be dismissed in your country, what process must be followed and what are the associated costs? Does this differ for collective dismissals and if so, how?

Dismissal with just cause

The employer can unilaterally terminate employment with just cause, ie. when the employee willfully commits such a serious offense that the maintenance of the labour relationship is no longer possible.

Portuguese legislation elaborates on what may constitute just cause, such as illegitimate disobedience to superior's order, violation of the employees' rights and guarantees, physical or verbal violence within the Company, amongst others.

Upon obtaining knowledge of the employee's offense, the employer must initiate the disciplinary procedure within 60 days.

If necessary to reunite evidence and grounds for the accusation, the employer can, alternatively, initiate a previous inquiry. In this case, the previous inquiry must be implemented within 30 days after the employer obtains knowledge of the employee's offense.

When proceeding in first hand with a previous inquiry, the employer has to notify the employee of the accusation within 30 days after the conclusion of the said previous inquiry.

The employer can also determine, within the course of the disciplinary procedure, that the employee is suspended from providing his work, being certain that his remuneration must still be paid during the duration of the suspension.

If the employer intends to suspend the employee prior to the notification of the accusation, the employer is obliged to communicate the accusation to the employee within a maximum of 30 days counting from the said suspension.

When the employer notifies the employee of the accusation within the disciplinary procedure, it should send copies of the accusation to the employee's representative structures, if existent within the Company.

After being notified of the accusation, the employee has 10 working days to consult the disciplinary procedure's file and to answer to the accusation, defending himself and requesting the production of evidence diligences. The employee can request the hearing of a maximum of 10 witnesses.

The employer must conduct the diligences requested by the employee, unless the employer finds them to be impertinent and manifestly delaying. In this case, the employer must fundament thoroughly the non-execution of the employee's requested diligences.

Once the evidence diligences are concluded, the employer must present the disciplinary procedure's file to the employees' representative structure, if existent, and this structure can present, within 5 working days, their opinion.

After concluding the evidence diligences and receiving the aforementioned opinion, the employer has 30 days to issue the final decision, which must be made in writing and have thorough justification.

Upon receiving the final decision, the employment contract is immediately terminated and the employee has 60 days to resort to judicial courts.

If a dismissal is considered unfair by the Court, the employee will be entitled to receive all the wages regarding the period between the dismissal and the Court's decision plus a compensation for seniority. Alternatively, to the compensation for seniority, the employee may opt to be reinstated.

Collective dismissal

A collective dismissal corresponds to the termination of several employment contracts by an employer simultaneously or within a period of 3 month (at least 2 employees, if the company has less than 50 employees / at least 5 employees, it the company has 50 or more employees), for market, structural or technological reasons.

Collective dismissals may only occur after following a procedure prescribed by law (specific legal formalities and timings shall be observed).

- The procedure for collective dismissal begins with a written communication addressed to

the work council or, if there is no such council, to the company union or inter-union representative structure in the company. If none of these structures exist, the affected employees will be informed, in writing, of the intention to perform a collective dismissal and employees will be invited to nominate a representative committee (or up to 5 employees) that will act as representative structure for that purpose.

- At the same time, a copy of the communication and the annexed documents shall be sent to the competent department of the Portuguese Ministry of Employment.
- Within a 5-day period following the initial communication, a phase of information and negotiation between the company and the employees' representatives must be initiated in order to try to reach an agreement on the dimension and effects of the measures taken. After a minimum of 15 days after the initial communication, the employer may send a written communication to each one of the dismissed employee, containing the dismissal decision, expressly indicating the motives and date of the dismissal, the amounts of the compensation and the labour credits, as well as the manner, moment and place of their payments.
- The employer must observe minimum notice periods which vary in accordance with each employee's seniority.

In the event of a collective dismissal, the employees are entitled to compensation. Such compensation should be calculated as follows:

– 1 month's salary per each year of work rendered until October 31st, 2012;

– 20 days' salary per each year of work rendered between November 1st, 2012 and September 30th 2013; and

– 12 days of salary per each year of work rendered after October 1st, 2013.

The compensation has the following maximum limits:

– The salary to consider for the calculation may not exceed 20 times the national minimum wage;

– The global amount of compensation may not exceed 240 times the national minimum wage.

16. Does your jurisdiction have a system of employee representation / participation (e.g., works councils, co-determined supervisory boards, trade unions etc.)? Are there entities which are exempt from the corresponding regulations?

In theory, there are 2 channels of workplace representation of employees for most issues: workplace union representatives and works councils.

The election of workplace union representatives and works councils is not mandatory and depends on the employees' initiative.

When existing, workplace union representatives and works councils are subject to mandatory regulations.

17. Is there a system governing anti-bribery or anti-corruption or similar? Does this system extend to nondomestic constellations, i.e., have extraterritorial reach?

Bribery and corruption in the private and public sector are criminal offences as set forward in article 372, 373 and 374 of the Portuguese Criminal Code ("PCC").

Furthermore, Law no. 20/2008 of April 21st, as amended, envisaged the criminalization of specific facts in respect to international trade and the private sector namely by introducing the crime of active corruption with prejudice to international trade, passive corruption in the private sector and active corruption in the private sector (articles 7 to 9 of the aforementioned law). This regime provides for the criminal responsibility when: (i) the facts carried out by Portuguese citizens or by foreigners who are found in Portugal, irrespective of the place where they were committed and (ii) irrespective of the place where the acts were committed, when the person giving, promising, requesting or accepting the advantage or promise is a national civil servant or holder of national political office or, being of Portuguese nationality, is an employee of an international organization.

Portuguese law makers have also introduced legislation envisaging more methods for public authorities to investigate and prevent bribery, corruption and related crimes more notably through Law no. 36/94 of September 29th, as amended, on measures to fight corruption and economic and financial crime.

More recently, Decree Law no.109-E/2021 of December 9th was published, which approved the legal framework

for the prevention of corruption. This regime provided for the creation of a new public entity responsible for the enforcement of the regime (MENAC) and a range of obligations, namely the adoption and implementation of an anticorruption compliance program which include the drafting and implementing of (i) a prevention of corruption and related offences risks plan, (ii) code of conduct, (iii) prior assessment procedures, (iv) training programs and (v) a whistleblowing internal channel in accordance with Law no. 93/2021 of December 20th, which transposed to the Portuguese jurisdiction Directive 2019/1937/EU on the protection of persons who report breaches of Union law. This regime is applicable to, among other entities, companies registered in Portugal with 50 or more employees and branches in Portugal of foreign companies with 50 or more employees, and therefore its extension to nondomestic constellations is limited.

In what concerns the potential extraterritorial reach of the criminal liability, as a general rule, Portuguese Criminal Law is applicable to facts (i) practiced in Portuguese territory, regardless of the agent's nationality; and (ii) on board of Portuguese ships and aircrafts. Notwithstanding, article 5 of the PCC foresees specific situations under which this general rule may be waived.

18. What, if any, are the laws relating to economic crime? If such laws exist, is there an obligation to report economic crimes to the relevant authorities?

Economic crimes are punishable under Portuguese law pursuant the PCC, Law no. 36/94 of September 29th, as amended, on measures to fight corruption and economic and financial crime, Law no. 28/84 of January 20th, as amended, on uneconomical offences and offences against the public health and Law no. 20/2008 of April 21st, as amended, which sets forward the regime of criminal liability for corruption offences committed in international trade and private activity.

Pursuant the anti-money laundering and terrorist financing ("AML/CFT") rules, (i.e. see point below) obliged entities, and in certain circumstances its legal representative or employees, must report to the Portuguese authorities, under penalty of administrative offences, whenever they suspect that certain funds or other property, irrespective of the amount or value involved, originate from criminal activities or are related to terrorist financing.

In this respect, to note Law no. 93/2021 of December 20th, which establishes protective measures for persons who report breaches to the authorities (or "whistleblowers").

19. How is money laundering and terrorist financing regulated in your jurisdiction?

Money laundering and terrorism financing prevention ("AML/CFT") is regulated by Law no 83/2017 of August 18th, as amended, which sets out the legal framework on the measures to combat money laundering and terrorism financing and which transposed to the Portuguese jurisdiction Directive 2015/849/EU and Directive 2016/2258/EU of the Parliament and Council.

Moreover, Portuguese supervisory authorities of regulated sectors have implemented sets of rules and recommendations in this matter having in mind the specific areas of activity and underlying AML/CFT risks, such as: Bank of Portugal Regulation no. 1/2022 for the banking sector, CMVM Regulation no. 2/2020 for investment firms, IMPIC Regulation no. 603/2021 for the real estate sector and ASAE Regulation no. 1191/2022for a wide range of economic operators.

In broad terms, this legal framework envisages the preventive duties which the obliged entities must comply with, namely: (i) duty of control; (ii) due diligence duty; (iii) duty of communication and reporting to the authorities; (iv) duty to refrain from performing suspicious operations; (v) duty to refuse; (vi) duty to cooperate with the authorities; (vii) duty of audit trail maintenance; (viii) duty of exam and (ix) duty of training. Furthermore, this regime establishes the administrative offences associated with the non-compliance of this framework.

Also, to note Law no. 92/2017 of August 22nd which puts forward the legal limitations on cash transactions. For this purpose, it is forbidden to pay or receive in cash transactions of any nature involving amounts equal or higher than € 3.000,00 or its equivalent in foreign currency. Notwithstanding, non-resident individuals in the Portuguese territory cannot pay and/or receive € 10.000,00 or equivalent foreign currency in cash. Payments of invoices can only be made in cash up to € 1.000,00 or its equivalent in foreign currency. Finally, payment in cash of taxes exceeding € 500,00 is prohibited. The transactions which surpass this threshold must be carried out through a payment method which allows for the identification of the respective recipient, namely: bank transfer, order cheque or direct debits.

20. Are there rules regulating compliance

in the supply chain (for example comparable to the UK Modern Slavery Act, the Dutch wet kinderarbeid, the French loi de vigilance)?

No. Notwithstanding, as a European Union Member State, Portugal, its institutions, and authorities follow closely the guidance issued by EU Authorities, of relevance the EU guidance “On due diligence for EU businesses to address the risk of forced labour in their operations and supply chains”.

21. Please describe the requirements to prepare, audit, approve and disclose annual accounts / annual financial statements in your jurisdiction.

Prior to the approval by the shareholders general meeting of the annual accounts:

- The financial accounts shall be drafted by the licensed accountant and approved by the management;
- A management report shall be drafted and approved by the Management (unless the company is considered a “micro entity”);
- A report and a legal certification of accounts shall be drafted by the statutory auditor and approved by the management (unless the company is a company by quotas and does not exceed specific requirements legally foreseen).

All the documents abovementioned shall be provided to the shareholders 15 days before the Annual General Meeting, and be approved by them, within 3 months of the closing date of each financial year, or within 5 months of that date in the case of companies that must present consolidated accounts or apply the equity method.

After the annual account’s approval, the financial statements must be filed before the Tax Authorities by the licensed accountant or legal representative, by the 15th day of the 7th month following the end date of the financial year.

22. Please detail any corporate / company secretarial annual compliance requirements?

All General Meeting/ Management resolutions minutes, including those related to the approval of the annual financial statements, and their annexes, shall be signed/initialized and filed in the company’s minutes book.

23. Is there a requirement for annual meetings of shareholders, or other stakeholders, to be held? If so, what matters need to be considered and approved at the annual shareholder meeting?

Yes. The Annual General Meeting of shareholders/quota holders must be held within 3 months of the closing date of the financial year or within 5 months of the same date in the case of companies that must present consolidated accounts or apply the equity method.

The shareholders must resolve on:

- The management report (if applicable), the accounts of the last financial year and the report and legal certification of accounts of the Statutory Auditor (if applicable);
- The proposal for the allocation of results;
- The general appraisal of the company’s management and supervision body;

Also and if applicable the shareholders/quota holders must resolve on:

- The appointment of the governing bodies;
- The acknowledge of the situation of loss of half of the company’s share capital and on the measures to be adopted.

24. Are there any reporting / notification / disclosure requirements on beneficial ownership / ultimate beneficial owners (UBO) of entities? If yes, please briefly describe these requirements.

Yes. Entities subject to the UBO regime, namely commercial companies, are required to identify the natural person(s) who, directly or indirectly, hold more than 25% of the entity or have effective control over it.

Changes and/or updates to the information contained in the CRBO must be registered in CRBO platform within 30 days from the date of the fact that determines the change.

As a general rule, it is necessary to confirm annually the accuracy, sufficiency and update of the information on the UBO, through an annual declaration, until December 31st. However, this obligation will be waived in cases

where an update of the information has occurred during the respective financial year and no fact has occurred in the meantime that determines a new amendment to the information.

Companies usually confirm annually UBO information within the procedures of submission, deposit and disclosure of their annual financial statements.

25. What main taxes are businesses subject to in your jurisdiction, and on what are they levied (usually profits), and at what rate?

Corporations and other entities with their head office or place of effective management in Portugal qualify as tax residents and are subject to corporate income tax on their worldwide income. Non-resident corporations and entities are subject to Portuguese corporate income tax for the profits attributable to a Portuguese permanent establishment or, in spite of that, for any income deemed to come from a Portuguese source.

The current corporate income tax rate is of 21%, but for companies established in the Autonomous Regions of Madeira and Azores, the current rates are of 14,7%.

Also, for resident entities are subject to municipal and state surcharges. Municipal surcharges are defined by each municipality every year and can be levied up to a maximum of 1,5%. Levies of state surcharges vary under the following conditions:

- 3%, for a taxable income raging between € 1.5 million to € 7.5 million;
- 5%, for a taxable income raging between € 7.5 million to € 35 million.
- 9%, for taxable income over € 35 million.

26. Are there any particular incentive regimes that make your jurisdiction attractive to businesses from a tax perspective (e.g. tax holidays, incentive regimes, employee schemes, or other?)

Dividends:

Dividends paid by Portuguese entities to foreign entities can be exempt from withholding tax applies if all the following requirements are met:

- The foreign shareholder is resident in another EU member state or EEA member state compliant with tax co-operation matters equivalent to those applicable in the EU, or in a state with which Portugal has signed a Double Taxation Treaty in which tax co-operation matters are established.
- The foreign shareholder is subject to, and not exempt from, a tax referred in the Parent-Subsidiary Directive or a similar tax levied at a rate that is at of 60% of the Portuguese corporate income tax rate.
- The foreign corporate shareholder holds, direct or indirectly, a minimum of 10% of the share capital or voting rights of the entity that pays the dividends. This shareholding must be held uninterruptedly for 1 year before the distribution of dividends.

Dividends received from foreign entities may be exempt from corporate income tax if all the following requirements are met:

- The beneficiary holds (directly or indirectly) a minimum of 10% of the share capital or voting rights of the distributing company.
- That stake was held uninterruptedly for 1 year before the distribution of dividends or, if held for less time, it is maintained for the required time to complete that period.
- The distributing company is subject to, and not exempt from, a tax referred in the Parent-Subsidiary Directive or a similar tax levied at a rate that is at of 60% of the Portuguese corporate income tax rate.

Interests and IP Royalties:

Interests and IP Royalties paid by a Portuguese entity to a foreign shareholder may benefit from the exemption of corporate income tax apply if all the following requirements are met:

- The Portuguese entity and the beneficiary are subject to, and not exempt from, an income tax mentioned in the Interest and Royalties Directive.
- Both entities are incorporated under a corporate structure as defined in the Interest and Royalties Directive.
- The beneficiary is a resident in an EU member state and is not considered a non-EU resident for tax purposes under a Double Taxation Treaty.
- The recipient is the beneficial owner of the interest.
- A direct 25% shareholding must be held by one of the companies in the share capital of the other, or a third company must directly hold at least 25% of the capital of both companies and, in any case, the shareholding

must be held uninterruptedly for at least 2 years.

In the case of interests, if the parties have a special relationship under transfer pricing rules, the exemption does not apply to any excess interest that, in the absence of such relationship, would not have been agreed between the payer and the beneficial owner.

Withholding tax may also be eliminated or reduced under an applicable Double Taxation Treaty.

27. Are there any impediments / tax charges that typically apply to the inflow or outflow of capital to and from your jurisdiction (e.g., withholding taxes, exchange controls, capital controls, etc.)?

Dividends paid by Portuguese resident entity to a foreign shareholders are subject to withholding tax at a rate of 25%. Also, dividends received by entities incorporated in Portugal are also subject to corporate income tax under the general tax rules.

In the same way, interests paid by Portuguese resident companies to foreign corporate shareholders is subject to withholding tax at 25%.

Under the Portuguese controlled foreign company (CFC) rules, income or profits obtained by non-resident companies subject to a clearly more favorable tax regime are allocated to Portuguese taxpayers who hold, directly or indirectly, even by means of a trustee, fiduciary or interposed person, at least 25% of the shares, voting rights or rights over the income or assets of those companies.

The CFC rules provide that a company is considered to be subject to a clearly more favorable tax regime when any of the following applies:

- It is resident in a jurisdiction listed in Portuguese regulations.
- It is exempt from, or not subject to, a tax equivalent to the Portuguese Corporate Income tax.
- The tax rate is less than 50% of the corporate income tax that would be due under Portuguese law.

28. Are there any significant transfer taxes, stamp duties, etc. to be taken into consideration?

Stamp duty is levied on deeds, contracts, documents, titles, books, papers and financial operations. It is usually payable by the entity that has an economic interest in the operation.

Exemptions may be applicable concerning certain financial operations, between companies structured under the same group, or in certain shareholder loans.

29. Are there any public takeover rules?

Yes. The main legal framework governing public takeovers in Portugal comprises, among others ancillary regimes:

- Portuguese Securities Code;
- Securities Market Commission Regulation No. 3/2006, which sets out the general rules, including the procedures and formalities required.

Regulation (EU) 2017/1129 of the European Parliament and of the Council, of 14 June 2017, on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market.

30. Is there a merger control regime and is it mandatory / how does it broadly work?

Merger control is regulated by Law no. 19/2012 of May 8th (as amended).

Concentration operations which meet one of the following criteria are subject to the obligation of prior notification to the Competition Authority:

- As a result of its implementation, it acquires, creates or strengthens a share of 50% or more of the national market for a certain good or service, or for a substantial part thereof;
- As a result of its implementation, it acquires, creates or strengthens a share equal to or greater than 30% and less than 50% in the domestic market of a certain good or service, or a substantial part thereof, provided that the turnover achieved individually in Portugal in the last financial year, by at least 2 of the undertakings involved in the concentration, is greater than € 5.000.000,00, net of taxes directly related thereto;
- All the undertakings involved in the concentration have generated in Portugal, in the preceding financial year, an aggregate combined turnover exceeding € 100.000.000,00, net of taxes directly related thereto, provided that the turnover achieved

individually in Portugal, by at least 2 of those undertakings, exceeds € 5.000.000,00.

Prior notification of mergers shall be submitted to the Competition Authority:

i. Jointly by the parties intervening in a merger over the whole or part of one or more or several companies;
ii. Individually, by the party acquiring sole control of all or part of one or more companies.

After being notified, the Competition Authority assesses potential obstacles to competition that may arise from the merger, and it may be necessary to conduct an in-depth investigation. If obstacles to competition are detected, the Competition Authority may require that commitments are made by those involved to eliminate the risks identified.

31. Is there an obligation to negotiate in good faith?

Article 227 of the Portuguese Civil Code provides that "whoever negotiates with another party for the conclusion of a contract must, both in the preliminaries and in its formation, proceed according to the rules of good faith, under penalty of being liable for the damages wrongfully caused to the other party".

This provision is transversal to all areas of law, applying to M&A operations, where the parties must be bound by good faith throughout the transaction, including in the preliminary phase and the negotiation and agreement conclusion.

32. What protections do employees benefit from when their employer is being acquired, for example, are there employee and / or employee representatives' information and consultation or co-determination obligations, and what process must be followed? Do these obligations differ depending on whether an asset or share deal is undertaken?

I. TUPE

According to the Portuguese Labour Code, the transfer of undertaking (TUPE) legislation applies in case of transmission, by any title, of the ownership of a company / ownership of business premises or a part of a company / part of business premises that constitutes an economic unit.

As the TUPE institute intends to grant the employee's position in case of transfer of employer, it is pacific that TUPE legislation is not applicable to "pure share deals" (in which there is no change of employer but only change of employer's shareholding's structure).

II. Mandatory TUPE procedures

Transferor's side

Within a reasonable advance and at least 10 working days before the consultation procedure, the Transferor must inform (i) the employees' representatives (employee committees, union associations, inter-union committees, union committees or union deputies) or, in their absence, (ii) the employees affected by the transfer, in writing, on the following:

- Date and reasons of transfer;
- Legal, economic and social implications of the transfer for the employees;
- Projected measures for the employees;
- Content of the contract between Transferor and Transferee.

In the absence of any sort of employee representatives, the employees affected by the transfer may elect, among themselves and within 5 working days from the reception of the above-mentioned information, a representative committee with:

- up to 3 members, if the transfer affects up to 5 employees;
- up to 5 members, if the transfer affects over 5 employees.

Afterwards, the Transferor must begin a consultation procedure with the employees' representatives or with the elected representative committee, in order to obtain an agreement regarding the measures to be applied to the affected employees after the transfer.

In the absence of a representative committee elected by the employees, the transferor must inform the employees affected by the transfer of the agreement reached with their representatives or that no agreement has been reached within the consultation.

If the Transferor has 50 employees or more it must inform the Portuguese Labour Authority (ACT) regarding:

- The content of the contract between Transferor and Transferee;
- If the transfer constitutes a transfer of an economic unit, all the elements that forms

such unit.

Transferee's side

Within a reasonable advance and at least 10 working days before the consultation procedure, the transferee must inform (i) the employees' representatives (employee committees, union associations, inter-union committees, union committees or union deputies) or, in their absence, (ii) the employees, in writing, on the following:

- Date and reasons of transfer;
- Legal, economic and social implications of the transfer for the employees;
- Projected measures for the employees;
- Content of the contract between Transferor and Transferee.

Governmental intervention

The services of the Portuguese Employment Ministry may participate in the consultation procedure at request of any of the parties involved in the TUPE.

Conclusion of the TUPE

The TUPE may only be concluded not earlier than 7 working days after:

- The termination of the period for the employees to appoint the representative committee, if no committee is appointed; or
- The consultation procedure is finished with or without an agreement.

Employees' right of opposition and right of termination

Any employee affected by the transfer is entitled (i) to oppose to the transfer of the respective employment contract or (ii) to terminate the employment contract with just cause whenever the transfer may cause him serious loss, namely by the transferee's evident insolvency or difficult financial situation, or if the employee does not trust the transferee's policies regarding work organization.

For the purposes of exercising the right of opposition, the employee must inform the employer, in writing, of its intention within 5 working days after:

- The termination of the period for the employees to appoint the representative committee, if no committee is appointed;
- The consultation procedure is finished with or without an agreement.

The employee's opposition to the transfer keeps the transferor as the respective employer.

In case of termination of the employment contract with just cause, the employee will be entitled to severance compensation corresponding to 12 days of base salary and seniority allowances multiplied by his seniority, capped by 12 base salaries and seniority allowances or 240 times the national minimum wage.

Joint liability

Transferor and Transferee will be jointly liable for all credits arising from the employment contracts, their breach and termination, as well as for the inherent social charges, for 2 years following the date of conclusion of the TUPE.

33. Please detail any foreign direct investment restrictions, controls or requirements? For example, please detail any limitations, notifications and / or approvals required for corporate acquisitions.

As a general rule, there are no restrictions in Portugal with respect to foreign investment.

The rules applicable to foreign investment are similar to those that rule domestic investment, such as mandatory registration obligations or compliance with regulatory obligations in specific activities.

As such a foreign investor must obtain a Portuguese corporate number/taxpayer number (for EU/EEA residents, this taxpayer number may be obtained directly with the tax authorities; non-EU/EEA residents must appoint a Portuguese tax resident, as representative to handle matters with the tax authorities.)

Portugal has also a mechanism for the screening of foreign investments over strategic assets. Under this regime, the Portuguese government can scrutinize any transaction resulting directly or indirectly in the acquisition of control, by an investor from a country outside the EU and the EEA, over strategic assets such as in the energy, transport and telecommunications sectors, and limit the transaction if considers it a real and serious risk, to the defense and national security and/or to the security of supply of services which are fundamental for the national interest.

34. Does your jurisdiction have any

exchange control requirements?

Foreign exchange operations are, in principle, intermediated by an entity authorized to carry out foreign exchange activities.

However, residents may carry out directly or through any means of payment denominated in foreign currency, their payments/receipts to/from non-residents or net-off their obligations towards non-residents. Residents may also incur debts or grant loans among themselves in foreign currency or in units of account used in international payments and clearing. (Decree Law no. 295/2003 of November 21st, as amended) Notwithstanding, temporary restrictions may be imposed on the conduct of these operations on the grounds of serious political reasons or urgency.

Residents and non-residents may open and operate bank accounts in Portugal, held in authorized institutions, denominated in euros, foreign currency, gold or units of account.

Residents in Portugal may also open and operate accounts with non-resident institutions

Any natural person entering or leaving Portuguese territory, originating or terminating in a territory outside the European Union, and carrying an amount of cash equal to or exceeding € 10.000,00 must declare the said amount to the customs authorities. If these cash movements are carried out with European Union Member States, the said amount must be declared only if requested by the customs authorities.

In what concerns the exchanges control systems put in place, the Portuguese jurisdiction envisages the mandatory periodic reporting to the Bank of Portugal, for statistical purposes, of end of period external positions (balances) on deposits loans and credits pursuant the regulations governing external and foreign exchange transactions between Portuguese residents and non-residents.

Thus, banks and other entities settling transactions on behalf of customers must comply with the COL report (communication of settlement transactions) and any and all legal persons residing or pursuing their business in Portugal, conducting external economic or financial transactions or foreign exchange operations exceeding a total annual amount of € 100.000,00 must comply with the COPE report (communication of external transactions and positions) (article 44 of RGICSF, Decree-Law 295/2003, of November 21st, Decree-Law 61/2007 of March 14th and Bank of Portugal Instruction 27/2012, as amended from time to time).

35. What are the most common ways to wind up / liquidate / dissolve an entity in your jurisdiction? Please provide a brief explanation of the process.

The most common way to wind up an entity in Portuguese jurisdiction is through the simplified liquidation procedure where dissolution is resolved with immediate liquidation. It may be applicable whenever the company does not have any debts nor liabilities, employees, agreements in force, litigations or disputes. As such the company usually prepare prior to the dissolution and liquidation to that effect. In the simplified liquidation procedure the company is dissolved and liquidated in one single step, by means of an extraordinary general meeting approving the final company accounts, resolving on the dissolution and liquidation, the assets distribution to the shareholders/quota holders (if any) and the appointment of a tax representative and depository of the books, documents and further information and data of the company. The resolution must be taken by the shareholders/quota holders and be registered with Commercial Registry Office.

Another simplified procedure of dissolution and liquidation of the company is by means of a global transfer of assets and liabilities to one or more quota holder/shareholders with the express written agreement of all the creditors of the company. The resolution must be taken by all shareholders/quota holders that also approve the final company’s accounts, and be registered with Commercial Registry Office.

The standard liquidation procedure, requires 2 steps (i) the approval of the dissolution and appointment of a liquidator (ii) the liquidation resolution, both by means of a shareholders/quota holders general meeting. Between the 2 resolutions the liquidator is required to take the necessary steps to liquidate the company within a period of 2-3 years.

Companies may also be dissolved by an administrative decision if, the company (i) has no activity for two consecutive years, (ii) carries out an activity that is not foreseen in its corporate object or (iii) the latter becomes impossible to pursue or (iv) has not the minimum required quota holders/shareholders for a period exceeding one year.

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