Fall | 24

INTERNATIONAL LAWYERS NETWORK

MIGRA & ASSOCIADOS

ESTABLISHING A BUSINESS ENTITY IN PORTUGAL

ILN CORPORATE GROUP

TABLE OF CONTENTS

ESTABLISHING A BUSINESS ENTITY IN PORTUGAL

I. INTRODUCTION

Portugal has circa 10,4 million resident inhabitants and most of its population lives in sunny coastal areas. Important cities include the capital Lisbon, Porto (in the north), Coimbra (in the center), Faro (in southern Algarve), as well as Ponta Delgada (in the Azores) and Funchal (in Madeira).

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

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

Portugal entered the European Union in 1986, is part of the Schengen area and adopted the Euro since its creation, as result of an integration process which last milestone is the Treaty of Lisbon, benefiting from the European Single Market and its four freedoms: goods, people, services and capital.

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

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

With modern infrastructures and technologies, Portugal is nowadays a business-friendly jurisdiction, and a solid platform to invest in Europe and in Portuguese Language Countries, most of which are emerging countries with vast natural resources, such as Brazil, Angola, Mozambique and East-Timor.

II. TYPES OF BUSINESS ENTITIES

II.1. General Considerations and Company Types

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

There are five different types of commercial companies in Portugal:

a) Public limited liability company (by shares – "*Sociedade Anónima*");

b) Private limited liability company (by quotas – "*Sociedade por Quotas*");

c) Partnership ("*Sociedade em Nome Colectivo*");

d) Limited liability partnership ("*Sociedade em Comandita Simples*"); and

e) Limited liability partnership with share capital ("*Sociedade em Comandita por Ações*").

The first two types of companies are by far the most common, while the last three have proven to be less flexible and generally inadequate for the modern business needs.

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

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

Shares may be listed on the Lisbon Stock Exchange (Euronext Lisbon, PSI-20 or "*Bolsa de Valores de Lisboa*") or remain under private commerce.

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

Since 2017, corporate law only allows nominative shares in PLC's, in accordance with European Union regulation. Such shares may be represented by book entries or certificates/titles (depending on whether they are represented by registrations in an account or by paper documents).

Along with the shares with par or nominal value, it is also possible to issue shares without par value, in order to facilitate capital increase scenarios. In any case, a share shall have a minimum value of EUR 0,01 (par value or issue value).

There are two types of shares:

- ordinary shares ("*ações ordinárias*"), which entitle holders to dividends and to a portion of the assets upon winding up, subject to the rights attributed to any existing preferred shares.
- preferred shares ("*ações preferenciais*"), which award special rights to their holders, usually broader rights than the ones attributed to ordinary shares. The bylaws may authorize the PLC to issue two types of preferred shares:

  1. non-voting preferred shares ("*ações preferenciais sem voto*") which confer, if they have nominal or par value, preferential rights to their holders to receive an annual payment of not less than 1% of the shares' par value, payable as a dividend out of distributable profits. If not, the annual payment is calculated by reference to the value of the issue of the shares reduced of its premium, if any. These shares also have priority over ordinary shareholders in the event of company liquidation. If authorized by the bylaws, corporations may issue non-voting preferred shares up to a maximum of 50% of its registered share capital;
  2. redeemable preferred shares ("*ações preferenciais remíveis*") which are redeemable at a fixed time date or when established by shareholders' general meeting. Only shares which are fully paid up can be redeemable. Redemption must be made at par value or according to shares issue value (in case of shares without par value) unless bylaws provide for the payment of a premium.

Shares in a PLC are freely transferable, except where the respective bylaws set forth restrictions on its transferability. These restrictions may consist of a right of first refusal or pre-emption right in favor of the remaining shareholders and right of prior consent of them or the company. Shares may be transferred by a written agreement, or a written declaration of the owner addressed to the keeper of the PLC's share registry (usually the company itself). The bylaws may not prohibit the transfer of shares otherwise permitted by law, being that transfer may only be restricted within the terms of the relevant legal provisions.

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

The share capital of a PLC must be paid up by means of contributions in cash or in non-monetary assets (contributions in kind) and the legal minimum capital must be fully subscribed. However, the capital stock does not have to be fully paid up at the time of its subscription. Indeed, only a minimum of 30% of each shares' nominal value must be satisfied at that time. Within 5 years of the incorporation, the remaining part of capital stock must be fully paid up.

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

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

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

The LTD ("*Sociedade por Quotas" or "Lda*.") has traditionally been the investment vehicle used in Portugal for small business, usually of family origin. The partners are jointly and severally liable to fulfil the company's entire quota capital, but their liability extends no further than that. This type of business entity does not allow participations to be represented by shares (since capital stock is divided into quotas) and thus may not be listed on the Lisbon Stock Exchange (Euronext Lisbon, PSI-20 or "*Bolsa de Valores de Lisboa*").

In an LTD the identity of the quota-holder is available to public knowledge since that information is subject to registration with Companies House.

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

A minimum quota capital is no longer required to incorporate an LTD company (it used to be EUR 5.000,00). The contribution of each quota-holder does not have to be fully paid up at the moment of the incorporation of the

company. In effect, quota-holders may defer the payment of their contributions until the end of the first financial year or until another date to be set forth in the respective bylaws, but no longer than 5 years after incorporation. The minimum value attributed to a quota is EUR 1,00.

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

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

As mentioned, LTD companies may be incorporated by a single partner, whether an individual or another company ("*Sociedade Unipessoal por Quotas*"), who is the holder of the entire quota capital.

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

This type of company may be incorporated as such since the beginning or may result from the concentration of all the quotas of a regular LTD in a single quota-holder. This does not preclude the possibility of an SMLTD being converted into a regular LTD if a new partner subscribes to the company's capital.

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

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

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

In the remaining aspects, the rules applicable to the regular LTD also apply to this type of company, apart from those intended to a plurality of partners (e.g., general meeting resolutions).

II.5. Holding Companies

The current legal framework for holding companies is set forth in Decree-Law no. 495/88, of December 30, 1988, as amended.

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

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

However, an SGPS may invest in smaller holdings (less than 10% of the voting rights):

- up to an amount not exceeding 30% of the investments made in larger holdings;
- when each participation's purchasing value is at least of EUR 5.000,00;
- when the purchase of the participations results from the target company's merger or demerger; and

- when it has formalized a managerial subordination agreement with the target company, under which the management of the subordinated company's business activities is entrusted to the SGPS.

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

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

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

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

II.6. The Limited Liability Individual Undertaking

An individual entrepreneur may also limit his liability to the firm's registered capital through the incorporation of a limited liability individual undertaking ("*Estabelecimento Individual de Responsabilidade Limitada*" or "*E.I.R.L.*") which regime is foreseen in Decree-Law no. 248/86, of August 25, 1986, as amended.

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

II.7. Branches / Representation Offices

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

Any foreign company wishing to operate in Portugal without resorting to a subsidiary is legally required to establish a Portuguese branch ("*sucursal*") or other local permanent representation ("*representação permanente*") and to comply with the appropriate registration requirements. It is foreseen that the registration of the branch or permanent representation may be done online, provided the necessary registration requirements are met. It should be noted that, differently from subsidiary entities, branches are not autonomous legal entities, nor do they have a separate corporate personality, reason why the foreign company will always be liable for its operations and debts in Portugal.

II.8. Collective Investment Undertakings (OIC)

The collective investment undertakings ("*OIC*") are institutions which may or may not have legal personality that have as their purpose the collective investment of capital raised from investors and which operate on the principle of

risk-spreading and in the sole interest of the participants. These OIC are subdivided into (i) undertakings for collective investment in transferable securities ("*OICVM*") and (ii) undertakings for alternative investment ("*OIA*").

Collective investment undertakings ("*OIC*") may take the contractual form (investment fund) or the corporate form (collective investment company). Focusing on the latter, the collective investment companies are designated "*SICAF*" or "*SICAV*" (or, in the case of "*OII*" – real estate investment undertakings – "*SICAFI*" or "*SICAVI*"), depending on whether they are set up, respectively, with fixed or variable capital (closed or open-ended collective investment undertakings, respectively).

The units and shares of a collective investment company are book-entry, nominative and without par value, and may be split up for the purposes of subscription, redemption or reimbursement.

These companies are subject to the Asset Management Regime – which revoked the General Regime of Collective Investment Undertakings ("*Regime Geral dos Organismos de Investimento Coletivo*") – and, when compatible, to the provisions of the Companies Code. By way of example, the provisions on the following matters are considered incompatible:

- Composition, increase, reduction and intangibility of share capital and amortization of shares;
- Constitution of reserves;
- Limitation on distribution of assets to shareholders;
- Preparation and rendering of accounts;
- Merger, demerger and transformation of companies; and
- Regime of acquisition towards total control.

Collective investment companies may be managed on a heterogeneous or self-managed basis, depending on whether or not they designate a third entity for the exercise of their management, and must comply at all times with the following general requirements:

- Adopt the type of public limited company;
- Have its registered office and head office located in Portugal;
- Share capital must be fully paid up and represented by book-entry and nominative shares.
- Have the minimum initial capital of (euro) 50.000,00 EUR or 300.000,00 EUR, depending on whether they are heterogeneous or self-managed.

As a general rule, heterogeneous collective investment undertakings may only be managed by management companies of collective investment undertakings ("*SGOIC*") which, among other requirements, must:

- Adopt the type of public limited company;
- Have as their exclusive object the exercise of the activities set forth in the Asset Management Regime;
- Have their registered office and head office located in Portugal;
- Have the minimum initial share capital fully subscribed and paid up on the date of incorporation;
- Have the required minimum own funds under the Asset Management Regime;
- Its top management shall consist of at least two persons.

Finally, it should be noted that the constitution of a collective investment undertaking in

Portugal, as well as of the respective autonomous property compartments, requires prior authorization from and/or communication to the Securities and Exchange Commission ("*CMVM*").

II.9. Investment Companies ("IC")

Investment companies are legal persons which, without being credit institutions, are principally engaged in the provision of investment services or in investment activities on a professional basis. As financial intermediaries, investment companies may also provide ancillary services foreseen in the Securities Code and investment advice on structured deposits, being applicable to them, in general, the provisions of the Securities Code and other national and European Union legislation. The IC regime is foreseen in Decree-Law no. 109-H/2021, of December 10.

Investment companies shall adopt the form of PLC or LTD where the investment consultancy activity is exclusively carried out, or of PLC in all other cases, and shall have their head office and effective management in Portugal.

Investment companies may be incorporated and subsist with any number of shareholders, under the terms of the respective type adopted and in accordance with the law.

With regard to share capital, investment companies shall have a minimum initial share capital, fully subscribed and paid up on the date of its incorporation, constituted in accordance with the EU legislation on prudential requirements for investment companies, which may not be less than:

- 750,000.00 EUR, if they carry out activities or provide services of trading on own account and underwriting and/or placing with guarantee of financial instruments, or carry out cumulatively activities of trading on own account and management of organised trading systems;
- 75,000.00 EUR, if they provide services of reception and transmission of orders on behalf of clients in relation to one or more financial instruments, execution of orders on behalf of clients in relation to one or more financial instruments, management of portfolios of financial instruments, investment advice in financial instruments and unsecured placement of financial instruments, and are not allowed to hold client funds or securities belonging to their clients
- 150,000.00 EUR, if they carry out or provide activities or services not referred to in the previous points.

The commencement of activity of investment companies in Portugal depends on prior authorization by the "*CMVM*", which shall define the investment services and activities as well as the ancillary services that the investment company is authorised to provide or perform.

Investment companies which have their head office in Portugal may perform in the host Member State the investment services and activities and ancillary services which they are authorised to perform in Portugal, and *vice versa*. Accordingly, investment companies authorised in other EU Member States or in states belonging to the European Economic Area (as well as those with registered offices in third countries), may establish branches in Portugal.

In particular, regarding the activity in Portugal of investment companies headquartered in the EU, it should be noted that the assets of the branch are only liable for obligations assumed by the investment company in other countries after the obligations contracted in Portugal have been satisfied.

III. STEPS AND TIMING TO ESTABLISH

Anyone intending to incorporate a Portuguese company must apply for the approval of the company's proposed corporate name and for the granting of a taxpayer number with the National Companies Registry Office. Natural persons who intend to incorporate a company must also apply for a Portuguese taxpayer number with Tax Authorities. As a general rule, individuals with residence outside the EU must have a tax representative in Portugal in order to be eligible to be registered with Tax Authorities.

Since the last great reform of the Companies Code (2006), and as a general rule, public deed of incorporation is no longer mandatory, being sufficient a private deed of incorporation, provided that the signatures of the founding partners are duly certified by a public notary or a lawyer. In addition, the referred reform has introduced the incorporation of companies through electronic tools (e.g., internet). Finally, and as a general rule, written or signed documents can be replaced by a document in another support or with another means of identification (e.g., electronic signature).

Before the execution of the company's incorporation agreement, the capital stock should be deposited in a Portuguese Bank, except in case of deferred contributions in the abovementioned terms. Tax Authorities also require companies to have a bank account in a Portuguese Bank. Also, in case the company's capital stock is not fully paid up in cash, the relevant assets (contributions in kind) should be subject to prior evaluation by an independent chartered accountant (statutory auditor), whose report must be referred to in the incorporation deed and is subject to publicity formalities.

Afterwards, the company's deed of incorporation must be registered with the Commercial Registry Office or Companies House ("*Conservatória do Registo Comercial*"). Upon registration and other official communications (i.e., to Tax and Social Security Authorities), the company becomes a separate legal entity with a separate corporate personality and capable of having its own assets, rights and obligations.

The records are kept by the Commercial Registry Office (Companies House) and are of public access. Certificates disclosing the facts registered for a specific company can be issued at any time (the process has been facilitated since most corporate records are available through internet) and can be issued in both Portuguese and English languages.

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

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

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

With the new procedures recently implemented by the Government (the so-called "*Simplex Program*"), it is possible to conclude the incorporation process in a single day.

IV. GOVERNANCE, REGULATION AND ONGOING MAINTENANCE

PLC's management and supervision must take one of the following three forms: (i) The first one, most commonly used in Portugal, refers to an organization structure formed by a board of directors ("*conselho de administração*") and a sole supervisor or supervisory board ("*fiscal*

único" or *"conselho fiscal"*); (ii) The second form of organizing corporate management consists of a board of directors, containing an audit committee ("*comissão de auditoria*"), and that also includes a certified chartered accountant ("*revisor oficial de contas*") for supervision functions; (iii) Finally, there is a third form, which comprises an executive board of directors ("*conselho de administração executivo"*), a general and supervisory board ("*conselho geral e de supervisão*"), as well as a certified chartered accountant (statutory auditor). In addition, a PLC whose shares are listed on stock exchange market must appoint a secretary ("*secretário*") and the respective alternate.

PLCs with a maximum registered share capital of EUR 200.000,00 may be managed by a sole director ("*administrador único*"), by means of a provision of the bylaws, rather than having a board of directors.

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

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

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

It is also possible to hold general meetings by resorting to telematic means (combination of telecommunications and informatics – transmission of voice and image in simultaneous is usually required), also called "virtual meetings". The shareholders and the company can benefit from this new way of gathering provided that the respective bylaws do not prohibit such a mechanism.

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

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

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

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

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

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

The legal regime of the Beneficial Owner Central Registry ("BOCR") is foreseen in Law no. 89/2017, of 21 August 2017, as amended, and in Ordinance no. 233/2018, of 21 August 2018. The Portuguese BOCR ("*Registo Central do Beneficiário Efectivo*") legal regime transposed Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing into domestic law and has an impact on all companies and respective beneficial owners, based on the beneficial owner disclosure rules. The BOCR is composed of a database managed and maintained by the Institute of Registry and Notary ("*IRN – Instituto dos Registos e Notariado*") which contains the identification and information about the natural persons who, directly or indirectly, have ownership or effective control of established entities in Portugal, in order to enhance transparency in business relationships and compliance with the disclosure obligations for the prevention and combat of money laundering and terrorist financing.

After the incorporation of a new company, it is mandatory to submit a beneficial owner declaration, which should contain information regarding the disclosing entity, the respective beneficial owner(s) (which, being a broad legal definition, must be subject to confirmation on a case-by-case basis) and the declarant. This register must be updated when there are relevant changes, and it is also subject to annual validation/confirmation.

In addition to such obligations, the company must also produce and keep an updated internal record with the identification of the direct shareholders and all individuals who, directly or indirectly, own shares/interests and/or have the effective control of the disclosing company.

Regarding licensing procedure, in case the commercial establishment needs a specific license to operate, the Municipality is the entity responsible for monitoring such procedure. In fact, Municipal authorities generally have sole jurisdiction on licensing commercial establishments.

Among others, there is a special regime for commercial establishments, services and restaurants. These regulations are set out in Decree-Law no. 10/2015, of January 16, as

amended, which regulates the legal regime of the Access and Exercise of Commercial Activities, Services and Restaurants.

This regime, implemented within the scope of the Simplex Program and aiming to improve the responsiveness of Public Administration in meeting the needs of citizens, with lower costs and promoting safety and speed of business, revolutionized the licensing procedure for certain business premises, by articulating and facilitating the application of the Zero Licensing ("*Licenciamento Zero*") figure.

The "*Licenciamento Zero*" figure was created by Decree-Law no. 48/2011, of April 1, and is intended to reduce administrative costs and eliminate licenses, permits, inspections and *a priori* constraints for specific activities, replacing them with systematic actions of surveillance and accountability mechanisms *a posteriori* on the economic agents. The simplification is reflected in the creation of a simplified procedure for the installation and modification of commercial establishments, services and restaurants.

As a result, previous administrative permission is now completely replaced for a mere prior notification served to the "*balcão único electrónico*" (e-administrative spot), also called "*balcão do empreendedor*" (entrepreneur spot) accessible through the website www.portaldaempresa.pt.

As mentioned, with "*Licenciamento Zero*", certain licensing procedures are simplified or eliminated.

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

The exploitation of an establishment included in the list present in article 4 of the Decree-Law no. 10/2015, as amended, is now only subject to a prior notification addressed, as the case may be, to the territorially competent municipality or to the "*DGAE – Direção-Geral das Actividades Económicas*" (Directorate-General for Economic Activities), through the "*balcão do empreendedor*" (entrepreneur spot). As a general rule, with this prior notice and payment of the fees due, the owner is immediately allowed to open and operate the establishment, exploit the warehouse or begin its activity, as applicable.

Nevertheless, access to certain activities is still subject to an authorisation from the municipality with territorial jurisdiction and the installation or significant alteration of certain large commercial surfaces is still subject to a joint authorization from the Director-General for Economic Activities, the Mayor of the respective municipality and the President of the territorially competent Commission for Regional Coordination and Development (CCDR).

Despite the freedom of access granted to the activities mentioned in the Decree-Law no. 10/2015, as amended, companies must comply with the requirements established in other regimes, if applicable, such as:

(i) The previous controls of urbanization and edification under the terms of the legal regime of urbanization and edification ("*RJUE*"), approved by Decree-Law no. 555/99, of 16 December, as amended;

(ii) The controls related to waste management, under the terms of Decree-Law no. 178/2006, of September 5, as amended;

(iii) The environmental impact assessment (EIA), under the terms of Decree-Law no. 151-B/2013, of 31 October, as amended;

(iv) The prevention and control of emissions of pollutants into the atmosphere, in accordance with Decree-Law no. 38/2018, of June 11, as amended;

(v) The controls of a tax or social security nature.

V. FOREIGN INVESTMENT, DEDUCTIBILITY OF FINANCING COSTS, RESIDENCY AND MATERIAL VISA RESTRICTIONS

V.1. Foreign Investment

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

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

Amongst others, these four major advantages to invest in Portugal are particularly noteworthy:

(i) Strategic access to markets. the combination of Portugal's economic opening, strong ties with the EU and unique geostrategic location, make it a natural gateway to world markets. Portugal's ties with the African continent, Brazil and transatlantic link with the USA provides a low-cost and effective internationalization base.

(ii) Cost competitive, qualified and flexible workforce. Portuguese employees are known for their versatility and commitment to work, along with a positive attitude towards the adoption of new technologies and practices.

(iii) Excellent environment to live and work. The country has safe urban centers and suburbs. This environment also promotes a freedom impression to anyone that decides to live in Portugal. All major international studies consider Portugal as a country with a significant tourism potential and place Portuguese cities on the top of the ranking for living and conducting events and conferences.

(iv) Infrastructure. During the past decades, Portugal has invested heavily in modernizing its communications infrastructure. The result was an extensive network of land, air and maritime route facilities.

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

- One of the lowest operational costs in Western Europe;
- A founder member of and full participant in the European Monetary Union;
- A superb investment track record, with many high-tier companies involved in new projects;
- One of Europe's youngest and most enthusiastic qualified workforces, with first rate training facilities and universities;
- One of the world's best and most flexible incentives packages;
- High levels of productivity growth in both manufacturing and services;
- A wide range of sites and buildings, including industrial and business

incubators facilities which are ready to use, at highly competitive prices;

- High quality support services for investors, both during and after investment;
- One of Europe's best records for industrial relations;
- A high quality of life with one of the old continent's lowest crime rates.

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

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

Given that Portugal is a Member State of the European Union, an entrepreneur planning to invest in the country is not submitted to stricter rules than those governing domestic investment followed by entrepreneurs. Therefore, as a general principle, there is no differential treatment between foreign and domestic investment in Portugal.

In general terms, foreign and local companies are free to invest in any industry. However, there may be specific requirements, such as the granting of a concession contract, when performing activities for the public administration sector. Certain activities related to certain basic public services (such as treatment and distribution of drinking water or disposal of urban waste) are prohibited for private companies, except when licensed by a public entity through an administrative contract.

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

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

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

Foreign companies are also subject to taxes and other tariffs, including Corporate Income Tax ("IRC"), Value Added Tax ("IVA"), Vehicle Tax, Property Tax ("IMI"), among others.

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

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

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

EU countries may also provide procedures for the declaration of capital movements for administrative or statistical purposes and take

other justified actions on the grounds of public policy or public security. However, these measures and procedures should not constitute a means of arbitrary discrimination or a simulated restriction on the free movement of capital and payments.

V.2. Deductibility of Financing Costs

Portuguese Law allows the deductibility of financing costs. In fact, net financing costs contribute to determining taxable profit up to the higher of the following limits:

- EUR 1.000.000; or
- 30% of profit before depreciation, amortization, net financing costs and taxes.

Net financing costs that are not deductible under the above terms may still be taken into account in determining the taxable profit of one or more of the five subsequent tax periods, after the net financing costs of that same period, subject to the aforementioned limitations.

Whenever the amount of financing costs deducted is less than 30 % of the result before depreciation, amortization, net financing costs and taxes, the unused part of this limit is added to the maximum amount deductible, under the terms of the second limitation mentioned above, until the 5th tax period afterwards.

For the aforementioned purposes, the first to be considered are the non-deductible net financing costs and the unused portion of the aforementioned limit that have been calculated earlier.

V.3. Residency and Material Visa Restrictions

Currently, Portuguese Law opens the possibility for foreign investors who invest either by themselves or through a company which they own, to apply for a Portuguese residence permit, if they reach a certain level of property investments, capital investments and/or job creation.

The applicable legal regime was amended by Decree-Law no. 14/2021, of 12 February, which entered into force on 1 January 2022, and the current provisions of the Law are applicable to all applications for a residence permit for investment made after the aforementioned date of entry into force – without prejudice to the possibility of renewing residence permits or granting or renewing residence permits for family reunification, as provided for in article 98 of Law no. 23/2007, of 4 July, in its current wording, when the residence permit for investment was granted under the legal regime applicable until 1 January 2022.

Holders of a residence permit for investment activity have the right to family reunification, access to permanent residence permit, as well as the Portuguese nationality, in accordance with the legislation in force, while being able to move freely within the Schengen Area. It is also granted the right to benefit from certain public services, such as medical care and public education.

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

1) Creation of at least 10 jobs;
2) Capital transfers in an amount equal to or higher than 500.000 EUR, which are invested in research activities developed by public or private scientific research institutions, integrated in the national scientific and technological system;

3) Capital transfers equal to or greater than 250.000 EUR, which are invested in investment or support of artistic production, recovery or maintenance of national cultural heritage;

4) Capital transfers in the amount equal to or greater than 500.000 EUR, aimed at the acquisition of investment units in investment funds or venture capital funds dedicated to the capitalization of companies, which are incorporated under the Portuguese legislation, whose maturity, at the time of the investment, is at least five years and at least 60 percent of the value of the investments is made in commercial companies based in Portugal;

5) Capital transfers in the amount of 500.000 EUR or more, intended for the acquisition of shares in non-real estate collective investment undertakings, which are set up under Portuguese law, whose maturity, at the time of the investment, is at least five years and at least 60% of the value of the investments is made in commercial companies based in Portugal;

6) Capital transfers in the amount of 500.000 EUR or more, intended for the incorporation of a commercial company with its registered office in Portugal, combined with the creation of five permanent jobs, or to increase the share capital of a commercial company with its registered office in Portugal, already incorporated, with the creation of at least five permanent jobs or the maintenance of at least ten jobs, with a minimum of five permanent jobs, and for a minimum period of three years.

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

Finally, it should be mentioned that the minimum amount or quantitative requirement for several investment activities mentioned above may be decreased by 20% when the activities are carried out in low-density territories, as defined in Portuguese legislation.

***