

Doing business in Portugal

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LEGAL SYSTEM

1. What is the legal system in your jurisdiction?

Portugal has a civil law system and most legal provisions are contained in statutes.

Custom and usages have legal force only if provided for by statute and only to the extent that they are not contrary to principles of good faith.

EC law is also directly applicable in Portugal.

FOREIGN INVESTMENT

2. Are there any restrictions on foreign investment (including authorisations required by central or local government)?

There are no differences between the treatment of national and foreign investment (*Decree Law no. 203/2003, 10 September*). Foreign investment operations do not need to be registered with the Portuguese authorities.

3. Are there any exchange control or currency regulations?

Except in limited embargo circumstances, there are no legal restrictions on international capital movements or foreign exchange transactions. However, for statistical purposes, individuals or companies resident in Portugal must report any payment of more than EUR12,500 (about US\$15,548) (or its foreign currency equivalent) received from, or made to, individuals or companies resident outside of Portugal

to the Portuguese Central Bank (*Banco de Portugal*).

4. Are any grants or incentives available to foreign investors?

The Portuguese government may grant large investment operations benefits such as (*Decree Law no. 203/2003*):

- Financial incentives.
- Tax benefits.
- Public funding.
- Co-participation in vocational training costs.
- Compensation for the costs of providing qualified professionals where there is a shortage.
- Compensation for the costs of seeking sources of knowledge and innovation where they are not readily available.
- The provision of relevant infrastructures by the Portuguese government.

The following will qualify as a large investment for these purposes:

- Investments of more than EUR25 million (about US\$31.1 million).
- Investments made by a company with a consolidated turnover of more than EUR75 million (about US\$93.3 million).

- Investments made by a non-commercial entity of more than EUR40 million (about US\$49.8 million).

The availability of these benefits is subject to any applicable EC rules on state aid.

BUSINESS ENTITIES

5. What are the most common forms of business entity used by foreign investors to conduct business in your jurisdiction?

The two most common forms of business entity used by foreign investors to conduct business in Portugal are:

- Stock companies (*sociedade anónima*) (SAs).
- Limited liability companies (*sociedades por quotas*) (LDAs).

6. In respect of the corporate vehicle most likely to be used by foreign investors conducting business in your jurisdiction, please state:

- Registration formalities (including timing).
- Minimum (and maximum) share capital.
- Whether shares can be issued for non-cash consideration such as assets or services (and any formalities).
- Any restrictions on the rights that can attach to shares.
- Any restrictions on foreign shareholders.
- Management structure and any restrictions on foreign managers.
- Directors' liability.
- Parent company liability.
- Reporting requirements (including filing of accounts) and cost of compliance.

The most common forms of corporate vehicle to be established by foreign companies in Portugal are SAs and LDAs (see *Question 5*). Unless otherwise stated, very similar incorporation formalities apply to both types of company.

- Registration formalities.** There are four stages to incorporation:

- the name of the company must be requested at the Companies Registry Office (*Registo Nacional de Pessoas Colectivas*);
- a public deed must be executed before a public notary, expressing the shareholders' decisions to incorporate the company and approve articles of association (which must be attached to the deed);
- the company must be registered with the tax authorities and social security services;
- the public deed of incorporation and articles of association must be registered at the Commercial Registry Office closest to the company's place of business and published in the *Official Gazette*.

The incorporation procedure takes about one month.

- Minimum (and maximum) share capital.** SAs must have a minimum initial share capital of EUR50,000 (about US\$62,190). LDAs must have a minimum initial share capital of EUR5,000 (about US\$6,219). There is no maximum amount provided for by law.
- Shares issued for non-cash consideration.** Companies may issue shares for non-cash consideration in the form of assets (but not services).
- Restrictions on rights attaching to shares.** Company law may restrict rights depending on the type of shares issued.
- Restrictions on foreign shareholders.** There are no restrictions on foreign shareholders.
- Management structure and foreign managers.** Companies are usually managed by a board of directors. The board of directors of an SA must comprise an odd number of members (who need not be shareholders), of which at least three must be appointed for no more than four years. A company can be a director of an SA, but it must nominate an individual to perform directorship functions on its behalf. Sole directorship of an SA is allowed if the company's share capital does not exceed EUR200,000 (about US\$248,460) and the articles of association expressly allow it.

The board of directors of an LDA can comprise one or more directors, who may or may not be shareholders but must be individuals.

There are no nationality restrictions imposed on company directors.

- **Directors' liability.** Directors are liable to the company for any loss suffered as a result of acts or omissions that violate legal or contractual duties, unless they can prove that the breach was not negligent or deliberate.

If a company's assets are insufficient to meet its debts, directors are liable to creditors for any negligent or deliberate violation of a legal provision aimed at protecting the creditors' best interests.

Directors are liable to third parties for any direct loss suffered as a result of actions taken in their capacity as director.

- **Parent company liability.** Parent companies may, in certain circumstances, be liable for subsidiary companies. For example, parent companies that own 100% of a subsidiary's share capital may be liable for its debts if certain legal requirements are not complied with.
- **Reporting requirements.** A company must register information, including the following (as well as changes to that information) at the Commercial Registry Office:
 - incorporation details and articles of association;
 - registered office;
 - details of shareholders;
 - any increase or reduction in share capital;
 - the transfer of shares in LDAs and details of the shareholders;
 - accounting reference date;
 - charges over company assets;
 - annual statutory accounts;
 - mergers, spin-offs and winding up of the company.

Actions relating to the above only bind third parties once they are registered.

EMPLOYEES

7. What is the jurisdictional scope of the regulatory environment for employment issues?

A Portuguese company's employment relationships are governed by Portuguese law regardless of:

- The employee's nationality.
- Whether the relationship was executed in Portugal or abroad.

This rule applies unless the law in the country of employment or chosen in the contract is more favourable.

8. Is a written contract of employment required and what, if any, other terms are likely to govern the employment relationship?

Written contracts are not required but employers must provide written information on employment conditions. Certain contracts (such as those with limited job security) and certain clauses (such as post-contractual non-compete obligations) must be agreed in writing.

Collective agreements and employers' internal regulations may also apply.

9. Are employees entitled to management representation and/or to be consulted in relation to corporate transactions (such as redundancies and disposals)?

Employee representatives (such as unions or works councils) must be informed of most transactions and are entitled to issue a prior opinion on certain transactions (such as redundancies). Employees are individually consulted in the absence of employee representatives but are not entitled to management representation.

10. What statutory rights do workers have against dismissal in your jurisdiction?

Employees are protected against unfair dismissal and

can only be dismissed with cause following the appropriate proceedings (for example, disciplinary).

Employees who have been dismissed fairly (other than those dismissed as a result of disciplinary action) are entitled to one month's remuneration plus seniority payments for each year of service (starting at a minimum of three months' wages).

Unfairly dismissed employees can appeal their dismissal to the labour court. They are then entitled to:

- Salary from the date of dismissal until the court's decision.
- Either reinstatement or an indemnity of between 15 and 45 days' remuneration (to be determined by the court) plus seniority payments for each year of service.

11. How are redundancies regulated?

Redundancies are permitted for market, structural or technological reasons. Employee representatives and the Inspector General of Work (*Inspecção Geral do Trabalho*) must be consulted.

For individual redundancies, employees are dismissed in the following order:

- Those with the least experience in the relevant job position.
- Those with the least experience in the relevant profession.
- Those who joined the company most recently.

Certain employees cannot be dismissed without first seeking the opinion of the relevant body. For example, a union must be consulted to dismiss employee representatives and the Commission for Equality in Work and Employment (*Comissão para a Igualdade no Trabalho e no Emprego*) must be consulted to dismiss pregnant women.

The rules regarding fair and unfair dismissals also apply to redundancies (see *Question 10*).

12. What is the cost of employment for employers and employees (such as mandatory taxes and social security contributions)?

Portuguese residents must pay:

- Tax on worldwide income (at a rate between 12% and 40%).
- Social security contributions (amounting to 11% of gross salary).

Employers must make social security contributions of 23.75% of gross salary.

13. How are employees of foreign companies who are seconded to your jurisdiction from abroad taxed?

Employees who work in Portugal but are not resident for tax purposes must pay tax on Portuguese-sourced income. Seconded employees of foreign companies are taxed at 25% of gross salary (which is deducted at source). Relief may be available under a double tax treaty or the domestic law of the employee's country of residence.

14. Do foreign workers require work permits? If so, how long does it take to get a permit and how much does it cost?

Employees from outside the EU or European Economic Area must obtain a work permit before entering Portugal. Applications may take up to six months to process and cost between EUR2.50 (about US\$3.20) and EUR75 (about US\$95).

TAX

15. What is the basis of taxation of companies that are incorporated and/or tax resident in your jurisdiction?

Resident companies must pay tax on their worldwide income (*Imposto sobre o Rendimento das Pessoas Colectivas*) (IRC). The company's taxable income is determined by deducting the previous year's losses and tax incentives from the current year's profits (direct method).

16. How are the activities of non-tax resident companies in your jurisdiction taxed?

Non-resident companies with permanent establishments in Portugal must pay tax on:

- Income and capital gains derived from the permanent establishment.
- Other income derived from activities carried out in Portugal that are identical or similar to those carried out by the permanent establishment.

Non-resident companies without a permanent establishment in Portugal must pay withholding tax on income derived in Portugal.

17. What are the main taxes that potentially apply to companies (including rates)?

The following taxes apply to companies:

- IRC at a rate of 25%.
- A municipality surcharge on IRC of up to 2.5%.
- Social security contributions for employees (see *Question 12*).
- A municipal tax on transfers of real estate (up to 15% for offshore companies).
- An annual real estate tax ranging between 0.2% and 5%.
- Value added tax (VAT). This is usually charged at a rate of 19%, although different rates apply for certain goods and services and in the regions of Azores and Madeira.

18. Please explain how each of the following are taxed:

- Dividends paid to foreign corporate shareholders.
 - Dividends received from foreign companies.
 - Interest paid to foreign corporate shareholders.
 - Intellectual property (IP) royalties paid to foreign corporate shareholders.
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- **Dividends paid to foreign corporate shareholders.** Dividends (other than stock dividends) paid to a non-resident company without a permanent establishment in Portugal are subject to a 25% withholding tax. Under Portuguese legislation implementing Council Directive (EC) No. 435/90 on the Taxation of parent companies and subsidiaries, dividends paid by Portuguese subsidiaries to EU parent companies are exempt from withholding tax (*Decree Law no. 123/92, July 22*). Companies licensed to operate within the free-trade zones of Madeira and Santa Maria (Azores) are also exempt from withholding tax.

- **Dividends received from foreign companies.** Inbound dividends are added to the company's taxable income for IRC purposes.

- **Interest paid to foreign corporate shareholders.** Interest paid to foreign companies is subject to a 20% withholding tax (or 25% for interest on corporate bonds issued before 16 October 1994).

- **IP royalties.** All royalties are subject to a 15% withholding tax. Exemptions apply if royalties are paid within a tax regime for a group of companies, provided that the payment relates to a tax period in which the regime applies.

19. Does your jurisdiction have thin capitalisation rules (restrictions on loans from foreign affiliates)?

Yes, interest paid on excessive debt by a resident company to a non-resident related party is not deductible unless the taxpayer can prove that the loan conditions are comparable to those agreed by non-related parties in comparable transactions under the same circumstances.

Excessive debt is that part of a debt (including a loan, guarantee or trade-related credit) which both:

- Is owed to a non-resident related party.
- Exceeds, at any date in the tax period, twice the amount of the corporate borrower's net worth held by the non-resident related party.

20. Can the profits of a foreign subsidiary be imputed to a parent company that is tax resident in your jurisdiction (controlled foreign company rules)?

Under the controlled foreign company regime, profits (whether or not distributed) of a foreign subsidiary may be attributed to a parent company resident in Portugal. The controlling company must include a share of the subsidiary's after-tax profits (in proportion to its holding, whether direct or indirect) in its own taxable income for IRC.

21. Does your jurisdiction have transfer pricing rules?

The mode of application of transfer pricing methods and the procedures for corresponding adjustments are regulated by an ordinance of the Minister of Finance. There are no provisions for advance pricing agreements.

22. How are imports and exports taxed?

This will depend on whether goods are imported or exported within the EU or outside it.

Outside the EU

Exports of goods outside the EU are subject to VAT but are generally zero-rated. Imports from outside the EU are subject to VAT which is payable by the importer at the same rate as if the goods were supplied within Portugal. Customs duty and excise duty may also be payable on imports.

Within the EU

The supply of goods between VAT registered traders is generally zero-rated (to qualify, the customer state code and VAT registration number must be put on the invoice). Where VAT is payable, the customer receiving supplies must pay VAT at his country's rate. VAT is charged in the normal way on sales to non-VAT registered customers.

23. Does your jurisdiction have a wide network of double tax treaties?

Portugal has double tax treaties with about 46 countries including the US, the UK and most of western Europe.

ANTI-TRUST

24. Are restrictive agreements and practices regulated by anti-trust law in your jurisdiction? If so, please give brief details.

Restrictive agreements and practices of any nature which have, as their object or effect, the prevention, distortion or restriction of competition in the whole or a part of the national market, are prohibited (*Decree Law no. 18/2003, 11 June*).

Prohibited practices are both:

- Null and void.
- Punishable with a fine of up to 10% of the previous year's turnover for each of the undertakings participating in the infringement.

INTELLECTUAL PROPERTY

25. Please outline the main intellectual property rights that are capable of protection in your jurisdiction and, in each case, please state:

- Nature of right.
 - How protected.
 - Length of protection.
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Patents

- **Nature of right.** For an invention to be patentable, it must:
 - be new;
 - involve an inventive step; and
 - be capable of industrial application.
- **How protected.** Patent applications can be filed with the Portuguese Industrial Property Office (*Instituto Nacional da Propriedade Industrial*) (INPI) by:
 - an interested party resident in Portugal;
 - an official agent; or
 - an attorney.
- **Length of protection.** Protection lasts for 20 years from the date of application.

Trade marks

- **Nature of right.** To be registered, trade marks must be capable of both:
 - graphic representation;
 - distinguishing the goods or services of one entity from those of others.
- **How protected.** Trade mark applications can be filed with the INPI by Portuguese and foreign entities (although foreign documents must be translated and, where applicable, authenticated by a Portuguese consulate or the Hague Apostille).
- **Length of protection.** Protection lasts for ten years from the date of registration and is renewable every ten years, subject to renewal fees.

Registered designs

- **Nature of right.** To be registerable, a design must:
 - relate to the appearance of all or part of a product resulting from certain features of the product or its ornamentation;
 - have individual character; and
 - be new.
- **How protected.** Registered design applications must be filed with the INPI.
- **Length of protection.** Protection lasts for five years subject to renewals up to a maximum of 25 years.

Unregistered designs

- **Nature of right.** See Registered designs, above.
- **How protected.** A right of priority exists in a design during the registration process.
- **Length of protection.** Protection lasts for six months from the date the design is first used.

Copyright and neighbouring rights

- **Nature of right.** Literary, scientific and artistic intellectual creations.
- **How protected.** Protection arises automatically, although it is strongly advisable to register the

creation with the General Inspectorate of Cultural Activities.

- **Length of protection.** The length of protection is as follows:
 - 70 years from the death of the author of a literary work;
 - 50 years from the first performance of an artistic creation, recording of a phonogram, or first broadcast of a video production;
 - 70 years from the death of the creator of a scientific work.

Confidential information

- **Nature of right.** The law does not define confidential information. However, any information that cannot be disclosed to third parties (as identified by law or agreement) is confidential.
- **How protected.** Information must be protected by contract unless it arises automatically under law, for example, under lawyer-client privilege. Breach of confidentiality can be remedied by bringing a civil action for damages caused by the breaching party. In some cases, fines may also be imposed by the courts.
- **Length of protection.** There is no limit on the duration of protection or the time in which an action for damages can be brought.

MARKETING AGREEMENTS

26. Are marketing agreements regulated in your jurisdiction? If so, please give brief details in respect of the following arrangements:

- Agency.
- Distribution.
- Franchising.

■ **Agency.** The Agency Act contains a number of mandatory provisions to protect agents, including (*Decree Law no. 178/86, 3 July, as amended*):

- minimum notice periods for indefinite contracts;
- the validity of post termination restrictions;

- indemnity or compensation for the agent on termination of the agreement.
- **Distribution.** Distribution agreements are not regulated in Portugal.
- **Franchising.** Franchising agreements are not regulated in Portugal.

E-COMMERCE

27. Are there any laws or codes of practice relating specifically to e-commerce (such as electronic signatures and distance selling)?

Provision of services

E-commerce is regulated in Portugal as required by Parliament and Council Directive (EC) No. 31/2000 on Electronic commerce (*Decree Law no. 7/2004, 7 January*). In particular, restrictions apply to the general principle of free provision of services in certain circumstances. A service provider established in Portugal cannot provide services in or outside Portugal if there is a serious risk of harm to:

- Human dignity (for example, discrimination based on sex, religion or nationality).
- Public health.
- National security.

In addition, service provision must not breach consumer legislation.

The general principle governing the free execution of contracts cannot be compromised by the use of electronic technology (*Decree Law no. 7/2004*).

Electronic signatures

Electronic signatures are governed by the following legislation:

- Decree Law no. 290-D/99, 2 August.
- Decree Law no. 62/2003, 3 April.
- Decree Law no. 165/2004, 6 July.
- Regulatory Decree no. 25/2004, 15 July.

However, there are doubts as to the effectiveness of

this legislation as its practical enforcement by the courts is inadequate.

Distance selling

Distance selling is governed by Decree Law no. 143/2001, 26 April which provides for, among other things:

- A 14-day cooling off period.
- The imposition of strict duties on the seller to provide information about himself, the product and the contract of sale, which must be confirmed in writing.
- The regulation of door-to-door selling.

DATA PROTECTION

28. Does your jurisdiction have data protection laws? If so, please give brief details.

Portugal has implemented Parliament and Council Directive (EC) No. 58/2002 on the Protection of privacy in the electronic communications sector with:

- Decree Law no. 67/98, 26 October.
- Decree Law no. 41/2004, 18 August.
- Decree Law no. 43/2004, 18 August which:
 - imposes duties on anyone who stores or has access to protected data;
 - established the National Data Protection Committee (*Comissão Nacional de Protecção de Dados*) and defines its structure and powers.

PRODUCT LIABILITY

29. Does your jurisdiction have product liability laws? If so, please give brief details.

Product liability is governed by Decree Law no. 383/89, 6 November as amended by Decree Law no. 131/2001, 24 April, and product safety is governed by Decree Law no. 311/95, 20 November as amended by Decree Law no. 16/2000, 29 February. Liability can also arise under civil criminal law.

In addition, consumer goods must be sold on the basis that they are fit for their purpose and correspond to their description (*Decree Law no. 67/2003, 8 April*).