The European Company

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Introduction

The need for reorganization of companies on a Community scale led to the creation of a new corporate person, the European Company (*Societas Europaea* — SE), a form of company common to two or more European Union (EU) member states (or possibly even to all EU member states), with common rules and management structures.

Council Regulation (EC) Number 2157/2001 of 8 October 2001 on the Statute for an European Company (the SE Regulation)[1] aims to create a uniform legal framework for such EU companies and is directly applicable in all member states, although each member state was required to adopt its national legislation for the implementation of the SE Regulation.

An SE is not governed exclusively by Community law, as the provisions of the national law of the member state where the SE's registered office is located are often applicable. Furthermore, the SE Regulation allows member states to choose between the optional rules that it provides or to grant additional remedies in addition to those contained in the SE Regulation.

Special rules concerning employee involvement in the European company are set out in Council Directive 2001/86/EC (the Participation Directive, also known as the SE Directive)[2] in order to ensure "that the establishment of an SE does not entail the disappearance or reduction of practices of employee involvement existing within the companies participating in the establishment of an SE".[3]

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1 Council Regulation (EC) Number 2157/2001, Annex I, was amended by Council Regulation (EC) Number 885/2004 of 26 April 2004, OJ 2005 L 24/35–38.

2 Council Directive 2001/86/EC of 8 October 2001 supplementing the Statute for a European company with regard to the involvement of employees, OJ 2001 L 294/22–32.

3 Directive 2001/86/EC, Preamble, Paragraph 3.

The Portuguese legislation implementing the SE is set forth in Decree Law Number 2/2005 of 4 January 2005 (which came into effect on 5 January 2005) and Decree Law Number 215/2005 of 14 December 2005 (which came into effect on 18 December 2005) for compliance with the EU Participation Directive.

The purpose of this chapter is to provide a general overview of the national Portuguese rules and of the legislation adopted in Portugal for the implementation of the SE Regulation.[4]

Applicable Law

The SE Regulation provides that the SE Regulation and, when expressly authorized, the provisions of the company statutes will govern an SE.[5]

The SE Regulation also provides that matters not regulated or only partially regulated by the SE Regulation will be governed by:

(1) The provisions of laws adopted by member states relating specifically to SEs;
(2) The provisions of member states' laws applied to a public limited liability company created in accordance with the law of the member state where the registered office of the SE is located; and
(3) The provisions of the company statutes, in the same way as for a public limited liability company formed in accordance with the law of the member state where the registered office of the SE is located.

Conditions for Establishment

In General

The establishment of an SE may occur through the merger of companies incorporated under laws of different member states, by incorporation of a holding SE, by incorporation of a subsidiary SE, or by conversion of an existing national company into an SE.

4 This chapter is not intended to provide legal advice and should not be deemed or treated as a substitute for specific advice concerning the subject covered here.

5 Council Regulation (EC) Number 2157/2001, Article 9; for this purpose, the statutes of an SE are the incorporation act and the articles of association.

Pursuant to the SE Regulation, the following Portuguese companies may be involved in the creation of the different forms of an SE in Portugal:

(1) *Sociedade anónima* (public limited liability company), for the creation of an SE by a merger;
(2) *Sociedade anónima* (public limited liability company) and *Sociedade por quotas* (private limited liability company), by creation of a holding SE;
(3) Any company formed under Portuguese law, by creation of a subsidiary SE; and
(4) *Sociedade anónima* (public limited liability company), by way of conversion/transformation.

For the creation of an SE in Portugal, a certificate from the Portuguese Companies Register (*Registo Nacional de Pessoas Colectivas* — RNPC) is required, approving the future name and the corporate purpose of the SE. The name of the SE may not be identical to the name of another existing Portuguese company.

The draft terms of the incorporation or the transfer of the head office of the SE should be registered with the Portuguese Commercial Registry and published on the public website created by the Portuguese Ministry of Justice at http://publicacoes.mj.pt/pt/index.asp.[6]

Prior to the incorporation of the SE, the cash contributions toward share capital should be deposited in a bank account in the SE's name.

The establishment of an SE domiciled in Portugal must be formalized by the signature of all the shareholders on the articles of association, before a person or entity with notarial powers.

The incorporation as well as the transfer of the head office of an SE are subject to registration with the Commercial Registry and to publication on the public website of the Portuguese Ministry of Justice and in the *Official Journal of the European Community* (OJ).

After the registration with the Portuguese Commercial Registry, the SE must be registered with the tax authorities — with a statement of registration of commencing activities — and its executive members registered with the social security system.

6 These registry and publication pre-conditions also are valid for the transfer of the head office of the company from Portugal to another member state.

Portuguese legislation does not foresee the possibility of a non-EU company participating in the formation of an SE.[7]

Establishment through Merger

The formation of an SE by a merger of companies is possible when the law of different member states governs at least two of the involved companies.[8]

Only a Portuguese *Sociedade anónima* (public limited liability company) may be involved in the establishment of an SE by way of merger. Without prejudice to the publications referred to in the Portuguese Securities Code for listed companies, prior to the effectiveness of the merger, the draft terms of the merger and the particulars detailed in Article 21 of the SE Regulation must be published on the public website of the Portuguese Ministry of Justice.

The notice convening the general shareholders' meeting must be published on the same website at least one month prior to the meeting.

The merger documents must be available for inspection by the shareholders of the merging company. On the other hand, the Portuguese Competition Authority has the authority to object to the participation of a Portuguese company in the formation of an SE through a merger. Other Portuguese regulatory authorities (related to banking, financial, and insurance activities) also have the authority to object to participation of a supervised Portuguese company in the formation of an SE.

These authorities must be given notice of the draft terms of the merger before the shareholders' resolution, and any opposition may only be based on grounds of public interest. The decision to oppose must be notified to the company within thirty days from the date of the notice of the draft terms of the merger.

Upon the company's request, the non-opposition to the merger must be certified by the competent authorities prior to the issuance of the certificate attesting to the completion of the pre-merger acts and formalities.[9]

In accordance with Portuguese law, the board of directors of the companies involved in the merger must prepare a report, in which they

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7 This possibility is optional, as stated in Council Regulation (EC) Number 2157/2001, Article 2(5).

8 Regulation Number 2157/2001, Article 2(1).

9 The issuance of this certificate is stipulated in Regulation Number 2157/2001, Article 25(2). The Portuguese Commercial Registry and Portuguese notaries are the competent authorities to verify and attest the existence and validity of all formalities required and to issue the required certificate.

must explain and justify the draft terms of the merger. These terms must be examined by the company's auditor or by a certified auditor or chartered accountant appointed by the board of directors.

The participating companies may, jointly or individually, submit a request to the Portuguese Auditors Association (*Ordem dos Revisores Oficiais de Contas* — OROC) to appoint a single independent expert.

Portuguese legislation protects minority shareholders who vote against the merger, granting them the right to be bought out from the company. Shareholders exercising this right must give notice to the company within thirty days from the merger resolution, and the latter must either purchase, or designate a third party to purchase, the shareholder's shares.

The compensation of minority shareholders who exercise their right to be bought out from the SE must be determined by an auditor appointed by the Portuguese Auditors Association or by mutual agreement of the parties.

The non-acquisition of the minority shareholders for reasons attributable to the company will block the merger. If, despite this, the company proceeds with the merger and its registration, the SE is obligated to compensate the minority shareholders for damages.

Portuguese law imposes control of the legality of the merger at different levels, by the Portuguese Commercial Registry, the Portuguese notaries, the company's auditor or chartered accountant, and the auditor appointed by the Portuguese Auditors Association.

Creditors and holders of security interests other than shares, whose credit rights are prior to the publication of the particulars of Article 21 of the SE Regulation, have the right to file a judicial opposition against the merger one month after publication of the draft terms of merger and the particulars of the companies involved.

The judicial opposition depends on a non-judicial request for payment or security of the claim having been presented at least fifteen days earlier.

Establishment of a Holding European Company

Companies may form a holding SE when the law of different member states govern at least two of the companies, or when at least two of the companies have had a subsidiary company governed by the law of another member state or a branch in another member state for at least two years.[10]

10 Regulation Number 2157/2001, Article 2(2).

Both the Portuguese *Sociedade anónima* (public limited liability company) and the *Sociedade por quotas* (private limited liability company) may be involved in the formation of a holding SE. The board of directors of the public limited liability company or the board of management of the private limited liability company must prepare a report, explaining and justifying the formation of the holding SE.

The draft terms of operation must be examined by the company's auditor or by a certified auditor or chartered accountant appointed by the board of directors or by the management.

The participating companies may, jointly or individually, submit a request to the Portuguese Auditors Association to appoint a single independent expert.

The fulfillment of the conditions for the formation of a holding SE must be certified and is subject to registration and publication with the Portuguese Commercial Registry and on the public website of the Portuguese Ministry of Justice.

Any shareholder who votes against the formation of the holding company has the right to be bought out from the company. A shareholder exercising this right must provide notice to the company within thirty days from the resolution concerning the formation of the holding company, and the latter must either purchase, or designate a third party to purchase, the shareholder's shares.

An auditor appointed by the Portuguese Auditors Association or by mutual agreement of the parties must determine the compensation of the minority shareholders who exercise their right to be bought out from the SE.

If the incorporation of the holding becomes effective before the purchase of the shareholder's shares, the SE will be jointly and severally liable for such payment; the directors or managers of both companies also will be jointly and severally liable for that payment.

Establishment of a Subsidiary European Company

Companies may create a subsidiary SE when the law of different member states governs at least two of the companies, or at least two of the companies have had a subsidiary company governed by the law of another member state or a branch in another member state for at least two years.[11]

11 Regulation Number 2157/2001, Article 2(3).

Companies and firms that come within the meaning of Article 48(2) of the Treaty establishing the European Community, and other legal bodies formed under Portuguese law and governed by public or private law, may create a subsidiary SE.

Portuguese legislation does not provide special rules for the formation of a subsidiary SE.

Conversion from an Existing Public Limited Liability Company

The conversion of an existing public limited liability company formed under the law of a member state into an SE is possible if the company has had a subsidiary company governed by the law of another member state for at least two years.[12]

The *Sociedade anónima* (public limited liability company) is the type of Portuguese company that may be transformed into an SE. Portugal has not adopted the option granted by Article 37(8) of the SE Regulation — i.e., the approval of the conversion by a qualified majority or by unanimity of the body of the company within which employee participation is organized.

According to Portuguese law, the board of directors of the Portuguese public limited liability company must prepare a report that explains and justifies the draft terms of the conversion. The report must be examined by the company's auditor or by a certified auditor or chartered accountant.

The company may submit a request to the Portuguese Auditors Association to appoint a single independent expert.

Registered Office

Registration Requirements

It is not mandatory that an SE's head office and registered seat be located in the same place, but both must be located in Portugal.

12 Regulation Number 2157/2001, Article 2(4).

Transfer of Registered Office

In addition to the rules set forth in the SE Regulation regarding the transfer of the registered office,[13] the Portuguese legislation provides specific rules concerning minority shareholders' protection, other special protection, and any objection by the regulatory authorities.

Any shareholder who opposes the transfer proposal of the registered office has the right to be bought out from the SE. A shareholder exercising this right must provide notice to the company within thirty days after the approval of the transfer proposal and the company must purchase, or indicate a third party to purchase, the shareholder's shares prior to the transfer.

An auditor appointed by the Portuguese Auditors Association or by mutual agreement of the parties must determine the compensation of minority shareholders who exercise their right to be bought out from the SE.

The SE must prove the acquisition of the minority shareholders' shares or, when applicable, that the acquisition did not occur for reasons that are not attributable to the company. In the latter case, the company may request that the Portuguese Commercial Registry or a notary notify the minority shareholders of the intention to acquire the shares. In this case, the SE will declare that any minority shareholder may exercise his right to be bought out from the SE.

Before the issuance of the certificate referred to in Article 8(8) of the SE Regulation, certain conditions have to be met:

(1) The SE must have certificates from the tax authority and social security, attesting the fulfillment of tax liabilities and social security contributions;
(2) Employees' credits with respect to employment agreements, their violation, and dismissal must be secured by a bank guarantee;
(3) Creditors may declare the accelerated maturity of their credits within thirty days after the publication of the transfer proposal;
(4) The transfer proposal may inform the right to accelerate credits; and
(5) The SE must inform the Portuguese Commercial Registry or the notary regarding those creditors that have accelerated the maturity of credits, and provide evidence of payment to them.

13 Regulation Number 2157/2001, Article 8.

The certificates from the tax authority and the social security system are dependent upon the fulfillment of tax liabilities and social security contributions or on their security by bank guarantee, mortgage, pledge, and the like.

The competent authorities to verify and attest the completion of the acts and formalities before transfer of the seat are the Portuguese Commercial Registry and Portuguese notaries.

If the SE has a regulated activity, the relevant Portuguese regulatory authorities may object the transfer of the registered office to another member state.

The regulatory authorities must be given notice of the transfer before the shareholders' resolution and the opposition may only be based on grounds of public interest. The non-opposition to the transfer must be certified by the competent authorities,[14] upon the company's request, prior to the issuance of the certificate attesting to the completion of the pre-transfer acts and formalities.[15]

Articles of Association

The articles of association must comply with the requirements for a Portuguese public limited liability company and must include:

(1) Name, type of company, purpose, head office, capital stock, and financial year (when different from the calendar year);
(2) Number and nominal value of the shares;
(3) Special rules for the transfer of shares, if applicable;
(4) Different categories of shares allowed, with the special rights and number for each category of shares;
(5) Choice between bearer or nominative shares and the conditions for their conversion;
(6) Value of the capital already paid and the time for the payment of the remaining issued capital;
(7) Authorization for the issuance of bonds; and
(8) Corporate governance structure.

14 The issuance of this certificate is stipulated in Regulation Number 2157/2001, Article 8(8).

15 The Portuguese Commercial Registry and Portuguese notaries are the competent authorities to verify and attest the existence and validity of all formalities required and to issue the required certificate.

The amendment of an SE's articles of association requires a decision by the general meeting, taken under two conditions: the first-call and second-call meetings.

At the first-call meeting, shareholders representing at least one-third of the share capital must attend, either in person or by proxy. The amendment requires a majority of two-thirds of the votes cast.

The second-call meeting can validly take a decision by a simple majority if at least fifty per cent of the SE's capital is present, either in person or by proxy or, failing this, even without a quorum, by a two-thirds majority vote.

The abstentions are not taken into account for purposes of calculating the majority.

In any circumstances, the votes of the shareholders impaired from voting are scored for purposes of calculating the majority.

The amendment of the articles of association by a simple majority of votes is allowed in a second-call meeting if at least half of the share capital is present, either in person or by proxy. The articles of association may provide that the amendment of the articles will require a higher quorum and a majority higher than two-thirds of the votes cast.

The registered office must be located in the same member state as its head office, under penalty of winding up of the company.

Capital

An SE may only allot shares that are paid up to at least thirty per cent of their nominal value and as to the whole of any premium. The payment of the remaining seventy per cent of the nominal value may be postponed for five years. The paid-up capital must be deposited in the company's bank account before the incorporation. Special minimum capital requirements may be imposed on SEs carrying on certain types of activities.

Regarding the foundation of an SE by non-cash capital contribution, Portuguese legislation only prohibits contributions of services. Contributions in kind will be effective at the incorporation date and an independent auditor must evaluate their value. The auditor report must be made within ninety days before the incorporation.

In order to prevent the shareholders from indirectly making hidden contributions in kind, the Portuguese Companies Code requires the prior approval by the general shareholders' meeting for the valid acquisition of assets by the company from its shareholders during the first two years following its incorporation.

This rule applies to any onerous acquisition exceeding ten per cent of the share capital, made during the two-year period, except if it is within the scope of the ordinary course of business or it is made through an official stock exchange or by way of public auction.

An independent auditor must valuate the assets prior to the acquisition. The auditor's report must be made within ninety days before the acquisition.

In accordance with Portuguese legislation, the shareholders may grant the company supplementary capital contributions, which will be regarded as equity — i.e., such capital contributions will not be repaid if the company's net worth is lower than the capital value plus the capital legal reserve.

Also in accordance with Portuguese legislation, the shareholders may grant loans to the company that will be treated as equity in case of bankruptcy or winding up of the company, i.e., the loan will only be repaid after the payment of the rest of the company's debts.

An SE may repurchase its shares to the value of up to ten per cent of its stock capital, bearing in mind Portuguese national rules. This percentage may be higher (for no more than three years) in particular cases.

The articles of association may prohibit the repurchase of shares or limit the cases of legal repurchase. The repurchase depends on a shareholders' resolution or, in some instances, on a board of directors' resolution.

Corporate Governance Models

Portuguese legislation concerning the SE expressly provides that, concerning the structure of the company, an SE with its registered office in Portugal will be governed by national law applied to public limited liability companies. Therefore, one of the three models of management and audit of public limited liability companies may be adopted:

(1) Board of directors and audit board;
(2) Board of directors, including an auditing committee and a statutory auditor; and
(3) Executive board of directors, supervisory board, and statutory auditor.

The most traditional model in Portugal is the system with a board of directors and an audit board (or a sole auditor).

Management Structure

In General

The one-tier system consists of an administrative body alone, while the two-tier system consists of a management body and/or a supervisory body. Both the one-tier[16] and two-tier[17] systems exist for Portuguese public limited liability companies. Listed companies also must adopt one of these two systems.

Portuguese law provides that a legal entity may be a member of an organ of the SE. In this case, the legal entity may designate a natural person and will be jointly liable for the acts of this person.

The appointment of the members of the board of management and the audit board must be registered within the Portuguese Commercial Registry.

One-Tier System

In the one-tier system, Portuguese legislation concerning the SE provides that the articles of association must provide for an odd number of members for the board of directors, without stipulating a maximum limit.

The board of directors is responsible for the management of the company, and has powers to make decisions in all affairs and to perform all the acts considered within the legal scope of managerial powers. Notwithstanding this provision, the articles of association or the law may require the prior approval of the general shareholders' meeting for specific acts.

All directors have the same rights and duties, but the board of directors may delegate part of its powers to one of its members, who will then become the executive director.

Two-Tier System

In the two-tier system, the articles of association may provide for the appointment of members of the supervisory board from rosters signed by groups of shareholders with ten per cent or more, but no more than twenty per cent of the capital stock. The articles of association also may provide that a minority of shareholders (with at least ten per cent of the

16 The models referred to in items (1) and (2), above.
17 The model referred in item (3), above

capital stock) who vote against the appointment of the supervisory board will have the right to appoint at least one member of the board.

In the two-tier system, Portuguese legislation concerning the SE provides that the articles of association must establish an odd number of members for the supervisory board. The number of supervisory board members must be higher than the number of the management board members, though no maximum limit is specified.

The chairman of the supervisory board, either on his own or upon the request of another member of the supervisory board, will have the right to require the management board to provide information of any kind, as needed for purposes of supervision.

The first management board may be appointed in the articles of association. The supervisory board must appoint the members of the management board. However, when required by the articles of association, the general shareholders' meeting may appoint the members of the management board. The management board must have an odd number of members established in the articles of association, although no maximum limit is provided. Only those companies whose capital does not exceed € 200,000 may have a single manager.

If a member of the supervisory board is appointed to occupy a vacancy in the management board, he may act as member of such board for a maximum term of one year.

The law, the articles of association, and the supervisory board may provide that certain acts of the management board will require the authorization of the supervisory board.

The management board is responsible for managing the SE and may delegate part of its powers to one of its members, who will become the executive director. A general authority or a specific power of attorney may be granted in favor of officers to act on behalf of the SE.

The supervisory board will supervise the work of the management board. The management board must report any relevant information to the supervisory board. In general, no person may be a member of both organs.

Audit Body

The most traditional management model in Portugal is a board of directors and an audit board (or a sole auditor). The auditing of companies that follow this model is entrusted to:

(1) A sole statutory auditor;

(2) An audit board; or
(3) An audit board and a statutory auditor or a statutory auditors company that is not a member of that body.[18]

The audit board comprises of the number of members as determined by the articles of association and at least three effective members. When there are three effective members, there must be at least one or two replacements; there are always two replacements when the number of effective members exceeds three.

The statutory auditor – or the statutory auditor company – is designated by the general shareholders' meeting for no more than four years and must examine the company accounts.

The members of the audit board are subject to certain election requirements and numerous prohibitions. The audit board should have at least one member with an adequate university degree for the required duties, knowledge in auditing or accounting, and should comply with the independence requisites established in Portuguese law.

General Shareholders' Meeting

The general shareholders' meeting may consider all matters under its sole responsibility, as determined by law and by the articles of association, or those matters that are not allocated to any other body.

A range of matters is subject to resolution at the general shareholders' meeting: among others, the amendment of the articles of association, increase or reduction of share capital, conversion, merger or spin-off, issuance of bonds, relaxation of statutory preemption rights on the issuance of new shares, variation of share rights, purchase of own shares, appointment or removal of members of company's bodies, approval of annual accounts, distribution of dividends, and winding up of the company.

The general shareholders' meeting has a specific board that acts as a body when duly convened or when all the shareholders agree to hold a meeting.

The general shareholders' meeting may be called by the chairman of the general meeting upon request of the management board, the supervisory board, the administrative board, or one or more shareholders who together hold at least five per cent of the share capital.

18 The separation between the statutory auditor and the audit board is mandatory for listed companies and large limited liability companies (in line with the Eighth EU Company Directive).

The general shareholders' meeting must be announced by public notice on the public website of the Portuguese Ministry of Justice no more than forty-five days in advance, and must indicate the meeting's agenda. The meeting may pass resolutions without prior publication, providing that the share capital is fully represented and the shareholders have unanimously decided to hold the meeting.

The resolutions will be adopted by valid votes, excluding abstentions. Shareholders may attend the meeting and exercise their voting rights in person, or may grant a proxy in favor of another person for this purpose.

If the company has put in place a long-distance voting procedure, voting rights may be exercised through remote means of communication (electronic means or postal correspondence).

All shareholders holding the number of shares and votes stated in the articles of association are entitled to attend the general shareholders' meeting. Shareholders with less than this limit of shares and votes may intervene and participate if, together, they form a group that meets the minimum number of shares that is represented by one of them.

The quorum required for decisions such as amendments to the articles of association, increase or reduction of share capital, mergers, or spin-offs, must represent one-third of the share capital in a first-call meeting.

Decisions are taken by a majority of votes of those attending the shareholders' meeting, except for those matters that are subject to resolution at the general shareholders' meeting when a majority of two-thirds is required even in a second call, without prejudice to the rules referred to above.[19]

The articles of association may increase the quorum or voting requirements provided for by the law, as well as extend the quorum requirement or voting majority with respect to other matters.

The general shareholders' meeting must be held at least once a year, for the approval of the annual accounts and the allocation of results arising from the preceding fiscal year. Shareholders holding five per cent of the share capital may participate in the general meeting, draw up the agenda, and have the right to put additional items on the agenda.

19 The amendment of the articles of association with a simple majority of the votes is allowed in a second-call meeting if at least half of the share capital is present, either in person or by proxy.

Employee Participation in Management Decisions

The right of representation of the employees in the management board or supervisory board of an SE exists in two circumstances. Employees have the right of representation if the written agreement entered into between the special negotiating body and the competent bodies of the participating companies determine arrangements for the involvement of employees. This agreement is mandatory in the case of an SE established by transformation, when rules on employee participation have been applied in the company transformed and continue to apply to the SE.

In all other forms of establishment of an SE, the employees of the SE, its subsidiaries and establishments, and/or their representative body have the right to elect, appoint, recommend, or oppose the appointment of a number of members of the administrative or supervisory board of the SE, equal to the highest proportion in force in the participating companies concerned before registration of the SE.

Portuguese law does not clarify the minimum or maximum number of representatives; however, one representative for each member state with employees may be appointed.

The representatives of the employees will be appointed in accordance with the agreement on arrangements for the involvement of employees, in accordance with the national legislation of each member state or, if not provided by national legislation (being the case in Portugal), by the representative body.

Employees' representatives enjoy the same rights and obligations as the members representing the shareholders, including the right to vote.

Taxation

Taxes and registration fees are due on the establishment of an SE.[20] A variable amount for stamp tax of 0.4 per cent on the real value of the contributions in kind is imposed.

Corporate entities are generally subject to corporate income tax (*Imposto sobre o Rendimento das Pessoas Colectivas* — IRC) on profits. Resident companies are taxed on their worldwide income. The

20 As of 30 June 2006, a public deed is no longer mandatory for all company acts (incorporation, amendments of the articles of association, capital increase, and the like).

general IRC rate in mainland Portugal is twenty-five per cent for tax years beginning in or after 2004.

The municipalities may levy a surcharge (*derrama*) on the corporate tax liability of the companies established within their territory. The surcharge may be up to ten per cent, with a maximum limit of 1.5 per cent on the taxable profit subject to and not exempt from corporate income tax.

Regarding the taxation of shareholders, resident individuals must include fifty per cent of the gross domestic dividends received in their taxable income for progressive income tax purposes.

Portugal has already implemented (in force since 1 January 2005) Directive 2003/123/EC (the Dividends Directive).[21] The scope of the Directive was extended to SEs.

Portugal also has already implemented Directive 2005/19/CE (in force since 1 January 2006).[22] The scope of the Directive was extended to SEs. Title IVb of Directive 90/434/EEC, introduced by Directive 2005/19/EC, provides rules for the transfer of the registered office of an SE.

Thus, under Directive 2005/19/EC, loss compensation arising from incorporation of an SE depends upon an authorization from the Portuguese Minister of Finance. Compensation of losses verified in a financial year that concern foreign branch offices is not provided for in Portuguese law.

Portuguese provisions regarding a tax consolidation regime may only apply to companies with both the head office and the registered office in Portugal.

The reorganization acts may receive authorization from the Portuguese Minister of Finance to be exempted from Municipal Transfer Tax (IMT), stamp tax, notarial fees, registration fees, and publication fees.

21 Directive 2003/123/EC of 22 December 2003, amending Directive 90/435/EEC on the common system of taxation applicable in the case of parent companies and subsidiaries located in different Member States, OJ 2004 L 7/41–44.

22 Directive 2005/19/EC of 17 December 2003, amending Directive 90/434/EEC on the common system of taxation applicable to mergers, divisions, transfer of assets, and exchanges of shares concerning companies of different Member States, OJ 2005 L 58/19-25.

Winding Up/Liquidation

SEs incorporated under Portuguese law will be subject to the general provisions regarding winding up, liquidation, and similar processes.

A winding up may be judicial or extrajudicial. According to Portuguese legislation, a company will be wound up in the cases established in the articles of association and in any of the following circumstances:

(1) The expiry of the term for which the company was incorporated;
(2) A resolution of the general shareholders' meeting to this effect;
(3) When the corporate purpose of the company is completed or becomes impossible to carry out;
(4) When the corporate purpose becomes illegal; or
(5) When the company is declared insolvent.

The liquidation process will have a maximum duration of two years, extended for a period of one year by a shareholders' resolution. The articles of association or the general meeting may reduce the initial period of the liquidation process.

In cases where the registered office is not located within the EU and in the same member state as its head office, and the SE fails to regularize its position after one year, it will be automatically wound up. The managers will assume the rights and duties of the liquidators, without any special act or formalities required to appoint them.

Conclusion

The Statute for a European company, a company form introduced by the SE Regulation, aims to provide an organizational basis for cross-border cooperation between firms, by establishing a company form common to two or more member states, with common rules and a common management structure. The SE Regulation was implemented in Portugal by Decree Law Number 2/2005, and the corresponding SE Directive on employee participation in an SE was implemented by Decree Law Number 215/2005.

The SE Regulation also provides that matters only partially covered by the Regulation will be governed by either the national laws of the member state where the company has its registered office, or the national law provisions that apply to public limited liability companies of that state.

An SE is therefore governed by the provisions of the SE Regulation, by the company statutes, and by the national laws of the member state in which its registered office is located.

An SE may be formed by merger, incorporation of a holding company, or incorporation of a subsidiary, provided the conditions for the establishment of each of these are met.