



OPENING UP SHOP IN PORTUGAL

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Portugal is still perceived as a frustrating country to start a business. The bureaucracy associated together with some difficulty in accessing complete and credible information contribute to this generalized idea.

Nevertheless, Portugal has never been so attractive for foreign investment as it is now, and the last few years have witnessed the implementation of a number of measures that have reduced bureaucracy towards citizens and corporations. In Portugal, the process of opening up a shop has been made significantly easier through simplified incorporation requirements available in the

«on-the spot firm» (“Empresa na Hora”) incorporation procedure. This procedure enables setting-up companies in an hour at a single contact point in one of the desks available throughout the country, regardless of the specific location of the company’s registered office in Portugal. An alternative swift incorporation procedure is offered through the «online company» (“Empresa on-line”) which enables the company set-up procedure to be completed online in a day or two.

Morais Leitão is a full service law firm with a team comprising more than 190 lawyers, with its main office in Lisbon and additional

offices in Porto and Funchal. As a result of the creation of the Morais Leitão Legal Circle, in 2010, Morais Leitão is also able to offer services through autonomous affiliated offices in Angola, Mozambique and Macau (China).

Both in a consultancy capacity and in litigation before labour courts, Morais Leitão provides daily assistance to a vast number of companies, from multinationals to start-ups (with a multidisciplinary team – Team Genesis – dedicated to these clients in particular).

I. LABOUR AND EMPLOYMENT REQUIREMENTS

From the labour standpoint, the first steps to have in mind when opening up a shop in Portugal, are the following:

- Enter into employment agreements

Although as a rule, employment agreements are not subject to statutory written form some forms of employment – such as term and part-time employment agreements – are mandatorily required to be entered into in

writing. In addition, the employer is required to provide written information on the employment conditions and other relevant information to the employees, at the beginning of the employment relationship. When the employment agreements cover the issues that are subject to information provisions, the employee information duties are deemed to have been fully fulfilled.

Therefore, it is advisable to enter into written employment agreements in all cases.

- Register each employee with the Social Security

Online at www.seg-social.pt within 24 hours preceding the employment agreement’s entry into force in order to proceed to monthly contributions at the general rate of 34.75%, of which

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23.75% are borne by the employer and 11% by the employee.

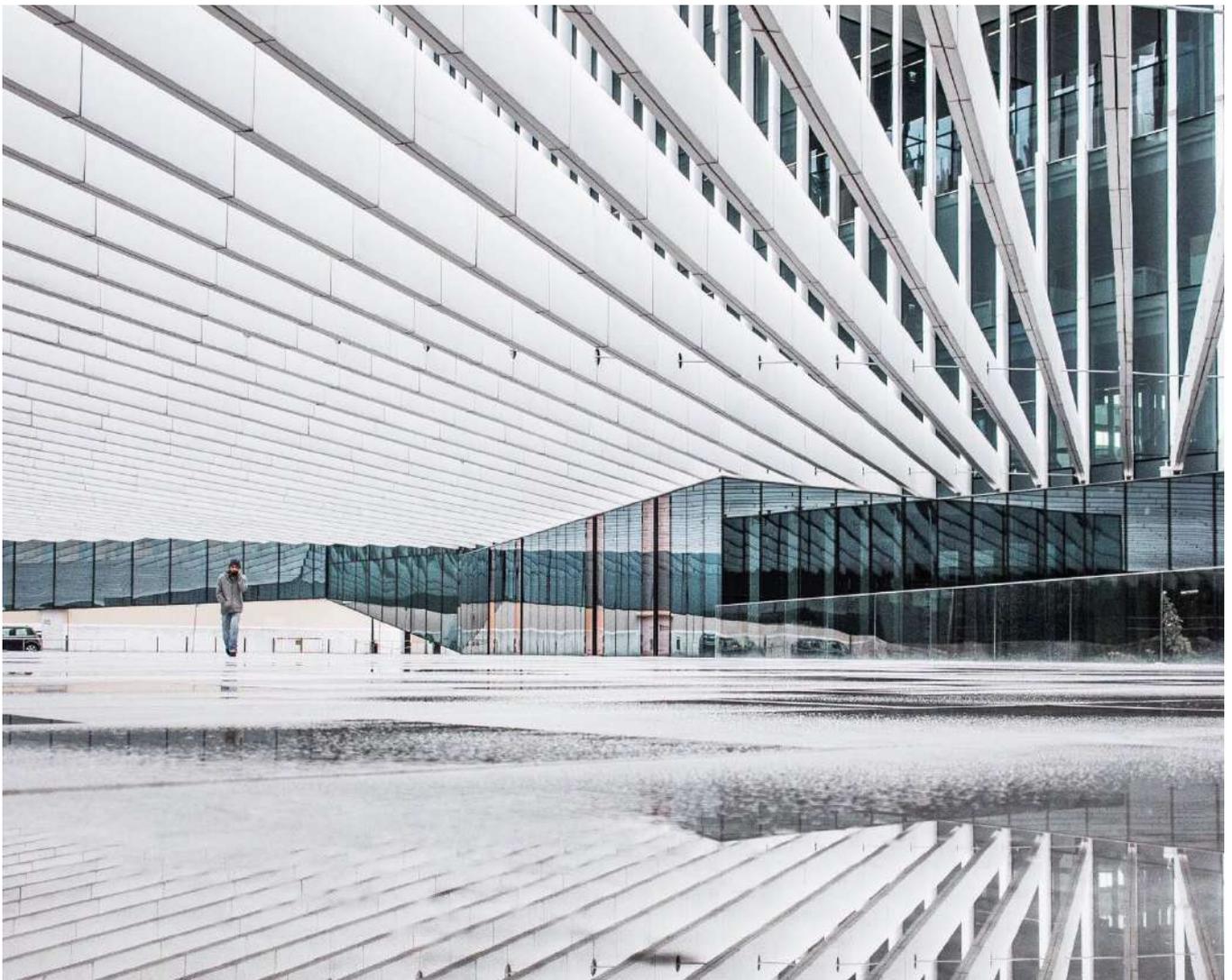
- Adhere to the Work Compensation Fund [“Fundo de Compensação do Trabalho” (“FCT”)] and to the Work Guarantee Compensation Fund [“Fundo de Garantia de Compensação do Trabalho” (“FGCT”)] for each employee

Until the entry into force of the employment agreements, in order to proceed to monthly contributions at the rate of 0.925% to the FCT and of 0.075% to the FGCT.

- Subscribe to a work accidents insurance and include each employee
- Contract health and safety services
- Implement a working time map and recording system
- Implement an anti-harassment policy (whenever the company has at least seven employees)

Please note the Portuguese Labour Code requires employers to keep the following information on recruitment processes launched (disaggregated by gender of candidates) for a period of 5 years: a) invitations for available

positions; b) employment offer advertisements; c) number of candidates for CV appraisal; d) number of candidates called for pre-selection interviews; e) number of candidates awaiting recruitment; f) admission or selection test results and g) social reports performed to assess possible gender discrimination in the access to job positions, training, promotions and work conditions.



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II. CORPORATE LAW REQUIREMENTS

A) COMPLIANCE FOR INCORPORATION

There are a number of corporate structures available in Portugal. Hereunder we have considered the steps and requirements for the incorporation of a limited liability company, which is the structure most commonly used.

There are two different types of limited liability companies in Portugal: (i) the limited liability company by shares (SA); and (ii) the limited liability company by quotas (LDA).

There are three possible procedures to incorporate and register a Portuguese company: (i) the conventional method; (ii) the «on-the spot firm» (“Empresa na Hora”); and (iii) the «online company incorporation» (“Empresa on-line”).

1. The conventional method

Anyone who wishes to incorporate a company in Portugal through the conventional method must follow a number of steps and requirements that are needed in order to ensure compliance with Portuguese law:

(i) Apply for the approval of the company’s proposed name with the National Registry for Corporate Entities [“Registo Nacional de Pessoas Colectivas” (RNPC)]. With the approval of the name, a provisional tax identification number is issued for the company;

(ii) Request a Portuguese tax number for all non-Portuguese shareholders;

(iii) Prepare and draft the company by-laws. For this purpose, the information that will be required includes, among others: (i) company name, (ii) head office, (iii) corporate purpose, (iv) share capital, and (v) shares/quotas nominal value;

(iv) Select the company Corporate Bodies (Board of directors/managers and auditor - if applicable). For this purpose, the following information regarding the company directors/managers will be required: (i) full name, (ii) nationality, (iii) address, and (iv) Portuguese tax number;

(v) Open a bank account in the Company’s name and deposit cash contributions towards share capital. Please note that the minimum share capital for a limited liability company by shares is €50,000 and for a limited liability company by quotas €1 per quota/shareholder. In the latter case the share capital in cash can be deposited until the end of the first financial year. If the company capital is paid-up in kind, the relevant assets should be subject to prior evaluation and report by an external auditor;

(vi) Formalize the company incorporation deed by signing a written document (documento particular)¹; the shareholders’ signatures in the incorporation

document must be certified in the presence of a lawyer, a notary or any other entity authorised for such effect;

(vii) Request the registration of the company incorporation - once the private written document is executed - before the Commercial Registry Office.

2. «Empresa na Hora» and «Empresa on-line»

In the «Empresa na Hora» procedure (<http://www.empresanahora.pt>) the company is immediately incorporated and registered in one visit by the investor to a single registry office.

In the procedure «Empresa on-line» the company is incorporated and registered by accessing the official Portuguese business website (<https://www.portaldaempresa.pt>) using a digital certification number.

If the shareholders decide to incorporate the company through any of these two procedures, they must:

(i) Choose a pre-approved company name which is a fantasy name created and reserved by the Portuguese authorities for the purpose of incorporating a company. The pre-approved company name can also be associated with a preregistered trademark. Reference to the company’s business activity may be added by the company founder

¹ The incorporation of a limited company does not require the execution of a public deed unless real estate assets are transferred to the company by way of capital contributions.



to the pre-approved company name;
(ii) If the shareholders decide not to use one of the pre-approved company names, it is possible in the procedure «Empresa on-line» (i) to request the automatic approval of a company name composed from the names of the company's founders (individuals), or (ii) to request the approval of a company name. In both «Empresa on-line» and «Empresa na Hora» it is also possible to present a certificate of approval of the company's name previously obtained from RNPC;

(iii) As far as the by-laws are concerned, the shareholders have to choose one of the pre-approved by-laws available (in «Empresa na Hora») or may choose to submit the by-laws drawn-up and signed by them with the signatures certified in the presence of a lawyer, a notary or by any other

entity authorised for such effect or to adopt one of the pre-approved by-laws (on «Empresa on-line»);

(iv) In these two procedures the share capital in cash shall be deposited within 5 days following the incorporation.

B) POST INCORPORATION REGISTRATIONS

(i) In the traditional method, the company must register its business activities before the tax authorities within ninety days from the tax identification number having been granted by the RNPC or fifteen days counting from the request of the company's incorporation registration. The accountant [“Técnico Oficial de Contas” (TOC)] who shall henceforth be responsible for the company's accounts must sign this tax registration request;

(ii) The registration of the company and the inscription of the members of the corporate bodies with the social security operate ex officio, based on information exchanged between the commercial registry office and the tax authorities. However, the company will have to provide social security information required to qualify the directors as being subject to (or, otherwise, excluded from) payments to the Portuguese social security;

(iii) For the purpose of the «Empresa na Hora» and «Empresa on-line» procedures, the registrar communicates the incorporation to the competent authorities, in particular, to the tax authorities and to the social security.



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III. PAYROLL AND BENEFITS PROVIDERS

In Portugal, it is common to outsource payroll and benefit responsibilities to third party companies, except for larger employers who often have their own internal teams processing payroll.

We are pleased to offer our services for all of the required work identified above and assist your organization to open in Portugal.

If you have any questions, please contact:

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We look forward to working with you.



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