



Portugal Lawyers - Flash Newsletter

Guidelines

The accomplishment of **direct foreign investment** deals with the **fulfillment of a target market** with **certain requirements** which are conditions sine qua non to arouse either the will of investing in a certain market or the interest of knowing better a certain market in order to develop a potential investment.

In terms of general investing market activity and in a first approach to the target market variables such as the labour **cost versus the workers' skills**, the existence of **infrastructures**, the low or high level of **fiscal stability** which is always a consequence of the political stability of the target market as well as its **geographical situation** should be examined.

In what concerns the referred requirements, we may say that **Portugal is an interesting target market for the direct foreign investment** because of the **high quality of its workmanship** joined with a **very inferior labour cost** compared with the average of the other countries of the European Union (Cfr. The minimum national salary of 485,00 [four hundred eighty five euro] in Continental Portugal, of 494,70 [four hundred ninety four and seventy cents] in the Autonomous region of Madeira and 509,25 [five hundred and nine euro and twenty five cents], in the Autonomous region of Azores, in what concerns the year of 2014). It **owns good infrastructures** either in the area of road transport, or in the areas of rail, sea and air transports. It owns a **stable and predictable tax system**, however a little heavy for enterprises (the ordinary tax of IRC [tax on the income of societies] in the average of 23% applied on a basis of tax settlement which we may say it approaches the net income got by the company less costs, duties, etc, and an ordinary tax - VAT [value added tax] charged on the provision of services in general, sales and supplies, and that is calculated in the increase of its global value in a percentage of 23% which is foreseen in 23,25% in what concerns the year of 2015), what is expected to be modified as the country is coming from a situation of economic and financial ransom and needs to balance its accounts with tax revenue. In what concerns its **geopolitical importance**, Portugal is a country situated in **western Europe** which **because of its geographical situation and its 900 years of history as a country** - it had also been an overseas country with territories all over the continents of the world - it **still represents the entry door for the European Continent and a reference for Africa, America and Asia**.

The potential of Portugal expands into different areas from which as it is usual we always choose one

for the topic of this Flash Newsletter. Considering the newsletter of June - July 2014, We will focus our attention on **Sea Economy and its opportunities**.

SEA ECONOMY

Portugal is a country at the sea side made up of a continental territory (Continental Portugal) and two insular territories (Madeira and Azores archipelagos). The exclusive economic zones of these three territories all together correspond to **1.727.408Km²** (one million seven hundred and twenty seven thousand and four hundred and eight square kilometers) **of the Portuguese Exclusive Economic Zone ("ZEE")**.

The potentialities of such Exclusive Economic Zones ("ZEE") are not totally developed yet, because the capital gains of the exploration of such valuable resources started arousing the interest of our country only a few years ago.

According to this it is being promoted by the Portuguese government a guidebook to get private investment in that sector. Practicable possibilities are being considered such as those of **exploration concessions of maritime territory** in what concerns aquaculture in open sea. It is foreseen an international contest for the exploration of **72 areas of aquaculture in open sea between the regions of Algarve and Aveiro** (Continental Portugal).

According to what was said by the present Agriculture and Sea minister the referred **granted areas are already licensed for aquaculture in farther sea of bivalves in open sea** (from which we can point out as examples the cockle, the mussel and the oyster), but **they will be able to be licenced afterwards for other cultures** either seaweeds or fishery (for example dory or rock-bass).

Within the guidebook promoted by the Portuguese government it is still highlighted the potential of the **mineral resource exploration of the Ocean**.

It is also considered the **possibility of exploration of the potential of the Portuguese sea in what concerns energy**, according to what was already indicated by the Programme of the Investigation Board and Innovation of the European Union till 2020, aimed at supporting and promoting the growth and profit of renewable oceanic energy in the seas and European oceans. **The Atlantic coast is therefore referred as it has big potentialities of exploration of oceanic energy**.





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We also have to refer to the thematic of the **growth of Biotechnology in Portugal** in which the production of micro seaweeds, reproduction of jelly-fish, sea cucumbers, limpets and oysters among others is associated with the investigation of the special properties of such organisms with a medical purpose or only for daily use. All this in a **perspective of investigation applied in partnership with enterprises which wants to produce value for the regional and/or national economy.**

A case of success that we can present is the one of a fruit and vegetable producer who wanted to provide the market with packages of sliced apple but faced the problem of oxidation of such fruit. So it was necessary to produce an edible preserving agent with antioxidant and antifungal capacities.

The solution for such problem was found by a team of investigation from the High School of Tourism and Sea Technology in Peniche. They were able to find, from certain maritime seaweeds, an anti-oxidant, which keeps the fruit freshness and quality, completely edible and without any danger to human health.

Another case is the discovery of the qualities of sea cucumbers for the reduction of risks of cardiovascular diseases, or the case of the shell of a "bruised" crab, a very common crab in the Portuguese coast, which has effective properties for the reconstruction of skin and bones.

It is not necessary to refer to the **Portuguese potentialities** in what concerns great sea industries, such as **fishing, canning and coastal tourism industry.** It must be referred the recent modernization of some Portuguese ports. The expansion of the port of Sines can be given as an example which has now a greater capacity of receiving goods and unloading volatile substances.

Just for curiosity we conclude by referring that Portugal has an ancient tradition in the canning industry. The canneries provide a large variety of fish and even mollusks in oil and/or in other ingredients, which are put on the market at relatively low prices, but which can have a high interest in certain landlocked countries, because the durability, taste and price of canned food are very attractive.

THE GOLDEN VISA

The golden visa has become well known and promoted by economic Portuguese agents all over the world because it **stimulates the opportunity of**

investment in those who want to invest in the Portuguese market.

The golden visa is a residence permit to enter and stay in Portugal aimed at people who want to invest.

It is given to those who are not citizens of European Union countries integrated in the Schengen Area (an area of free movement of people, goods and capital inside the European Union) and they have to meet **certain requirements fulfilling at least one of the following conditions:**

i) **investment or transfer of capital of at least € 1.000.000.00** (one million euro) under certain conditions;

ii) **Creation and maintenance of a certain number of jobs;**

iii) **Acquisition of real estates of a minimum value of 500.000.00** (five hundred thousand euro)

There are other requirements such as the applicant's nationality, the non-existence of a previous criminal practice or evidence in the security system of Schengen.

The golden visa is given for an **initial period of five years**, during which the requirements of attribution must be kept. There are also minimum periods of stay in national territory during the permit, which can be renewed for two-year periods after meeting the requirements of its attribution.

The benefits of the golden visa are the enjoyment of a simplified and privileged entry in Portugal, that permits to its owner to fix residence and to invest in this country and also establish links with the Portuguese territory and other related territories. Later this may allow either the request of Portuguese nationality if the requirements are met or the request of authorization for permanent residence.

As the concession of such a visa depends on a certain degree of administrative discretion, it is not certain per se only by the simple fulfillment of the necessary requirements.

PUBLIC LIMITED COMPANIES AND PRIVATE LIMITED COMPANIES IN THE PORTUGUESE LEGAL SYSTEM

In the Portuguese Legal System there are different types of commercial companies, but we may stand out two in particular - the Public (Sociedades Anónimas) and the Private limited companies





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(Sociedades por Quotas) due to their evident importance and major use.

The choice of the legal form of the company depicts the operating model wanted by the entrepreneur concerned, as well as the form that best suits the desired type of business, which will determine the so-called corporate object of the company (the activity to be performed by the company)

The basic principle behind the formation of every company includes the possibility of imputation of rights and duties to an entity having its own legal personality, which will take upon itself the corresponding obligations and will exercise the competent rights on its own. The legal liability of the partners will be reduced to the amount of the share capital held by each of them in the company (quotas or shares) and to the assets that in this way or through any other means (for example loans to the company - Shareholder loans) enter the company.

All this whilst still allowing the conjunction of common ways and the adoption of a common goal by the partners through the company, and the possible benefits only likely to be obtained through the implementation of a commercial activity by a company (for example tax benefits of various types, the possibility of allocating costs to the company through an organized accounting system, etc.)

Nevertheless the idea of limiting the financial liability is the hallmark of the formation of the company itself.

In what concerns the Private Limited Companies, in general, they are used by their partners to carry out activities which do not involve a huge investment. This is shown by the Portuguese legislation by allowing the formation of Private Limited companies with a minimum share capital of only €1,00 (one euro), which has only happened since January 1, 2011. Before this, in order to form a Private Limited company it was required a minimum share capital of €5,000,00 (five thousand euro).

The only comment we make to this subject is that in our opinion the permission to form a company with such a small capital is not advantageous to the security and healthy trust of the commercial traffic among economic operators in a specific market.

In what concerns the minimum number of partners required to form these companies, they can be formed by only one partner and in this case they are called single-member companies (Sociedades Unipessoais). In the firm (corporate name) the

expression "Single-member company" or the word "Single-member" ("Sociedade Unipessoal" or "Unipessoal") should be included.

Or they can also be formed by two or more partners (natural or legal persons), which, is generally more common.

In this type of companies it is a partners' common obligation the injection into the company's capital structure of assets over which pledge can be constituted, not being allowed the so-called contributions in industry, which currently has no practical effect due to the absence of a compulsory minimum share capital.

The firm (corporate name) of this type of companies may be composed by either the full and / or short name of one, some or all the partners of the company or it may incorporate an expression related to the company activity (corporate object) or even a mixture of both followed by the expression "Limited" (Limitada) or "Ltd." (Lda.) ("Single-member company Ltd" or "Single-member, Ltd" (Unipessoal Lda.) if it has only one partner).

At the time the company is formed and through its social pact, the partners may establish the regulation of an endless amount of situations such as pre-emption rights in quota transfer (portions of share capital belonging to each partner), voluntary reserves, the possibility of transferring or not the company seat (the company's headquarters), the possibility of acquiring or not social participations in other companies, etc. All this depending on the activity to be developed, on the partners' expectations for the company either using it for a single business as a way of outsourcing, control and allocation of a cost centre or to carry out a certain activity indefinitely in terms of time.

In the Private Limited Companies the ownership of the "quota" (a portion of the share capital) is publicly known and shown in the Public Register of the Commercial Registry Office of the area in which the company's headquarters are located. In this type of companies the transfer of shares is, generally, more difficult and time-consuming as we will see later.

The accounts of a Private Limited Company, that is its accountancy is generally done by a Chartered Accountant without being necessarily reviewed by a Statutory Auditor every year. This doesn't apply to the Public Limited Companies as we will see later in spite of some exceptions to this rule.





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The Private Limited Companies are managed and represented by one or more managers elected by the Company General Assembly (The resolution and meeting body of all the partners) from among those who are members of the company or not. They perform their duty for a period of time fixed in advance and hold joint or individual binding powers of the company.

In spite of not being common it can be determined in the social contract that the company has a Board of Auditors to supervise its accountancy.

In what concerns the **Public Limited Companies** it has to be mentioned that **€50.000,00** (fifty thousand euro) **is the total minimum of share capital of the entrance of the partners to its formation.** It is divided into shares held by the partners and at the time the company is formed, a value corresponding to 30% of the share capital must be achieved.

The shares, in general, have a certain nominal value corresponding to the portion of the capital share that they own (represent) in the total capital share of the company. There are **two different types - Nominal shares**, in which it is possible to know, through the securities concerned, the identity of the holder which is included in the securities or - **Bearer shares** in which the identity of the holder is not referred.

The **Nominal shares**, despite the previous accomplishment of the statutory obligations expressed in the social contract, **can be transferred through written declaration of the notifier.** The **Bearer shares transfer is operated through a simple securities transfer to the acquirer** or to the custodian indicated by that one.

The **shareholders of the Public Limited companies are not included in the public register**, and therefore **they are not publicly known.** They can be known by being mentioned in certain documents such as the share registration book and the attendance sheet of the General Meetings.

The Public Limited Company may hold its own registered shares, but until a certain portion of its share capital, that is generally 10% (own shares)

The **firm** (corporate name) of this type of companies may be composed by either the name or trading name of one or some of the partners or by a particular denomination, or by the combination of both of these elements but in every case **it will end with the expression "Sociedade Anónima" or the abbreviation "S.A."**

At the time the company is formed and through its social pact, the partners may establish the regulation of an endless amount of situations such as the choice of the company's management and supervision, preference in share acquisition by third parties, etc

The management and supervision of the Public Limited Companies can be structured in accordance to one of these three modes;

i) **Board of Directors and Board of Auditors**

ii) **Board of Directors, Audit Committee and Statutory Auditor**

iii) **Executive Board of Directors, Supervisory Board and Statutory Auditor**

In certain cases **the Public Limited Companies may have a sole Director if the share capital of these companies does not exceed €200.000,00** (two hundred thousand euro).

The most common form of organization of a Public Limited Company is certainly the one referred in i).

The sole Director or the Board of Directors (formed by several directors) is the formal body that administers and represents the company, within the statutory linking constraints, and with the Board of Auditors supervising the company's accountancy.

In general the company also has a Chairman of the General meeting appointed to that purpose and assisted by a Secretary. The Chairman presides over the meetings, where the decisions taken by the shareholders in the General meetings are discussed

The **accountancy** of a Public Limited Company is done by a Chartered Accountant and the accounts are reviewed by a Statutory Auditor every year.

As a purely illustrative purpose it may be referred a **specific type of company that adopting either the form of a Private Limited Company or the one of a Public Limited company is recognized by its social object, which solely and exclusively applies to the administration of the share participation of other companies** as an indirect way of exercising economic activity. We are thinking about **Holding Companies** (sociedades gestoras de participações sociais, S.G.P.S.) **commonly referred as "holdings".**

It is worth noticing **that in Portugal the legislator has indicated these companies, due to their substance, as "Management holdings"** (the one that solely controls and has a leading position in the capital of





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its affiliated companies), according to what is prescribed in its own legal system in what concerns the purpose to be included in its social contract, from which we can conclude the impossibility of these companies exercising any economic activity – industrial, commercial or financial – besides the one above mentioned. In spite of this, practice has shown that the Portuguese “SGPS” have become a mixture of “management holding” and “financial holding”. This way besides holding participations in the affiliated companies and inherent influence power in the administration, they also have the possibility of providing administrative and management services as well as the possibility of granting credit to their affiliated companies under certain circumstances.

The Holding Companies - “SGPS” are aimed at structuring business within an economic group and reflect an expertise in terms of management of their affiliated. They have as main advantages the expertise and the vocation for the acquisition of share-holdings in other companies and their further follow-up. Coordinating positions, keeping a certain unity and predictability, showing consistency within a group, targeting investments and allocating and raising financial resources in a more rational way are other further advantages.

The Holding Companies - “SGPS” may acquire and hold quota interests or shares in any companies according to the law. They can acquire and hold participations in companies subject to a foreign law under the same terms that they can acquire and hold participations in companies subject to the Portuguese law.

As the participation held by the Holding Companies - “SGPS” in their affiliated is an indirect operation of the economic activity, it can't be of an occasional nature (participation held for more than one year) and in general has to reach at least 10% of the total capital with the affiliated company's right to vote, individually or together with participations of other companies where the Holding Company - “SGPS” is dominant.

However there are exceptions, being allowed the acquisition and holding of participations inferior to the referred 10 % percent in the capital of the affiliated company. We can highlight among others the acquisition of participations as a result of the merger or division of the affiliated company.

There are also exceptions to the occasional nature of the participation, being allowed the sale/ transfer or encumbrance of participations in a period inferior to

a year after the acquisition, if the acquirer is a company ruled by the Holding Company - “SGPS” or the sale/transfer takes place by exchange of assets, or the product of the sale/transfer is reinvested in a period of six months after the modifying fact in other participations.

The Holding Company - “SGPS” is not allowed to acquire or own real estate, except the necessary for its premises or those of a company in which it holds at least 10% of the share capital with the right to vote for more than one year, or if awarded in court enforcement proceedings brought against its debtors or acquired by winding up the affiliated companies in accordance with current legislation.

The corporate name of the Holding always shows this same expression or its abbreviation “SGPS” followed by the type of the company in question.





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EDITORIAL

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Internal Informative Document to be delivered to Partners, Collaborators, Clients and Friends from RL ADVOGADOS PORTUGAL

WARNING

The current flash newsletter has a merely informative purpose, thus its opinion articles neither bind in any way this Law Office firm its lawyers and / or collaborators nor replace the prior advice of a qualified professional before taking a decision about investments in Portugal.

Before taking any decision about investment, you should always visit a lawyer in advance so that you can be informed about the constraints and legal feasibility of your project.

With my best regards

Francisco Lourenço

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