



# MVPACK

Starting kit for innovative entrepreneurs



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# How do I create a Startup?

A startup can start operating without being registered or having entered into a partnership agreement. Two or more people may just get together and start a business activity. However, in such case, the assets of the entrepreneurs are unlimitedly liable for the obligations created under that business activity. After registration, the company can take responsibility for these obligations.

Therefore, to better ensure the protection of entrepreneurs, we recommend the incorporation of a company. Public limited companies and private limited companies are the most common forms, since in both cases the liability of members is limited. This means that only the assets of the company, and not those of the shareholders, are liable for the debts of the company.

Private companies have a lighter organizational structure, more suitable for short-term investments, while public companies are more geared to long-term investments and allow for a greater dispersion of share capital.

Complementing the articles of association there is a possibility of entering into shareholders' agreements. It is common to fix voting commitments, to establish qualified majority requirements for certain actions, or to set out conditions for transmission of shares. It is also by these agreements that the shareholders define provisions to ensure that their percentage share in the company is not reduced (anti-dilution).

	Private Limited Companies	Public Limited Companies
Number of partners	1 (single-member company) or 2	5 (1, if the shareholder is a company)
Minimum share capital	€ 1 per share	€ 50.000
Management powers	Managers / Partners (on reserved matters)	Board of Directors

Incorporating a company is a simple and quick procedure and Portugal offers two swift ways to do it.

And what must I do to incorporate a company? In Portugal, this is very simple today.

Using the "company on-the-spot" method, interested parties can go to an office, choose one of the pre-approved company names and articles of association and set up the company. It has a cost of €360.

Through the "online incorporation of companies" entrepreneurs can choose a company name and the articles of association over the internet, avoiding any displacement to a public service. It has a cost of €220.

The mechanism "branch on-the-spot" allows the immediate creation of a Portuguese branch of foreign-based entities at a cost of €200.

# How to finance my startup?

## Personal financing and common corporate financing

Most entrepreneurs start by financing their project from their own savings and from family and friends loans.

Corporate law provides for the self-financing of companies through supplementary (free) or accessory capital contributions (free or against consideration) and shareholder's loans (free or against consideration) as well as through funding by partners or by third parties in the contexts of capital increases or issuing of obligations.

## Institutional funding

To the extent that the project is sustainable and evolves positively, it is usual in a second stage the recourse to institutional financing means, such as bank loans, venture capital, or warrants.

The bank loan is the most traditional means of financing, but in the case of startups it is not always simple, as banks usually require collateral for loans. Now, if the company does not have a track record or assets that the bank consider safe enough, this may condition the granting of the loan to the provision of personal guarantees by entrepreneurs, which means that the assets of the latter are accountable for the debt in the event of failure of the company.

Today, several banks in Portugal set up partnerships and credit lines directed to startups.

Private equity funds provide funding to companies with growth potential in exchange for a stake in the share capital (equity) that they intend to sell when the company value increases or to maintain if the company generates substantial profits.

## Other investors

Business angels and venture capitalists are investors willing to invest in companies in their earliest stage, in return for equity or options. Both types of investors may have a varying degree of intervention, including counseling, sharing of contacts or participation in the definition of the company strategy.

## Warrants

Warrants are rights to acquire assets (including shares) of the company and are used as an additional element to attract investors or to align the interests of key partners. They grant the right but not the obligation to purchase the company's assets at a later date at a predetermined price and are transferable by their holders. These holders can profit from its sale price being higher than the price at which they can purchase the underlying asset.

# What kind of support can I look for?

## Portugal2020– Qualified and Creative Entrepreneurship

Portugal2020 is an European Union fund that may finance (usually refundable) projects, with less than two years of existence, boosting sectors with strong growth, including the built-in creative and cultural industries and / or sectors with higher intensity of technology and knowledge or that value the application of research and development results in the production of new goods and services. There is a tender available until 31 March 2016.

## Hiring Support

Financial support for employers who enter into employment contracts for a fixed term for a period equal or higher than twelve months or permanent employment contracts, with unemployed registered with the employment services, with the obligation to provide vocational training.

## Microsoft BizSpark

It is a program that supports startups, providing them with free access to Microsoft tools, platform technologies and server products production licenses. It also provides free support to its beneficiaries, as well as a connection to network partners around the world, as such as incubators, investors, advisors, government agencies and hosters.

## *Fiware Accelerator Program*

It is a program aimed to startups owning an innovative idea able to penetrate the market and the basis for a sustainable business. All across Europe, accelerators specialized in different sectors will provide direct funding (equity-free), mentoring, coaching and networking.

This initiative is applicable to the following sectors: (i) smart cities; (ii) e-health; (iii) transport; (iv) energy and environment; (v) agrifood; (vi) media and content; (vii) manufacturing and logistics; and (viii) social and learning.

## *Startup Europe Partnership*

The Startup Europe Partnership (SEP) will build bridges between Europe's startups, corporation, education institutions and investment communities to help EU startups raise funds and beat language barriers.

The SEP offers to startups: (i) market learning, (ii) networking, (iii) grow opportunities (procurement/distribution/licensing), (iv) exit & investment opportunities, (v) single point of entry to large corporates and (vi) SEP badge of quality .

# How can I protect my idea for the business?

Innovative ideas with commercial value may be protected as intellectual property. There are three major forms of intellectual property protection:

## Industrial property

Industrial property covers utility patents, designs and distinctive signs of trade. This right ensures the exclusive use of a particular invention, design and the signs used to distinguish goods and firms on the market. Inventions are considered: the products or processes, in all fields of technology; new processes for obtaining products, substances or compositions already known.

Patents and utility models are exclusive rights that protect inventions through a simplified and accelerated procedure and the "industrial design" are rights that entitle their holders to a monopoly or exclusive use of the appearance of products.

However, the law does not allow the registration of designs which are not new or do not have an individual character. The distinctive signs of trade are signs identifying the different companies, products or services, including brands, names or symbols of establishments, logos and firms.

## Copyright

Copyright provides protection for literary, artistic works, computer programs, databases or multimedia creations. According to the Copyright and Related Rights Code, the work is independent of its promotion, publication, use or exploitation.

Copyrights are automatically granted without official registration and the holder may use the symbol of "copyright", if she/he so desires. In Europe, software creations are protected under copyright.

## Trade secret

Trade secrets are commercial secrets or technical skills (know-how). When there is need for disclosure of startup secrets, for example, to enable an investor to evaluate the project, it is necessary to protect this information.

The confidentiality agreement (or NDA) is the most appropriate way: protects the use of disclosed information by a particular person (or company), to another person, or the exchange of information between certain people.

# How do I hire?

## Employment agreement

The most common form of recruitment is through employment agreements, which usually do not need to be written. Just like that, I can hire someone to work for me, without a contract term duration, upon the payment of a salary.

If I intend to hire someone for a certain period of time, I can do it through a fixed term contract, justifying it with the company's start operation. A fixed term contract cannot be renewed for more than 3 times and have a maximum duration of two years.

## Remuneration

Employees are entitled to a minimum monthly salary that is currently settled at €557.

In addition, employees are also entitled to receive (i) a Christmas bonus, (ii) remuneration on vacation period and (iii) a holiday bonus.

It is also possible to grant employees with share capital rights and others fringe benefits to be settled by agreement.

## Social Security

Employers must notify the Social Security about the hiring of new employees, which can be done through the relevant website. The social security contribution, monthly paid by the employer, is equal to 23,75% of the employee's remuneration.

## Copyrights and patents

The employment agreement should clarify that the ownership of copyright on the work creations (books, computer programs, etc.) developed in the course of the labor activity belongs to the employer. The right to the patent belongs to the employer automatically on inventions made during the execution of the employment agreement in which the inventive activity is provided.

## Provision of services

An alternative to the employment agreement is the provision of service agreement, which allows me to hire the result of an intellectual work of an collaborator, with no employment relationship or the costs associated with it. However, in long-lasting and stable relationships, there is a risk of this contract to be qualified by the State as an employment agreement.

# Goal: selling the company or the technology!

## The sale as part of the business strategy

Successful startups, as a rule, are sold. For this reason, it is important to prepare the company very early for a possible sale in the future, which implies not only having a good product and good sales, but also having everything in its due place and a strategy defined early on.

## Impact of the forms of financing

One of the aspects to take into account early is funding. With the granting of equity to investors in exchange for funding, the entrepreneur is giving up part of his/her participation. On the other hand, obtaining financing on loan, the company loses value to the extent of its liabilities.

Funding mechanisms are therefore to be well-thought-out in accordance to the degree of control that the entrepreneur wants to keep on the fate of the company.

Shareholders' agreements can avoid problems between the shareholders in regulating the rights and obligations in case a shareholder wishes to sell his/her shares in the company.

## Selling a business

All intellectual property rights of a company follow it upon the sale of the company. Similarly, if a company is merged into another, all rights of the former are follow to the latter. The entrepreneur has to bear this in mind and to include in the sale and purchase agreements the rights he/she wants to keep.

An elaborate corporate structure design allows entrepreneurs to segregate the rights and liabilities of multiple companies in a project in order to manage the objective for each product or business line more easily.

## Transfer of technology or knowledge

The sale may be limited to certain rights, including patents or software. In this case it may be necessary to enter into a technology transfer agreement regulating the transfer of ownership as well as the conditions of use by third parties or technical assistance.

At the same time, it is possible to enter into a knowledge transfer agreement, encompassing the creation, organization and dissemination of knowledge, ensuring their availability to third parties.

# Glossary

**Articles of Association (or instruments of incorporation or memorandum of association)** – set of rules governing the structural and functional relationships of the company towards the fulfillment of its scope;

**Confidential Information** – information that is only known to a certain group of individuals or companies and is not known to the public;

**Copyright** – in its patrimonial aspect, rights that allow the author to control the production, distribution, exhibition or execution of a work;

**Dividends** – part of the company profits distributed to shareholders;

**Employment Contract** – contract by which an individual undertakes, against consideration, to carry out activities to another person within the latter's organization and under its authority;

**Guarantee** – right granted to a creditor on a specific good or asset that primarily guarantees payment to the creditor in case of default of the company's obligations;

**Licensing** – terms and conditions of the usage of Intellectual Property of the company by a third party;

**M&A** – transactions as part of corporate strategies involving the purchase, sale, merger and demerger of companies;

**Patents** – rights which confer the exclusive production, use and sale of an invention for a period of time, preventing third parties from doing so;

**Share Capital** – sum of the shareholdings that corresponds to the initial assets of the company. Used as a parameter to measure the stake of each shareholder;

**Shareholders Agreement** – agreements between all or some shareholders by which they become bound to a certain conduct. Shareholder agreements are only binding on its signatories but not on the company or on the other shareholders;

**Transfer of technology** – transfer of rights arising from innovations resulting from scientific research from one organization to another;

**Warrants** – mechanisms that give holders the right but not the obligation to subscribe or purchase shares at a later stage at a predetermined price.





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ABOUT US

# Our Experience

In today's competitive global market, Macedo Vitorino & Associados can provide a comprehensive commercial and corporate law advice to domestic and foreign clients. We have strong relationships with many of the leading international firms in Europe, in the United States and in Asia, which enable us to handle cross-border transactions effectively.

We are mentioned by The European Legal 500 in thirteen of eighteen practice areas , including Banking and Finance, Capital Markets, Project Finance, Corporate and M&A, Tax, Telecoms and Litigation.

Our firm is also mentioned by IFLR 1000 in all areas of practice analysed in Portugal, namely in Project Finance, Corporate Finance and Mergers and Acquisitions and by Chambers and Partners in Banking and Finance, Corporate and Dispute Resolution, among others .

Macedo Vitorino & Associados has a team specialized in the needs of startups and companies in its early stages, from which results our MVStart project

At MVStart we are young and proactive team focused on the needs of startups developing their business in Portugal. We advice national and foreign companies in dynamic sectors such as new technologies, communications, distribution, tourism, among others.

In MVStart we've grouped our legal knowledge in the areas of law that are most relevant for entrepreneurs when it comes to start a business project:

- Establishment of companies and subsidiaries in Portugal;
- Financing;
- Patents and copyright; and
- Contracting.

If you want to learn more about us please visit our website [www.macedovitorino.com](http://www.macedovitorino.com).



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