

#WHYPORTUGAL 2021

THE BASICS OF HOW TO START A BUSINESS IN PORTUGAL

WHY BRINGING YOUR BUSINESS TO PORTUGAL IS EASIER THAN YOU THINK

WHETHER AN SME OR LARGE BUSINESS, TAKING YOUR FIRST STEPS INTO THE PORTUGUESE MARKET CAN TAKE LESS THAN A DAY OR BE DONE ONLINE, WITH INNOVATIVE SYSTEMS OFFERING SIGNIFICANT COSTS REDUCTIONS.

Starting or internationalising your business can be a cumbersome affair, not to mention costly. But thanks to Portugal's advanced systems, from online registration at a reduced 40% cost to its 'on-the-spot' one day incorporation, setting up your business has never been easier

IS THERE A WAY TO TEST THE WATERS FOR TEMPORARY OR ONE-OFF PROJECTS?

If you're not ready to jump in with both feet and prefer to work with a Portuguese partner before setting up your own subsidiary, then the unincorporated joint venture (JV) is a way for you and your partners to come together to work on limited or temporary projects in Portugal without having to create a formal legal structure.

A JV has no legal personality and no common funds; cooperation is merely for a specific project, in the pursuit of a particular objective or in the development of an activity.

JVs can either be 'internal' or 'external'. 'Internal' means having the freedom to determine your own obligations without any formal bodies. 'External' means having a leader, steering body and supervisory board. Leaders take on both internal administrative obligations, such as the organisation and implementation of cooperation among all parties, as well as external ones, namely the power to represent the UJV before third parties.

IF YOU ALREADY HAVE A BASE IN PORTUGAL, HOW CAN YOU COLLABORATE WITH OTHER DOMESTIC COMPANIES?

For companies that already have a foothold in Portugal, a way to collaborate is using an 'ACE' – an Enterprise Group. This is where two or more domestic companies collaborate creating a new legal entity with its own organisational structure to improve respective business performance and generate results.

The structure comprises three core bodies: General Meeting (deliberative), Board (management and representation) and Supervisory. An ACE can own assets in the form of member contributions and each member is personally responsible for its debts.

WHAT'S THE BEST BUSINESS FORM FOR AN EU COMPANY TO COOPERATE WITH A PORTUGUESE COMPANY?

To collaborate with businesses in other Member States you can form an EEIG (European Economic Interest Grouping), which is an ACE but at EU level. With an international legal personality, the EEIG allows parties to come together and carry out activities in the EU to improve the exercising or result of their business activities.

The main differences to note when comparing an EEIG with an ACE are that individuals can form EEIGs, something you cannot do with an ACE, and the parties to the EEIG must be located in different EU countries.

CAN A BUSINESS START OPERATIONS IN PORTUGAL WITHOUT ESTABLISHING A COMPANY?

If you're looking to take a first step into Portugal, you can take a minimalist approach without having to establish a fixed corporate structure by opening a branch. This operates merely as an extension of the parent company without legal personality, assets, corporate bodies or equity requirements. You can, of course, allocate funds to the branch for operational purposes.

A branch doesn't need a corporate body merely an appointed legal representative to manage the business, and a simple registration is sufficient for incorporation.

WHAT TYPES OF COMPANIES CAN YOU SET UP IN PORTUGAL?

To take the next step and establish a legal entity, the most common methods are private limited liability companies and public limited companies. Portugal offers the added advantage of being able to incorporate either entity online or in just one day using a system known as the 'On-the-spot'.

WHAT ARE THE OBLIGATIONS AND REQUIREMENTS FOR A PRIVATE LIMITED LIABILITY COMPANY?

With a simpler governance structure, a private limited liability company (LDA) is particularly popular with those taking their first steps into Portugal or looking for smaller or shorter-term investments. There's no minimum compulsory share capital, shares numbers are usually equal to the number of shareholders (a minimum of two is needed), shares must be of at least €1 and registration is with the Companies Registrar.

You can incorporate a sole shareholder company, but your liability as sole shareholder is not limited as you are personally and unlimitedly liable if you do not keep your company's assets separate from your personal assets.

An LDA can be managed by one or more managers. General meetings are used to resolve managerial issues - such as the disposal / subscription of holdings in other companies or disposal / encumbering of real estate - and decisions are taken by a simple majority.

Supervision of LDAs is by a supervisory board or external auditor, but you must set up a supervisory board if you exceed at least two set thresholds for two consecutive years, namely: your balance sheet exceeds €1.5m, turnover exceeds €3m and/or your average number of annual workers exceeds 50.

WHAT ARE THE OBLIGATIONS AND REQUIREMENTS FOR A PUBLIC LIMITED COMPANY?

If you're looking to invest in larger or longer-term investments, a public limited company (PLC) is for you. With a minimum share capital of €50,000 divided into shares at a minimum nominal value of €0.01, PLCs require at least five shareholders - domestic or foreign - and shares are free to trade privately or on the Stock Exchange, in case of listed companies, without the need to register the sale or the acquisition with the Companies Registrar. Do note, however,

that it is now mandatory that the company or the bank holding the shares keep a record identifying the shareholders and the number of shares they hold.

If your PLC's share capital doesn't exceed €200,000 you can have just a single manager, otherwise you need a board of directors and must adhere to one of the following models:

- A board of directors plus a supervisory board or sole supervisor. Listed companies must have a supervisory board as well as any company that exceeds two of the following thresholds: balance sheet over €20m, turnover exceeding €40m and average number of annual employees exceeds 250;
- A board of directors plus an audit committee made up of managers and an external auditor; or
- An executive board of directors, a general and supervisory board and an external auditor.

The board of directors manages all aspects of your company's business and is responsible for resolving any management issues, namely: acquisition, sale and encumbering of real estate; any collateral or guarantees; management reports and financial statements; partnerships or forms of cooperation with other companies; opening or closing of important business or relevant fractions; and any major changes in the company's organization - acquisition of other companies, reduction of its activity and preparation of mergers.

General meetings don't touch on managerial matters unless requested by the board and are instead used for resolution of any legal matters or those specified in the articles of association, such as: changes to the articles or share capital, assessment of the administration; election of corporate body members and their remuneration; removal of directors, members of the supervisory board or of the audit committee; and, resolutions relating to mergers, spin-offs or transformations of the company.

To note, three months after year-end, the General Assembly must approve your company's annual accounts and register them online at the *Portal das Finanças* by the fifteenth day of the seventh month after year-end.

WHAT IS THE PROCESS TO INCORPORATE A COMPANY?

When it comes to the actual incorporation process, you can go the traditional route, online, or the speedy 'On-the-spot' method.

WHAT DOES THE TRADITIONAL ROUTE OF COMPANY INCORPORATION INVOLVE?

Traditional incorporation involves more cumbersome steps, physically going to the relevant authorities, and of course a longer timeline and potential costs.

You first request a company name certificate with the National registry of Legal Entities – RNPC – either in person or online at www.portaldaempresa.pt or www.irn.mj.pt.

Next you must execute the articles of association by public deed or private document and deposit your minimum initial share capital in a bank (in the case of public liability companies).

Then follows registration with the Commercial Registry Office, publication of the articles of association and the member list of the company's corporate bodies and finally registration with the Tax Authorities, Social Security and the Working Conditions Authority (ACT).

WHAT BENEFITS ARE THERE TO INCORPORATING ONLINE AND HOW DOES IT WORK?

For a 40% reduction in incorporation fees, and to avoid having to go to the relevant authorities, you can incorporate online through www.portaldocidadao.pt, with registration taking up to two working days.

You first fill in the relevant application form online, choosing from pre-approved documentation (including company name and articles of association, all available online) or submit your own. Do note that the online application must be made within 24 hours of starting your business activity.

A declaration of commencement of the activity then has to be filed with the Tax Administration within 15 days but you can choose to appoint a chartered accountant or choose one from the available list to do it for you. If share capital is involved, you must agree to deposit this within five days from the application.

The company is then registered either immediately or within two working days, depending on whether you choose pre-approved articles of association or submit your own.

To note, you cannot apply online if your company's capital is subscribed to by contributions in kind because the transfer of assets requires an auditor's valuation.

Be aware that to apply online the applicant must have a Portuguese ID card and a digital certificate to access the authorities online. Costs range from €180 using pre-approved articles to €380 for using your own articles, and you can even register a trademark for an additional €100.

WHAT IS 'ON THE SPOT' INCORPORATION AND WHAT ARE THE CONDITIONS TO QUALIFY?

'On-the-spot' is an instant way of incorporating your company at any of the many Desks around the country, with legalities and administrative issues taking as little as an hour and costing €360 if your company name is pre-approved or €435 if you request approval.

Certain conditions must be fulfilled on the day. All shareholders must be present with ID and Taxpayer info, or a relevant representative with a Power of Attorney, and certain documentation must be presented, but this is easily done with pre-approved models available online. There is a list of chartered accountants to choose from as well as articles of association etc previously approved and certified by the Companies Registry and notary services.

Again, a declaration of commencement of the activity then has to be filed with the Tax Administration within 15 days but you can choose your own chartered accountant, one from the pre-approved list or do it yourself. Share capital must be deposited within five business days following the incorporation.

Your company is registered that same day with all the relevant authorities – Tax, Social Security and ACT - and you receive the articles of association certificate, the company access code to its permanent certificate at the Commercial Registry, access to the company's electronic card and its social security number.

To find out more about this and any other aspects of [starting a business in Portugal](#), and how we can help, do visit our platform '[Why Portugal](#)'.