

# INFOMATIVE NOTE

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## REFORMS TO SIMPLIFY THE TREATMENT OF THE PROCEDURES CONCERNING PORTUGUESE COMMERCIAL COMPANIES

This newsletter intends to provide our German speaking constituents, colleagues and friends with a rapid overview of the reforms that recently occurred in Portugal within commercial and corporate law, in respect of the debureaucratization of the treatment of commercial companies.

### I. Reforms

Thus, a substantial range of amendments has been implemented in the last years, with the purpose of simplifying the commercial companies' incorporation, registration, merger, division, etc. procedures. The abolishment of the necessity of the notarial authentication in wide corporate law areas is a considerable relief brought by these reforms. In fact, until the date on which the reforms came into force, the notarial authentication of the statutes was still necessary for the incorporation of a company. Presently, it is sufficient that the statutes are registered at the commercial registry, consequently, a double control by the notary as well as by the commercial registry is not necessary anymore.

Not only was the necessity of the notarial authentication of the company's statutes abolished, but the recourse to a Notary is now voluntary, also in respect of several actions that concern the company, with the exception of those implying transmission of real estate, in which case the notarial authentication is still necessary. Thus, in matters of amendment of the company's statutes, increase of the company's capital, modification of the corporate name, amendment of the company's object, transfer of the registered office, merger, de-merger, dissolution and division of shares, the notarial authentication is now merely optional and only the control by the commercial registry continues to be compulsory.

In order to simplify the company's commercial sector, some books were also abolished in this sector. Only the minute-book is still necessary, however, it does not need to be authenticated by the commercial registry anymore.

In addition to the abolishment of the necessity of the notarial authentication in the mergers and divisions sector, these procedures were also generally simplified and speeded up.

The fact that, meanwhile, it is possible to incorporate a company through the Internet, the so-called "Empresa on-line", also constitutes a great achievement. The condition is that the founders can provide an electronic or digital signature. The advantages of this possibility are obvious. On the one hand, this procedure is cheaper than the incorporation in the traditional way, quicker (within the following two working days) and there is no link to a specific place, the company can be, so to speak, incorporated from home. Another substantial progress is that all actions concerning the companies are electronically published in the Internet and registry extracts – which are submitted to an automatic updating – can easily be downloaded from the Internet and amendments to the registry can be made online. Even when the traditional way to the commercial registry is chosen, it was also simplified by the fact that there is no local jurisdiction anymore, thus, any company can file applications in Portugal before any commercial registry.

Irrespective of that, it is also possible to incorporate a company in Portugal before the commercial registry in only one hour – the so-called "Empresa na Hora", if all necessary conditions are fulfilled. For that purpose, the commercial registry already has drafts of statutes; the company's capital must be paid up to five days after the incorporation and the respective costs amount to approximately 360 euros together with the stamp duty (0,4% of the company's capital). The dissolution and liquidation of a company can also occur

within one hour, provided that all partners agree and have already settled all issues related with the company's assets and liabilities.

All these reforms, that have, in practice, already been successfully accomplished, also pursue, among others, the purpose of attracting foreign investors to Portugal and of simplifying the procedures in such a way that Portugal regains attractiveness and reputation within the national and international scope.

## II. Possibility of authentications by the lawyer

In this connection, there was also, in the last years, an extension of the competence in respect of the powers of the Portuguese lawyers. Thus, the authentications of documents that are indispensable for certain acts of commercial and corporate law, either of registry extracts or of translations – particularly, when dealing with

significant foreign mandates – etc., can be executed by a lawyer licensed in Portugal. This constitutes a considerable simplification of the lawyer's day-to-day work and spares additional journeys to the authorities, costs and, above all, valuable time. Thus, a Portuguese lawyer can, for instance, authenticate himself the documents that are necessary to incorporate a company and certify officially recognized translations, e. g. he can authenticate the conformity of the documents' contents and the identity of the issuer, including the signature and the powers of the undersigned which are linked to them. However, the single authentication of the signature continues to be exclusively reserved for a notary.

## "Portuguese Law Firm of the Year"

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