

# NEWSLEX TTER

## DOING BUSINESS IN PORTUGAL AND POLAND I

CENTRAL AND EASTERN  
EUROPE DESK

PLMJ

A.M.PEREIRA, SÁRAGGA LEAL, OLIVEIRA MARTINS, JÚDICE E ASSOCIADOS  
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*"Best Portuguese Law Firm of the Year"*  
IFLR Awards 2006 & Who's Who Legal Awards 2006  
*"Best Portuguese Tax Firm"*  
International Tax Review - Tax Awards 2006-2008

*"Polish National Law Firm of the Year"*  
Chambers Europe Awards for Excellence 2008

### PORTUGAL TODAY

### POLAND TODAY



Portugal is the western most country of mainland Europe and is bordered by the Atlantic Ocean to the west and south and by Spain to the north and east and also encompasses two autonomous Atlantic regions, notably the Azores and Madeira archipelagos. Portugal has an area of 92,090 km<sup>2</sup> and 10,676,910 inhabitants (2008 estimate). It is a founding member of the OECD and NATO and is member of the European Union since 1986.

Poland has an area of 322,575 km<sup>2</sup> and 38 million inhabitants. It is a member of the OECD and NATO and since 2004 has been a member of the European Union. The 20<sup>th</sup> anniversary of the 1989 political transformation and the adoption of a market economy is approaching.

The Portuguese service sector has increased substantially in recent decades. The same can be said about the industry sector, such as the software and automotive sector. In 2007, agriculture, forestry and fishing generated 2,5% of gross-value added (GVA), in comparison with 24% in 1960, and created 11,6% of jobs, whereas industry, construction, energy and water generated 28,3% of GVA. The service sector accounts for two thirds of the working population and generates almost 70% of the GVA.

During these 20 years and especially since its accession to the European Union, Poland has seen dynamic development economically, socially and politically, confirming it as one of the most important economies in Central Europe.

In addition, the manufacturing sector, too, has undergone significant changes: The traditional manufacturing has changed dramatically moving from high dependence on textiles, footwear, among other industries, to new sectors which are growing dynamically and involve a larger incorporation of technology, such as motor vehicles and components, electronics, pharmaceuticals and new technologies. Portugal's model has been changing from one based on public consumption and public investment to one focused on exports, private investment, and development of the sector.

One of the factors that has contributed to the rapid growth of the Polish economy is the rise in foreign investment. In 2007 alone, foreign investment in Poland was worth around EUR 12 billion. The largest foreign investors in Poland are currently France, USA, Germany, Netherlands, Italy and the United Kingdom. Last year Portugal was the 16<sup>th</sup> largest investor in Poland.

In 2007, Foreign Direct Investment inflows to Portugal corresponded to a gross value of 30 billion Euro, which was the third best figure

The first Portuguese companies started to invest in Poland in 1995 (Millennium BCP, Mota-Engil and Jeronimo Martins). Poland is at the moment the fourth most popular location for Portuguese FDI (foreign direct investment), which hit a peak in 2006 at EUR 400 million. The number of Portuguese companies here has tripled since Poland's accession to the European Union. These companies have invested in many different areas, such as banking, industry, civil construction, real estate, services, retail, recycling and more recently IT and renewable energies. The majority of these companies have achieved excellent results in Poland and many are now considering expanding their businesses to neighbouring countries, such as Ukraine, Bulgaria, Romania and Czech Republic.

In the current financial crisis, however, many people are now asking themselves if Poland will be able to maintain its dynamic market

since 1996. In that year, the main recipients of Foreign Direct Investment (FDI) were manufacturing, real estate and trade, which combined corresponded to 80% of total FDI for 2007.

The major foreign investors (87% in 2007) belong to EU. The Euro area countries accounted for 70% of total FDI in 2006 and 2007. The Top 5 foreign investor in 2007 were all Member States of the EU, namely Germany, the United Kingdom, the Netherlands, Spain and France.

Despite the marginal growth in 2008, which is essentially due to the current worldwide economic /financial crisis, in 2007, the National GDP grew 1,9%. This increase in national GDP was mainly due to an increase of the companies' investments and of the export of goods and services – which nowadays is represented on more than one third to non EU countries, namely emerging economies' countries with which Portugal has been establishing and deepening privileged economical relationships, such as Angola and Brasil. Furthermore, the decrease of the public deficit, from 6% of the GDP in 2005 to 2,5% in 2007 and 2,2% (OECD estimate) for 2008, also gave reasons for optimistic economic forecasts, notwithstanding the current global crisis scenario, which affects all countries worldwide.

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## DOING BUSINESS IN PORTUGAL

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### Basic Legal Aspects

Portugal is a member of the European Union since 1986, being integrated in the Euro-Zone since its implementation. Hence, its national law, notably its business law, is in line with the European applicable common norms, namely those deriving of the freedom of establishment of undertakings' rights. Therefore, in general, according to Portuguese law, there are no restrictions on foreign investment and businesses.

### Conducting Business – Legal Forms

#### 1. Commercial Companies

Doing business in Portugal is mainly carried out by means of two different legal types of commercial entities, which are the (i) private limited liability company – *Sociedade por Quotas* - , and the (ii) public limited liability company/joint stock company - *Sociedade Anónima*.

Portuguese Commercial Companies are governed by the Commercial Companies Code (Código das Sociedades Comerciais), hereinafter CSC.

Subsequent to the CSC, there are five types of commercial companies:

- Limited Liability Company/ Quota Company;
- Public limited liability company;
- General Partnership ;
- Limited Partnership;
- Limited Partnership with Share Capital/ Partnership Limited by Shares

These types of companies differ in their economic significance for Portuguese business life. General Partnerships and both types of Limited Partnerships are not usual in the Portuguese business life, whereas limited liability companies and joint-stock companies are by far the two most common commercial companies in Portugal.

The articles of association of all companies have to be drawn up in written form and the signatures of the partners require to be certified. The incorporation of a company is not mandatory performed before a public notary. All companies are subject to commercial registration (*registo comercial*) at the commercial registry (*Conservatória do Registo Comercial*), the moment of final registration being the moment

development and whether it will continue to be attractive to foreigner investors. Fears remain despite the good results achieved in 2008. According to estimates, economic growth stood at 5.3% and the unemployment rate was 6.4%.

It is obvious that the current global financial crisis is affecting the Polish economy, as with other countries in the world. Therefore, it is almost certain that in 2009 Poland will see a slow-down in growth, though it will not move into negative figures and will be above the European average.

The current economic situation has forced governments to adopt special measures, such as increasing public procurement. Thus over the next few years EUR 43 billion will be invested in infrastructure, e.g. roads, highways, railways and airports. One of the underlying factors here is the need for improved infrastructure ahead of the EURO 2012 European Football Championships to be hosted by Poland and Ukraine.

All these investments will create opportunities in many other sectors.

There are many other factors that make Poland an attractive location for investment, such as European funds. Poland will receive approx. EUR 85 billion from Brussels, including its own contribution derived from public and private funds. The Polish government is currently making a big effort to obtain maximum aid from the European Union through several operating programmes.

in the world in which to invest, particularly for Portuguese companies. Poland may provide a great opportunity for the expansion and internationalisation of Portuguese businesses and may offer a gateway to other markets in Central Eastern Europe.

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## DOING BUSINESS IN POLAND

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### Basic Legal Aspects

The legal system in Poland has become more friendly for both domestic and foreign businesses. Since Poland's accession to the European Union on 1 May 2004, all its laws have been checked for compliance with *acquis communautaire* and all laws currently applicable here fully comply with European standards.

The principal legal act governing business activity in Poland is the Act on the Freedom of Business Activity of 2 July 2004<sup>1</sup>. This Act regulates how business in Poland is started, pursued and closed, and specifies the tasks of public administration in this area. Foreign entrepreneurs from the European Union (EU) and the European Free Trade Association (EFTA) zones belonging to the European Economic Area (EEA) may establish and conduct business on the same rules as those that apply to Polish entrepreneurs.

### Conducting Business – Legal Forms

Under Polish law business can be carried out by both domestic investors and investors from EU and EFTA countries in the following forms:

#### Sole trade (*indywidualna działalność gospodarcza*)

This form is used for the purpose of a small business being operated by a private individual. It is registered in the Business Activity Register kept by the head of a municipality or the mayor of a city.

#### Civil partnership (*spółka cywilna*)

A civil partnership may be established under the regulations of the Civil Code by at least two private individuals or legal entities. An important feature is the lack of legal personality and the inability to act in its own name in the economic exchange of goods and services, therefore a civil partnership itself is not registered in any register, but each partner in a civil partnership is entered in the Business Activity Register individually.

<sup>1</sup> Journal of Laws of 2007, No. 155, Item 1095, as amended.

of the incorporation of the company as a legal entity (Article 5 CSC).

**a) Limited Liability Company / Quota Company (*sociedade por quotas*)**

This is the type adopted by the majority of small and medium sized Portuguese companies. The minimum share capital required is € 5,000,00, being divided into so-called “quotas” and contributions being made in cash or in kind. The minimum par value of one share (*quota*) is € 100, 00. The liability of the shareholders for company’s debts is limited. Portuguese private limited liability companies are, as a rule, incorporated by two or more shareholders.

The corporate structure of a private limited liability company is quite simplified, and besides the general assembly, the majority of these type of companies has, as further mandatory body, one or more directors, who have the power to manage and represent the company. A supervisory board (*conselho fiscal*) may be appointed if provided for in the company’s articles of association and is mandatory if the company meets two of the following goals:

- Total amount of balance of €1.500.000,00;
- Total amount of net sales and other profits of €3.000.000,00;
- An annual average of 50 employees.

Portuguese law also enables the existence of single-shareholder limited liability companies.

The name of a limited liability company needs to contain the word “Limitada” or the abbreviation “Lda” and the words “*sociedade unipessoal*” - or the word “*unipessoal*” in front of the word “*Limitada*” or the abbreviation “*Lda*” - , in case of single-shareholder limited liability companies.

**b) Public limited liability Company (*Sociedade Anónima*)**

Public limited liability’s capital is divided in shares. As in private limited liability companies (and except which concerns the special regime applicable to sole-shareholder public limited companies), the shareholders’ liability is limited – Shareholders’ private assets are not liable towards company’s debts.

The minimum number of shareholders for incorporation is five. However, as stated, under some circumstances, a joint-stock company may be incorporated with a sole shareholder as long as this shareholder is a company.

The minimum capital required is € 50,000 and the minimum nominal value of one share is 0,01 €. Contributions may be made either in cash or in kind.

Unlike private limited liability companies, the corporate structure of public limited liability companies foresees a mandatory audit board, besides the board of directors and general assembly. There are three models of management and supervision foreseen by the law:

- General assembly, board of directors and board of auditors (*conselho fiscal*);
- General assembly and board of directors encompassing an auditing committee and a chartered accountant;
- General assembly, executive board of directors, supervisory board (*conselho geral e de supervisão*) and a chartered accountant.

Instead of a board of directors, a single director might be appointed in companies which capital that does not exceed € 200.000,00.

Subsequent to Council Regulation on the Statute for a European Company (Council Regulation (EC) n°2157/2001) and Decree-Law n° 2/2005, of 4<sup>th</sup> January, there is the possibility to incorporate in Portugal as a European Public Company (SE).

**c) Partnership (*sociedade em nome colectivo*)**

Like all other types of Commercial Companies in Portugal, the General Partnership is a legal entity and can therefore act in its own name, acquiring rights and incurring liabilities on its own behalf. However, besides the company’s assets, the partner’s assets too may be challenged to respond subsidiary before creditors to pay for the

**Registered partnership (*spółka jawna*)**

A registered partnership is a personal partnership established under the regulations of the Code of Commercial Partnerships and Companies<sup>2</sup> to conduct business on a larger scale than a civil partnership. Despite the lack of legal personality, a registered partnership has the right to act in its own name in the economic exchange of goods and services. Each partner has unlimited liability for the partnership’s liabilities.

**Limited partnership (*spółka komandytowa*)**

The main feature of a limited partnership is that at least one partner has unlimited liability for the partnership’s liabilities, while the others are only liable up to the amount specified in the partnership deed. A limited partnership has the right to act in its own name in the economic exchange of goods and services, despite the lack of legal personality. The partnership deed has to be drawn up in the form of a notarial deed.

**Limited joint-stock partnership (*spółka komandytowo-akcyjna*)**

A limited joint-stock partnership is a partnership established by partners that acts in its own name in the economic exchange of goods and services. Its main feature is that at least one partner has unlimited liability for the partnership’s liabilities and at least one partner is a shareholder. Minimum share capital is PLN 50,000. To be valid, the partnership deed must be drawn up in the form of a notarial deed.

**Professional partnership (*spółka partnerska*)**

A professional partnership is a partnership established by partners for the purpose of carrying out a profession. Partners may be attorneys, pharmacists, architects, building engineers, chartered accountants, insurance brokers, tax advisers, auditors, doctors, dentists, veterinary surgeons, notaries, nurses, midwives, legal advisers, patent agents, property valuers, sworn translators or psychologists. The main feature of this form of business is that one partner is not liable for liabilities incurred by the other partners in the course of professional activities. A professional partnership has the right to act in its own name in the economic exchange of goods and services, despite the lack of legal personality.

**Limited liability company (*spółka z ograniczoną odpowiedzialnością – sp. z o.o.*)**

A limited liability company is the most common type of company in Poland. It has separate legal personality, which means that it can acquire rights and incur liabilities on its own behalf. It can be formed by both individuals and legal entities. A limited liability company can also be formed by a single shareholder, but it may not be established solely by another single-member limited liability company.

The articles of association of the company are drawn up in a notarial deed and must give:

- business name of the company and its registered office;
- description of the nature of the business;
- amount of share capital;
- quantity of shares that one shareholder can hold;
- quantity and nominal value of the shares acquired by each of the shareholders;
- duration of the company (if limited).

The minimum initial capital of this type of company is PLN 5,000. The minimum nominal value of one share is PLN 50. Contributions to a limited liability company can be made either in cash or in kind. The corporate bodies of a limited liability company are the

<sup>2</sup> Act of 15 September 2000 (Journal of Laws of 2000, No. 94, Item 1037, as amended).

company's debts.

Contributions to this type of commercial company may be made either in cash or in kind (e.g. labour). The name of a General Partnership must include the name of all, some or one of the partners. In the second and third case, the General Partnership's name must end with a reference that points to the existence of other members (e *Companhia or & C.ia*).

#### **d) Limited Partnership (*Sociedade em Comandita Simples*)**

The Limited Partnership is a legal entity in which at least one member is subject to unlimited personal liability for the partnership's obligations (general partner/ sócio comanditado), unlike the other partners (limited partners/ sócios comanditários), whose liability is limited to the amount of capital subscribed by each of them. The managing function is exercised by the general partners. There is no minimum capital requirement. The Partnership's name must include at least the name of one general partner and the words *em Comandita or & Comandita*.

#### **e) Limited Partnership with Share Capital/ Partnership Limited by Shares (*Sociedade em Comandita por Acções*)**

In the second type of limited partnership there is also a distinction between one or more general partners - with unlimited personal liability and exclusive managing powers - and limited partners, with one important specific characteristic: the capital contributed by the limited partners must be divided in shares, *i.e.*, the limited partners shall be shareholders. The minimum share capital is € 50,000 and Partnership's name shall include at least the name of one general partner and the words *em Comandita por acções or & Comandita por acções*.

### **2. Alternative investment vehicles**

#### **a) Branch office/ Representative office**

Foreign companies that intend to conduct business in the Portuguese market and do not intend to incorporate a fixed corporate structure may do so by means of establishing a branch (*sucursal*). Since branches have no autonomous legal entity, as they are considered an extension of the Foreign Company, this one remains liable for the obligations arising from the agreements executed by its branch office.

The branch requires to be registered at the Commercial Register (*registo comercial*) and its name has to be registered at the National Registry for Legal Entities (*Registo Nacional de Pessoas Colectivas* (RNPC)).

#### **b) A.C.E. (*Agrupamento Complementar de Empresas*) Enterprise Group**

The A.C.E. Enterprise Group (Law n° 4/73, of 4<sup>th</sup> de Junho, as amended by Decree-Law no. 36/2000, of 14<sup>th</sup> March) is a legal entity, which creation was influenced by the business type "*groupement d' intérêt économique*", foreseen and governed by French law.

The A.C.E. Enterprise Group is an entity established by way of a contract entered into between natural persons or pre-existing legal entities, which collaborate - without prejudice to its legal personality - in order to improve their activity and/or their results or achieve a common goal.

As an alternative, business can be carried out in the form of a European Economic Interest Grouping (EEIG). This business form is regulated by Council Regulation CEE no. 2137/85, of 25<sup>th</sup> July, Decree-Law no. 148/90, of 9<sup>th</sup> May and, subsidiary, by the A.C.E. Enterprise Group legal regime (Law no. 4/73, of 4<sup>th</sup> of June).

### **3. Non commercial juridical structures**

#### **a) Civil Company (*sociedade civil*)**

A civil partnership, by the adoption of a Civil Company, may be established under the regulations of the Civil Code by at least two members for the development of an economic activity without a commercial purpose<sup>3</sup>. The civil company is governed by Articles 980-996 of the Portuguese Civil Code. Even though civil companies cannot have a commercial purpose, Portuguese law enables them to adopt a commercial form (Article 1 no. 4 CSC). In this case, the rules

shareholders' meeting and the management board. A supervisory board can be appointed if required by law or if provided for in the company's articles of association. The shareholders of a limited liability company are not liable for the company's liabilities.

#### **Joint-stock company (*spółka akcyjna – S.A.*)**

A joint-stock company differs from a limited liability company in its ability to issue shares which can be publicly trading. Management of a joint-stock company is more formal than that of a limited liability company. The company must be founded by at least one individual or one legal entity. A joint-stock company can also be established by a single stockholder. However, a joint-stock company cannot be established by a limited liability company that is founded by a single shareholder. The founders are obliged to draw up articles of association and by-laws, both in notarial form.

The minimum initial capital is PLN 100,000 and the minimum value of one share is PLN 0,1. Contributions may be made either in cash or in kind. The joint-stock company's corporate bodies are the general meeting, the management board and the supervisory board (obligatory).

All companies and partnerships (except civil partnerships) must be entered in the commercial register of the Polish Court Register (Krajowy Rejestr Sądowy – KRS) kept by selected district courts.

Since Poland's accession to the EU, business can be carried on the form of a European Company and a European Economic Interest Grouping (EEIG).

Foreign businesses can also operate in Poland through a branch office or a representative office.

#### **Branch Office (*oddział*)**

Foreign businesses can operate here by setting up a branch in Poland. A branch office is a part of a foreign company that does not have its own legal personality. The branch office's business can only be conducted within the scope of the parent company's activities. Branch offices need to be entered in the commercial register of the Polish Court Register.

#### **Representative Office (*przedstawicielstwo*)**

The representative office of a foreign business is legally dependent and its can only promote and advertise the foreign company. It must be entered in the Register of Representative Offices of Foreign Businesses kept by the Minister of the Economy.

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governing commercial companies are also applicable to such companies. For instance, civil companies that adopt a commercial form shall file for commercial registration (*registo comercial*) at the local trade registry (*Conservatória do Registo Comercial*).

**b) Professional Partnership**

There are professional partnerships in Portugal that are subject to specific regimes, notably law firms (*sociedades de advogados*; Decree-Law n° 224/04 of 10<sup>th</sup> December), and companies of chartered accountants - *sociedades de revisores oficiais de contas*, regulated by Articles 94-122 of Decree-Law n° 487/99 of 16<sup>th</sup> November 1999 - which are both special types of civil companies.

**c) Associations**

Foreign entities are finally also freely entitled to participate and become members of Portuguese associations, being these civil law and non-profit envisaged entities ruled at Portuguese Civil Code, which are destined to uphold the best interests of its partner's best interests.

<sup>3</sup> Portuguese Law has a broad definition of commercial purpose (including commercial and industrial activities), which leads to the consequence of the Civil Company not being an adequate type of business entity for almost all business activities, as these fall under the category of commercial activity. Examples of civil companies are agricultural companies, handicraft companies and professional partnerships. Companies that have simultaneously a non-commercial and a commercial purpose are considered



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## NEXT EDITION:

In April we will be focusing in the Legal aspects of the Real Estate in Portugal and Poland

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