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Portugal Investing In

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This country-specific Q&A provides an overview of investing in laws and regulations applicable in Portugal.

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Portugal: Investing In

1. Please briefly describe the current investment climate in the country and the average volume of foreign direct investments (by value in US dollars and by deal number) over the last three years.

Despite an 8.4 % contraction in GDP in 2020, the Portuguese economy faced a material growth of 4.9 % in 2021 and 6.7 % in 2022. Nevertheless, Portugal is no exception and has not escaped the consequences of the conflict between Russia and Ukraine, causing energy and food costs to rise and driving inflation, which peaked at 7.4 % in March 2023. Because of that GDP in 2023 reduced to 2,1% and is expected to slow to 1.2% in 2024.

In recent years, there have been government policies aimed at promoting foreign investment in Portugal, such as the development of an efficient logistics structure for storage and transport (ex. the Sines terminal), the investment in telecommunication infrastructures, changes to labor law aimed at making Portugal more competitive for foreign entities to domicile their production capacity in Portugal and, for individual investors, favorable tax regimes and the Golden Visa Residency Programmes. Also, the government created the AICEP – an agency for investment and foreign trade – giving it the responsibility of promoting trade and investment, which includes attracting foreign direct investment, whether through the global promotion of Portuguese brands or the export of goods and services.

Allied to these policies, it is worth notice that in Portugal the skilled and multilingual workforce register a significantly lower cost than in other EU countries, the strategic international relations with Africa and America and the political and social stability of Portugal.

As a result, we can find a business friendly environment in Portugal, with the country being ranked 39th on the World Bank's [Doing Business 2020](#) report and 6th most attractive investment destiny in Europe in 2022.

Over the last 3 years FDI in Portugal increased substantially, with 248 new FDI Projects in 2022 (an increase of 24% from 2021) and a FDI stock on Q4 of 2022 of over 170 billion euros. In 2023, the volume continued to increase with foreign direct investment transactions amounting 2 billion euros in Q1 and Q2 (with a stock of 173 billion euros).

In 2022, the three main sources of FDI were Spain (25.7 billion euros), France (17.2 billion euros) and the United Kingdom (13.4 billion euros). Investments from the United States, with a FDI stock of 8.2 billion euros in 2022, is still a significant number with many American companies setting up business/service centers in Portugal, taking advantage of the cost efficient, talented and multilingual Portuguese workforce.

The ecosystem that has developed around tech start-ups in Portugal is growing, with companies taking advantage of the US start-up ecosystem to obtain funding, know-how, networkings and clients, which ultimately creates new jobs on both sides of the Atlantic.

Sectors with greater demand are software and IT, energy, car and aircraft components industry and real estate.

2. What are the typical forms of Foreign Direct Investments (FDI) in the country: a) greenfield or brownfield projects to build new facilities by foreign companies, b) acquisition of businesses (in asset or stock transactions), c) acquisition of minority interests in existing companies, d) joint ventures, e) other?

Typical forms of FDI in Portugal are acquisition of businesses (for ex. green energy projects), acquisition of assets (for ex. real estate assets) and acquisition of companies.

In terms of number of projects, there has been to date more demand for brownfield projects, rather than greenfield, in particular due to the fact that Portugal is still a highly bureaucratic country and obtaining licensing for projects, construction of industry plants and legalization of a business is time consuming and requires local expertise. However, a sizable number of large investments are greenfield (including Airbus, Embraer, Volkswagen, Peugeot, Continental Mabor and Repsol).

Portugal has also seen other forms of DFI, such as the acquisition of concessions in public infrastructure projects granted by the Portuguese State (for ex. motorway concessions), and the creation of local branches of foreign institutions, commonly used by foreign banks.

Joint ventures are not a common form of FDI.

3. Are foreign investors allowed to own 100% of a domestic company or business? If not, what is the maximum percentage that a foreign investor can own?

Foreign investors are, in general, allowed to own 100% of a domestic company or business.

However, in certain situations, and if the investment is carried out by non-EU entities, restrictions may apply to investments in strategic companies that operate main infrastructures and assets related to national defense and national security or the provision of essential services in the areas of energy, transport and communications.

4. Are foreign investors allowed to invest and hold the same class of stock or other equity securities as domestic shareholders? Is it true for both public and private companies?

Foreign investors are allowed to invest and hold the same class of stock or other equity securities as domestic shareholders.

5. Are domestic businesses organized and managed through domestic companies or primarily offshore companies?

Domestic business is usually organized and managed through domestic companies.

6. What are the forms of domestic companies? Briefly describe the differences. Which form is preferred by domestic shareholders? Which form is preferred by foreign investors/shareholders? What are the reasons for foreign shareholders preferring one form over the other?

The most common forms of companies in Portugal are private limited companies (*sociedades por quotas*, "SQ") and public limited companies (*sociedades anónimas*, "SA").

SQs are designed for small companies with a light structure and their capital is represented by quotas, whereas SAs are used for bigger companies with more sophisticated structures and their capital is represented

by shares. As a result, the main differences relate to the following three aspects:

(i) Amount of minimum share capital

The minimum share capital to incorporate a SQ is €1.00 (one euro). The shareholders may defer payment of the entirety of the capital up to 5 years, provided that at least €1.00 per shareholder is paid up.

The minimum share capital for SAs is €50,000.00 (fifty thousand euros). The shareholders may only defer payment of up to 70% of the share capital up to 5 years.

(ii) Limitation on the sale and acquisition of capital

In general, the transfer of quotas in SQs to a third party is subject to (a) consent of the company, and (b) a pre-emption right or right of first refusal of the other shareholders (unless otherwise set out in the company's by-laws).

The transfer of shares in a SA is free, unless the company's by-laws include a pre-emption right or right of first refusal in favor of the other shareholders and/or the need to obtain the consent of the company.

It should be noted that the shareholders may agree other limitations (including drag/tag along rights and put options) on the transfer of shares, by way of shareholders' agreements. However, in general, these stipulations are only binding upon the relevant shareholders and are not enforceable against third parties.

(iii) corporate governance structure

SQs only require the existence of a management body (*gerência*).

SAs require the existence of a management body (the "board of directors", or "executive board of directors") and a statutory auditor and may have a supervisory body (the "supervisory board", or "audit committee", or "general and supervisory board").

It should be noted that in certain cases it is mandatory that companies take the form of SA (for example, credit and financial companies).

Which form is preferred by domestic shareholders?

For medium-sized investments – up to 5 million euros – involving up to 50 employees, domestic shareholders prefer to incorporate SQs. In other cases, the preferred form is a SA.

Which form is preferred by foreign investors/shareholders?

We refer to our response to question 7.

7. What are the requirements for forming a company? Which governmental entities have to give approvals? What is the process for forming/incorporating a domestic company? What is a required capitalization for forming/incorporating a company? How long does it take to form a domestic company? How many shareholders is the company required to have? Is the list of shareholders publicly available?

In addition to the minimum capital requirements set out in our response to question 6, there are certain sectors of investment which require the approval of administrative or governmental authorities, such as:

- Banco de Portugal, S.A., for credit and financial institutions;
- Infarmed I.P., for pharmaceutical companies;
- Comissão do Mercado de Valores Mobiliários, for Investment companies;
- Autoridade de Supervisão de Seguros e Fundos de Pensões, for insurance companies;
- Autoridade Nacional de Comunicações, for telecoms companies;
- Entidade Reguladora dos Serviços Energéticos, for companies in the energy sector;
- The Portuguese government for concessions of public services and infrastructures.

What is the process for forming/incorporating a domestic company?

To incorporate a company in Portugal, the following steps must be followed:

(i) Obtain a Portuguese tax identification number for the shareholders and directors (directors do not require to be resident in Portugal); (ii) Obtain the company's name at the National Registry of Legal Persons; (iii) Execute the incorporation agreement (which includes the by-laws of the company); (iv) Obtain a statutory auditor's report, if contributions of shareholders to the capital of the company are asset based (as opposed to contributions in cash); (v) Obtain a declaration of acceptance by the appointed members of the corporate bodies (e.g., directors/auditors) relating to their mandate; (vi) Register the company with the Commercial Registry Office; (vii)

Open a bank account in Portugal in the name of the company to deposit the amount of the share capital; (viii) Appointment by the company of a certified accountant (técnico oficial de contas or TOC) to be responsible for the relationship between the company and the Tax Authorities and Social Security; (ix) Register the company with the tax and social security authorities; (x) Register the company at the Central Registry of Ultimate Beneficial Owners.

What is a required capitalization for forming/incorporating a company?

Please see our response to question 6 above.

Certain specific companies require greater share capital, such as credit and financial institutions.

How long does it take to form a domestic company?

In general, the procedure to incorporate an unregulated company in Portugal takes 2 weeks.

How many shareholders is the company required to have?

SQs may have only one shareholder (either a corporate entity or a person).

SAs, at the time of incorporation, must have at least 5 shareholders (corporate entities or persons), or only 1 shareholder (if such shareholder is a corporate entity).

Is the list of shareholders publicly available?

The list of shareholders publicly available for SQs, but not for SAs.

8. What are the requirements and necessary governmental approvals for a foreign investor acquiring shares in a private company? What about for an acquisition of assets?

No specific governmental approvals are required for a foreign investor to acquire shares in a Portuguese company, unless in restricted sectors, for instance, defense, where the Government may oppose the acquisition by non-EU entities (please see response to question 3. above).

9. Does a foreign investor need approval to acquire shares in a public company on a domestic stock market? What about acquiring shares of a public company in a direct (private)

transaction from another shareholder?

No specific governmental approvals are required for a foreign investor to acquire shares in a Portuguese company or assets unless such investment relates to a restricted sector (please see response to question 3. above).

10. Is there a requirement for a mandatory tender offer if an investor acquired a certain percentage of shares of a public company?

Under the Portuguese Stock Market Code, if an entity exceeds, directly or indirectly, one third or half of the voting rights corresponding to the share capital of a public company (a company that issued shares admitted to trading on a regulated market, the "Target"), such entity must immediately launch a public offer for the acquisition of the entire share capital of the Target, as well as other securities conferring the right to subscribe or acquire shares in the Target.

11. What is the approval process for building a new facility in the country (in a greenfield or brownfield project)?

Building of a new facility in Portugal requires, in general terms, the following licenses:

(i) Industrial license or prior communication (depends on the specific facility); (ii) Construction license or prior communication when located in an area covered by an allotment license or urban detailed plan; (iii) Environmental impact assessment (depends on the specific facility); (iv) Using license.

In addition, regulated activities will require other regulatory approvals as set out in our response to question 9 above.

12. Can an investor do a transaction in the country in any currency or only in domestic currency? a) Is there an approval requirement (e.g. through Central Bank or another governmental agency) to use foreign currency in the country to pay: i. in an acquisition, or, ii. to pay to contractors, or, iii. to pay salaries of employees? b) Is there a limit on the amount of foreign currency in any transaction or series of

related transactions? i. Is there an approval requirement and a limit on how much foreign currency a foreign investor can transfer into the country? ii. Is there an approval requirement and a limit on how much domestic currency a foreign investor can buy in the country? iii. Can an investor buy domestic currency outside of the country and transfer it into the country to pay for an acquisition or to third parties for goods or services or to pay salaries of employees?

No restrictions are applicable in Portugal as regards applicable currency in private transactions.

Is there an approval requirement (e.g. through Central Bank or another governmental agency) to use foreign currency in the country to pay:

- in an acquisition, or
- to pay to contractors, or
- to pay salaries of employees?

No requirements are applicable. Therefore, we believe that the payment of price relating to the acquisition of a company or an asset, or payment to a contractor, if made between private entities, may be effected in a currency other than the Euro.

As regards payment to employees, Portuguese law does not contain a specific rule on currency. Common practice is that payments to employees are effected in Euros, as all employees' obligations vis a vis tax authorities and social security must be effected in that currency.

Is there a limit on the amount of foreign currency in any transaction or series of related transactions?

- Is there an approval requirement and a limit on how much foreign currency a foreign investor can transfer into the country?
- Is there an approval requirement and a limit on how much domestic currency a foreign investor can buy in the country?
- Can an investor buy domestic currency outside of the country and transfer it into the country to pay for an acquisition or to third parties for goods or services or to pay salaries of employees?

Not Applicable.

13. Are there approval requirements for a foreign

investor for transferring domestic currency or foreign currency out of the country? Whose approval is required? How long does it take to get the approval? Are there limitations on the amount of foreign or domestic currency that can be transferred out of the country? Is the approval required for each transfer or can it be granted for all future transfers?

No approval requirements are applicable.

14. Is there a tax or duty on foreign currency conversion?

There is stamp duty of 4% over the commissions charged by the financial intermediary.

15. Is there a tax or duty on bringing foreign or domestic currency into the country?

There is no tax on bringing foreign or domestic currency into Portugal.

Between an EU country and a non-EU country, from €10.000,00 in cash (or its equivalent in other currencies), there is an obligation to declare it to the customs authorities in all EU countries.

16. Is there a difference in tax treatment between acquisition of assets or shares (e.g. a stamp duty)?

The acquisition of real estate assets in Portugal is subject to municipal property transfer tax (IMT) and stamp duty.

The acquisition of movable assets and services is subject to VAT.

The acquisition of shares is not subject to taxation.

17. When is a stamp duty required to be paid?

Stamp duty is applicable on acquisition of property, granting of financing and creation of guarantees. Additionally commissions charged by banks/financial intermediaries are also subject to stamp duty.

18. Are shares in private domestic companies

easily transferable? Can the shares be held outside of the home jurisdiction? What approval does a foreign investor need to transfer shares to another foreign or domestic shareholder? Are changes in shareholding publicly reported or publicly available?

The transfer of quotas in a SQ, must be made by a written agreement and registered with the Commercial Registry office.

The transfer of shares in a SA must be made by a written agreement and endorsed in the share certificates or, if the shares are in book – entry form, in the relevant share accounts, and registered in the share registry book of the company.

Can the shares be held outside of the home jurisdiction?

Yes.

What approval does a foreign investor need to transfer shares to another foreign or domestic shareholder?

No specific approvals are applicable to foreign investors.

Are changes in shareholding publicly reported or publicly available?

Changes in shareholdings of SQs are referred in the commercial registry certificate of the SQ. Changes in SA are not publicly reported.

19. Is there a mandatory FDI filing? With which agency is it required to be made? How long does it take to obtain an FDI approval? Under what circumstances is the mandatory FDI filing required to be made? If a mandatory filing is not required, can a transaction be reviewed by a governmental authority and be blocked? If a transaction is outside of the home jurisdiction (e.g. a global transaction where shares of a foreign incorporated parent company are being bought by another foreign company, but the parent company that's been acquired has a subsidiary in your jurisdiction), could such a transaction trigger a mandatory FDI filing in your jurisdiction? Can a governmental authority in such a transaction prohibit the indirect transfer of control of the subsidiary?

In Portugal there is no mandatory FDI filing.

How long does it take to obtain an FDI approval?

Not applicable.

If a mandatory filing is not required, can a transaction be reviewed by a governmental authority and be blocked?

FDI filling is not required. However, if the target company carries out a regulated activity, approval by the relevant Portuguese regulator may be required (please see response to question 9 above).

Additionally, clearance from the Competition Authorities may also be required.

If a transaction is outside of the home jurisdiction (e.g. a global transaction where shares of a foreign incorporated parent company are being bought by another foreign company, but the parent company that's been acquired has a subsidiary in your jurisdiction), could such a transaction trigger a mandatory FDI filing in your jurisdiction?

FDI filling is not required. However, if the Portuguese subsidiary is a regulated company, approval by the relevant Portuguese regulator may be required (please see response to question 9 above).

Additionally, clearance from the Competition Authorities may also be required.

Can a governmental authority in such a transaction prohibit the indirect transfer of control of the subsidiary?

Yes, it can.

20. What are typical exit transactions for foreign companies?

Sale of companies.

21. Do private companies prefer to pursue an IPO? i. on a domestic stock market, or ii. on a foreign stock market? iii. If foreign, which one?

The Portuguese Equity Capital Markets has registered extremely low activity in recent years.

In the last ten years there have only been six IPOs in Portugal, the last being in 2021 by Greenvolt and a number of IPOs have aborted due to lack of interest from investors.

There are news about the preparation of two IPOs for 2024, (i) Novo Banco (credit institution) and (ii) Luz Saúde (health sector), which are expected to be realized late 2024/early 2025.

There are, however, initiatives of the Portuguese Stock Market Commission ("CMVM") to change this lack of activity and promote Portuguese companies entering the market. On 22 November 2023, the CMVM launched the project "Sandbox Market4Growth", which aims at offering to companies highly skilled and personalized assistance regarding the possibility of using both the equity and the debt capital markets. For further information, please use the following link:

<https://www.cmvm.pt/PInstitucional/Content?Input=0E4F13D691BAF3C7E104177AC36FC2DBD35B8539A20188DE007A9A2FDECCED58>

22. Do M&A/Investment/JV agreements typically provide for dispute resolution in domestic courts or through international arbitration?

Arbitration under Portuguese applicable law (*Lei de Arbitragem Voluntária*) and International Arbitration is commonly used.

23. How long does a typical contract dispute case take in domestic courts for a final resolution?

Between 8 to 10 years.

24. Are domestic courts reliable in enforcing foreign investors rights under agreements and under the law?

Yes.

25. Are there instances of abuse of foreign investors? How are cases of investor abuse handled?

The typical case of investor abuse is insider trading and market manipulation. Both are deemed market crimes under Portuguese law.

The entity that is responsible for supervising the Portuguese capital market – CMVM – has the required powers to identify, investigate and apply sanctions or other administrative measures in the case of these two

offences. Additionally criminal proceedings may be filed by the Public Ministry.

There are occasional cases of these crimes, although no foreign investors have been involved.

26. Are international arbitral awards recognized and enforced in your country?

Any final judgement obtained in a court of competent jurisdiction will be enforced by the courts of Portugal under the conditions set forth in Regulation (EC) no. 1215/2012 of the European Parliament and the Council of 12 December 2012 or, if and when such conventions are not applicable, will be enforced by the courts of Portugal without re-examination of the merits of the case provided that:

- There are no doubts about the authenticity or substance of the document in relation to which the judgement is given, and the judgement is final and conclusive;
- Any conditions imposed by the law of the country in which it was given, which are conditions to its enforcement in the Portuguese courts, have been complied with;
- It was issued by a foreign court the jurisdiction

of which has not been claimed as fraudulent and does not relate to matters subject to the exclusive competence of the Portuguese courts;

- It would not be adjudged *res judicata* by the Portuguese courts;
- The defendant was duly served for the action in accordance with the law of the country in which the judgement was issued and that the principles of the right to a fair trial (*principio do contraditório*) and equal treatment of the parties have been complied with;
- It does not contravene the principles of Portuguese public order.

27. Are there foreign investment protection treaties in place between your country and major other countries?

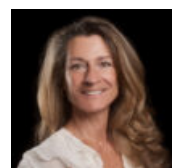
In addition to the European framework in force between all member states, Portugal is a party to various agreements for the protection of foreign investment with other states. Please see list in the following link:

<https://www.dgae.gov.pt/servicos/comercio-internacional-e-relacoes-internacionais/acordos-de-protecao-de-investimento.aspx>

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