

Startups & SMEs Legal Guide

**Start
innovation
team**



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ENG

Hello,

Startinnovation Team brings you the new Startups & SMEs Legal Guide.

Do you have an idea? A project? Where to begin? What must be safeguarded from the start? How to hire? How to finance the enterprise? How to implement an international expansion? There are many questions that arise when you want to start a business. And there are many other questions which do not arise when they should have.

The Startinnovation Team wants this guide to help you focus on your project by addressing questions which you should always bear in mind, safeguarding essential legal matters and helping you ask other questions which will be paramount for the success of your business.

Additionally, please do not hesitate to contact us if you have an idea, a project or just a question.

We are here because of you and for you.

**See you soon,
Startinnovation Team**

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1

Starting Point

I have an innovative idea and want to start a business.

The growth and success of a Startup rely on an innovative product and a strong marketing and sales component. If the importance of the latter is unquestionable, a sound legal planning is just as relevant.

It is fundamental to define an operating strategy that is clear about the risks of your business, the contractual relationships to be implemented and the feasibility of your product.

1.1 What is the first step to incorporate a company?

> Request a certificate of admissibility of corporate name: Identify the desired company name (there is a list of available names in the *Registo Nacional de Pessoas Coletivas - RNPC*).

1.2 Draft the company's articles of association:

- > Choose the type of business entity (private or public limited liability company);
- > Identify the founding partners/shareholders and their respective equity;
- > Choose the business activities to be carried out (corporate purpose);
- > Indicate the registered office;
- > Appoint manager/director.

2

Corporate Structure

With regards to the corporate structure, contractual relationships and other medium/long term matters, there are some questions that should be addressed from the start:

Shareholders agreement:

- > Shareholders' relationships and interests;
- > How corporate bodies take decisions (by consensus or by observing predetermined conditions that shareholders must abide to);
- > Exit strategies, winding-up, capital increases and dilution;
- > Funding by shareholders.

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Back Office Support and Tax Compliance

After incorporating the company, it is mandatory to appoint a certified public accountant to ensure that all tax liabilities and accounting obligations are fulfilled. You should also have a management schedule for that purpose.

Main tax obligations for your reference:

VAT:

- > Monthly basis - the declaration must be submitted until the 10th day of the following second month;
- > Quarterly basis - the declaration must be submitted until the 15th day of the second month following the end of the quarter, for example, February 15/May 15/August 15/November 15.

IRS: The monthly declaration of remunerations must be submitted until the 10th of each month reporting income earned and wage tax withheld, as well as compulsory deductions for social protection schemes and the legal subsystems of health and contributions, in relation to the preceding month.

Withholding tax: Pay until the 20th of the following month.

Social Security: Submit the declaration of remuneration until the 10th of each month.

IRC (CIT): Submit the annual corporate income tax return, Model 22, until May 31 of each year.

IES: Until July 15 of each year, submit online the “Simplified Business Information - IES / Annual Declaration” with annexes. The reported data relates to the preceding year.

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Tax Incentives for Startups & SMEs

Tax Incentives for Startups & SMEs

4.1 Tax Regime for Investment Support - RFAI

- > Provides for a tax deduction under the corporate tax (IRC) of a certain percentage which varies depending on the case;
- > Grants tax exemptions or reductions on Municipal Real Estate Tax (IMI) and Municipal Tax on Real Estate Transfer (IMT) and Stamp Duty exemptions;
- > In order to benefit from this regime, the company must comply with some specific legal requirements.

4.2 Tax Benefit for the Reinvestment of Retained Profits - DLRR

- > For SMEs carrying out commercial, industrial or agricultural activities;
- > Provides for a tax deduction under the corporate tax (IRC) of retained profits that are reinvested.

4.3 R&D Tax Incentives System - SIFIDE II

- > For SMEs carrying out commercial, industrial or agricultural activities;
- > Provides for a tax deduction, under certain conditions, of eligible expenditure on research and development.

4.4 Agreed share capital remuneration

- > Provides for a tax deduction corresponding to 5% of the subscriptions of equity in cash by the shareholders in company incorporations or share capital increases.

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Intellectual Property Protection

There are several questions arising before entering the market: How do I protect my innovative idea or my product to avoid others from using them? What about the trademark?

5.1 Registration of Intellectual Property (name, trademark, patent, design, innovation):

- > In Portugal, registration is made with the National Institute of Industrial Property (INPI) and there are geographical, class and time limits for each type of registration;
- > It is possible to apply for a national or European community registration;
- > Both the ownership of the 'idea' and the exclusivity of its use are protected by registration.

5.2 Covenants to be included in employment agreements:

- > Covenants relating to the ownership of intellectual property in employment agreements and with third parties;
- > Confidentiality and non-compete agreements;
- > Penalty clauses setting forth consequences for breach.

5.3 Agreements to be made with investors or others who have access to intellectual property:

- > Non Disclosure Agreements (NDA) with penalty clauses setting forth consequences for breach.

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Employment: Employee x Independent Contractor

When hiring staff, it is important to be aware of the situations under which you are obliged to enter into an employment contract or if you may hire independent contractors. For that purpose, you should be familiar with the inherent characteristics of each type.

6.1 Employment contract:

- > Employer has both management and disciplinary powers;
- > Economic dependency of the employee;
- > Work is performed on a regular basis;
- > Frequency of payment for the remuneration of work.

6.2 Provision of services:

- > Autonomy of the independent contractor;
- > Provision of services is made more sporadically - it is not compulsory to set working hours;
- > There is no obligation to pay a minimum wage;
- > Work does not have to be carried out in a place belonging to its beneficiary.

Note: It is important to identify if the work relations in place are closer to those of an employment contract in order to avoid risks and liabilities.

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Contractual and Consumer Relations

Some aspects to take into account in relations with suppliers, users and consumers.

Contractual relationships:

- > Be aware and comply with Consumer Laws;
- > Model contract considering the intended activity(ies);
- > Terms and Conditions for websites and applications;
- > Privacy Policy for websites and applications.

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What are the compulsory insurances for my business?

There is not a universal list for all companies. It is up to each company to decide which insurance policies are more appropriate to their specific case.

Notwithstanding, there are insurances which your company must have. Which ones?

- > Workplace Accident Insurance - applicable to all professions;
- > Civil Liability Insurance - the insurer covers the risk of the insured having to indemnify a third party for damages caused;
- > Fire Insurance - for all real estate you own.

Note: Additionally, specific insurances vary according to the corporate purpose of the company and applicable insurance should therefore be analysed on a case by case basis.

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Internationalization

**What is the goal for going international?
Access other consumer markets, expand
the cooperation network, access to
raw materials and human resources
or technological skills?**

9.1 Strategy: What are the available models?

- > Export (direct or indirect);
- > Different forms of contractual relationships (for example, inter alia, license, partnership, distribution, service and subcontracting agreements);
- > Direct investment (through the acquisition of an existing company or green field investment).

9.2 Each model has advantages and disadvantages ...

- > Export provides for exploiting the international market with low operational costs, lower risk and potential financial return;
- > The model of contractual relationships provides for a reduction of risk and initial investment by partnering up with local companies, but it is only a path and not an end in itself;
- > Direct investment requires a feasibility study which takes into consideration the political, legal, economic, social and cultural atmosphere of the country of destination.

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Startup Money

Financing is an integral part of starting a business. Which types of financing are there and which should I pick?

10.1 Debt financing:

- > Bank loan, to be repaid in a fixed period of time plus interest;
- > Advantage: It is a loan - as such, once repaid, the relationship between the borrower and the lender ends. The bank has no control over your business or company;
- > Disadvantage: Payment schedules are often over costly for those taking the first steps in entrepreneurship and include the provision of collateral.

10.2. Convertible debt and Convertible notes:

- > Convertible debt: It is a loan that, on or before the date of maturity, gives the lender the choice of acquiring equity under pre-negotiated amount and conditions;
- > Convertible notes: It is a short term loan convertible into equity (shares).

10.3 Equity financing:

- > Investment made in return for a percentage of the company's share capital;
- > Advantage: The investment is made at the investor's own risk and the entrepreneur is under no obligation to pay it back. It is possible to find an investor with a lot of know how and a good network;
- > Disadvantage: The entrepreneur must give the investor a percentage in the company. The investor will be entitled to receive company profits (many times preferential) and will also have a saying in the business decisions of the company (casting vote).

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Preparing to receive Investment

The investor is a key figure for many Startups and SMEs, but it is fundamental to have a solid base capable not only of attracting investors, but also of putting their money to good use.

There are two crucial steps in this process: pre-due diligence and due diligence.

11.1 Pre-due diligence:

- > It is the number of diligences that entrepreneurs must carry out before their company is audited by investors;
- > What diligences are those? Organizing all documents since the company's incorporation (minutes, intellectual property registrations, company books, update articles of association), financial and accounting files (financial statements, remedy any current liabilities), and even contracts and employment relationships.

11.2 Due diligence:

- > An audit of the target company carried out by the investor. The investor will provide a list with documents, information and questions which need to be made available and answered for the investor to proceed with the audit;
- > Common mistakes: outdated company books, unregistered entry and exit of shareholders, lack of registration of corporate documents in the companies registrar, lack of registration of trademark and/or patent, employment and tax debts, among many others.



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