

Rules and requirements on submitting annual accounts for companies registered in Portugal and consequences of late filing

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The Portuguese Commercial Companies Code lays down the rules for the approval of annual accounts and the Portuguese Register of Commercial Companies Code provides the duty to file accounts and the manner in which such must be filed with the Commercial Companies Registrar, as well as the public disclosure obligations related to the same in the Ministry of Justice's official website.

In this newsletter we will focus on the most commonly used forms of companies and governing structures, *i.e.* non-listed (i) private limited company (*sociedade por quotas*) with one or more directors organized or not collegially and an official accounts certifier¹ ("ROC") and (ii) public limited company (*sociedade anónima*) adopting the so-called monist model, with a board of directors ("BoD") and a sole auditor (*fiscal único*) which must be a ROC².

1. Duty to prepare and approve the accounts

First stage. Directors' approval

For each financial year, directors are required by law to prepare:

- i) **accounts** in accordance with applicable accounting rules that provide true, complete and accurate information on the company; and,

¹ As a rule, private limited liability companies do not have a supervision body unless the appointment of such a corporate body is set forth in their articles of association, in which case said body is or must always include a ROC (please refer to note 2 below). In any case, private limited liability companies are required to appoint a ROC to legally certify their financial statements if at least two of the following limits over two consecutive years are exceeded: (i) balance sheet totalling EUR 1,500,000.00; (ii) net sales and other profits totalling EUR 3,000,000.00; and/or (iii) an average of 50 employees during the financial year.

² Public limited liability companies must always appoint a supervision body. Companies adopting the monist model may opt for one of the following types of supervision: (i) by a sole auditor (*fiscal único*) which must always be a ROC, (ii) by a supervisory board (*conselho fiscal*) with a ROC as an internal member, or (iii) a supervisory board and an independent ROC (in certain circumstances option (iii) would be mandatory).

- ii) a **directors' report**, that must have the minimum content set out in the Portuguese Commercial Companies Code, including a true and fair view of the company's affairs, course of business and standing, together with a description of the principal risks and uncertainties that it faces, the company's likely future outlook and a proposal to allocate the year-end results.

In companies with their directors organised as a collegial body, the accounts and directors' report must be approved at a properly-convened BoD meeting. Decisions require the attendance (in person or by proxy) of the majority of the BoD members and will be adopted by a simple majority, except if the articles provide for a greater quorum or majority.

Unlike other jurisdictions, where upon the BoD's approval the accounts may be signed by one single director on behalf of the BoD, as is the case of the UK, under Portuguese law, following the BoD's approval, the accounts must be signed in wet ink by all directors. However, a director that voted against the BoD's resolution, may refuse to sign the accounts, provided that: (a) he/she explains the reasons of the refusal in writing and (b) presents such reasons to the shareholders at the general meeting of shareholders ("**GMS**") that will approve the accounts.

Second stage. Certified Statement of Accounts ("certificação legal de contas")

Following the BoD's approval, the directors must - 30 days prior to the above-mentioned GMS - present the accounts and directors' report to the ROC. The ROC shall, taking into consideration the directors' report, complete a review of the accounts and issue a certified statement thereof. The certified statement of accounts includes the ROC's opinion on the director's report and annual accounts³.

Third stage. Shareholders' approval

Upon completion of the above and within the first quarter or the five months (for companies with consolidated accounts) following the financial year-end, the directors must formally call the annual ordinary GMS to approve the accounts.

Directors are under the duty to make the accounts and supporting documentation available to the shareholders, at the company's registered office and during working hours, within a period of 15 days prior to the GMS (review period). The shareholders can also request the delivery of the accounts and supporting documentation by registered or electronic mail. If applicable the documents should also be available at the company's website.

By law, shareholders have the following rights:

- i) during the review period, to inspect the accounts;
- ii) at the GMS, to receive true, complete and clear information, which enables the shareholder to form a well-founded opinion on the matters which are to be discussed;

³ Where the supervision of the company is carried out by a supervisory board (*conselho fiscal*), this body shall also issue a statement report with its general assessment on the director's report, annual accounts and the Legal Certification of Accounts.

(ii) during the review period and during the GMS, to require the chairman of the GMS to be accompanied by an auditor or other expert.

2. Filing and public disclosure of the accounts

For each financial year, every company must submit information on the annual accounts by electronically filling an official form together with the company's annual tax return. The time limit for filing the information on the accounts is the same as that to submit the tax return, which is currently the 15th day of the 7th month following the term of the relevant financial year.

3. Consequences of late filing

It is a fundamental requirement that the accounts are regularly approved as laid out above, which means that the tax returns and accounts should not be submitted without previously obtaining formal approval of the accounts by the shareholder(s).

The law sets out several consequences for late filing which may be summarised as: (i) inability to register certain acts relating to the company; (ii) administrative winding up; and (iii) fines.

Inability to register certain acts relating to the company

A company in default of filing the accounts shall be barred from registering events regarding the company, with certain exceptions, including, without limitation, the appointment and removal of members of the BoD and of the supervision body and circumstances that may affect the free disposition of shares.

Administrative winding up

A company that for 2 (two) consecutive years fails to file the accounts and its income tax declaration will be subject to administrative winding up. The process is initiated by the Register of Commercial Companies on its own initiative. The administrative process may be terminated if the company proceeds to file the accounts before the process is concluded.

Fines

Fines may be applicable in an amount equal to twice the amount of the administrative filing fee.

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