

V – Steps to creating your company

1. Legal Aspects - Formal

The choice of a legal form for your company will determine how it will function from the very beginning. This decision will have implications for the entrepreneur and the future of the business, as it is a decision made according to the strengths of the future company, keeping in mind the features most likely to adapt to the expectations of development.

So the first decision the entrepreneur should take is related to the choice whether to build a company on his/her own, or in partnership with someone else.

“Do I *develop a company on my own?* ”

	Sole Trader	Limited Liability Single Shareholder Company (EIRL)	Sole Trader Shareholder Company
CONCEPT	An individual who uses his/her private property to operate his/her business.	Underlies the constitution of an autonomous asset or a special allocation to the establishment through which individuals operate his/her business. No legal personality is recognised.	A sole trader which has one individual or legal person who holds the whole of the share capital. The rules applying to private limited companies apply to these firms, provided the company doesn't presuppose the plurality of the shareholders.
LIABILITY	Unlimited liability towards creditor, for debts incurred in the exercise of his/her activity, with all the property being part of his/her assets.	Only the property allocated to the EIRL is used to meet debts incurred during the company's operations.	The member's liability is restricted to the amount of his/her share capital.
CAPITAL	The law does not establish an obligatory minimum capital.	Minimum 5.000 (five thousand) euros, it may be in cash, goods or rights which can be seized. The cash part must be at least 2/3 of the minimum capital (3333.33 euros).	The share capital must be at least 5.000 (five thousand) euros.
NAME	The name may be composed of the entrepreneur's full or abbreviated name, plus a nickname for the business to be better known in the business world, referring to the nature of the business. Only one name can be adopted.	The name is composed of the full or abbreviated name of the owner of the EIRL, with or without the addition of a reference to the business area. The name must include the formula "Estabelecimento Individual de Responsabilidade Limitada" or "EIRL".	The name of the company must include the expression "sociedade unipessoal" or "unipessoal", before the word "Limitada" or abbreviation "Lda".

Do I develop a company in partnership?

Type	Concept	Liability	Capital	Name
<p>Private Limited Company Minimum 2 members</p>	<p>Unlimited liability company</p>	<p>Members jointly liable for all payments agreed in the social contract.</p>	<p>> = € 5.000 divided into share worth minimum € 100.</p>	<p><u>Name</u>, full or abbreviated name of all, some or one of the members; <u>Name/designation</u>, composed of an expression alluding to the business area; <u>Mixed name</u>, a combination of both the above; must be followed by " Limitada" in full or the short form "Lda".</p>
<p>Public Limited Company Minimum 5 members</p>	<p>Pure model of a corporate company, based not people (members) but on his/her capital holds.</p>	<p>The liability of each member is restricted to the worth of the shares he/she holds, creditors can only be paid with company assets.</p>	<p>> = € 50 000 divided into shares with the same nominal value, which cannot be less than € 0.01. Shares may be publicly or privately subscribed.</p>	<p><u>Name</u>, full or abbreviated name of all, some or one of the members; <u>Name/designation</u>, composed of an expression alluding to the business area; <u>Mixed name</u>, a combination of name of one or more members and the above-mentioned expression; must be followed by "Sociedade Anónima" in full or in the short form "SA".</p>
<p>General Partnership Company Minimum 2 members</p>	<p>Company with unlimited liability, members are liable without limitation and subsidiarily in relation to the company and jointly with one another, to the company's creditors.</p>	<p><u>Unlimited</u> members are liable individually through their payments and their personal property and assets; <u>Subsidiarily</u> – only in the absence or insufficiency of company assets, once the company's capital has been committed; <u>Jointly</u> – each member is liable for the full performance of the company's obligations, and may be sued individually by the firm's creditors.</p>	<p>The law does not fix a minimum compulsory amount, since the members have unlimited liability for the company's obligations.</p>	<p>A name composed of the full or abbreviated name, the surname or name of all, some or (at least) one of the members, must be followed by "e Companhia" in full, or shortened to " e Cia", or any other form that indicates there is more than one member, e.g. "e Irmãos", in full, or abbreviated.</p>

Type	Concept	Liability	Capital	Name
<p>Co-partnership Company</p> <p>Minimum no. of members:</p> <p>5 – Limited by Shares</p> <p>2- Limited</p>	<p>Mixed liability company since there are some limited partners (<i>comanditários</i>), who contribute with capital and some partners with unlimited liability (<i>comanditados</i>), who contribute with property/assets or services and who effectively run the company.</p> <p>They may be limited or have shares. In the first case the capital is not represented by shares.</p> <p>In the second, only the shareholdings of the limited partners are represented by shares.</p>	<p>Each limited partner is liable only to the extent of his/her payment. Unlimited partners are liable for the debts of the company, without limitation and jointly, in the same terms as the members of a general partnership company.</p>	<p>Not applicable.</p>	<p>The name must be made up of the full or abbreviated name of at least one of the partners with unlimited liability and must be followed by "em Comandita" or "& Comandita", in the case of Limited Co-partnerships, and by "em Comandita por Acções" or "& Comandita por Acções", for Limited by Shares Co-partnerships.</p>
<p>Public Limited European Company</p>	<p>Has the form of a corporate enterprise whose capital is represented by shares; it has a legal personality whereby its statutory head office is in a Member State and it is registered in the Member State where this head office is located.</p>	<p>Each shareholder is liable only up to the amount of the capital he/she has subscribed.</p>	<p>The subscribed capital must be at least, € 120.000.</p>	<p>The name of a public limited European company must contain, at the end, the letters "SE". Only public limited European companies may include this abbreviation.</p>

2. Legal Constitution of the Company in 12 steps

1 – Choose the type of company you are going to set up

2 – Identify the firm – choose the name

3 – Apply for a Validation Certificate for the name or legal person name and a Provisional Company Identification Card.

- Competent entity: *RNPC – Registo Nacional de Pessoas Colectivas* (National Registry of Companies); through ANJE, which has a protocol with the RNPC; through the *Centro de Formalidades e Empresas* (Business Formality Centre) (CFE) – IAPMEI
- Documents required: - Form '*Modelo 11*', in duplicate and Form '*Modelo 10*'
- Note: The application must suggest three names for the company, in order of preference; the names have to be original (they may not be the same or liable to confusion with any others already registered). The object of the company and the local government where the company's registered office is located must also be stated.
- Expiry date of the Certificate: 180 days for registration purposes, valid for 1 year after deed has been signed.

4 – Drawing up of the company's statutes

5 – According to the share capital, entry deposit has to be made into a bank account opened in the name of the future company.

6 – Scheduling the date for signing the public deed of incorporation

- Competent entity: Notary Office or through the Business Formality Centre - IAPMEI
- Documents required: Certificate of validation of the name; Provisional Company Identity Card; Photocopies of the parties identity documents individual person: ID and TIN – legal person: Certificate from the *Conservatória do Registo Comercial* (Commercial Registry Office), Legal Person card; ID and Taxpayer Identity Card of whoever binds the company; Report from a ROC (chartered accountant) for the

deposits in goods other than cash; should a deposit be made in property, a proof of payment of SISA (property transfer tax) unless there is an exemption; Document proving permission has been granted for the business activity.

7 – Signing the public deed of incorporation

- Competent entity: Notary Office or through the Business Formality Centre - IAPMEI
- Documents required: Identification of the parties (ID and TIN); Proof of deposit of share capital, in cash in favour of the company (not required for a general partnership company - SNC).

8 – Declaration of the Beginning of the Activity

- Competent entity: Tax Office in the area of the registration office or through the *Direcção Geral dos Impostos* (Tax General Directorate) in the CFE – IAPMEI

At this stage the company should also acquire the respective commercial deeds books.

- Documents: '*Modelo 1438 – INCM*' in triple copy, containing details of the ROC (chartered accountant), duly certified; Provisional Company Identity Card; Photocopy of the Deed of Incorporation; Photocopy of ID and TINs of the company members and accountant.
- Period: Before the beginning of the activity, or within 90 days from the registration of the RNPC (date of issue of the provisional card).

9 - Requisition of the Commercial Registration, Publication and Entry in the RNPC (final legal person card). This has constitutive effects; the company can only exist legally from this point. At this stage, the company acquires legal personality.

- Competent entity: *Conservatória do Registo Comercial* (Commercial Registry Office) in the area of the registration office of the company or through the company registration assistance office – IAPMEI
- Documents: Deed of incorporation of the company; Name Validation certificate; Start of activity declaration.

- Publication: *Diário da República*: Private Limited Company; Public Limited or Limited co-partnership Companies; Optional – local or regional newspaper in registration office area: Private Limited Companies; Public Limited Companies
- Entity responsible for publication – competent *conservatória*.
- Period: 90 days after signing of Deed of Incorporation

NOTE: requisition for registration must be made by a member or manager of the company.

10 – Make 3 payments (3 different cheques): *Conservatória Registo Comercial*; RNPC; INCM

11 – Social Security Registration

- Competent entity: Regional social security office, in the area of the company's registration office or through IAPMEI (same office)
- Registration of the company, employees, managers, directors and executives at the social security.
- Documents: Taxpayer ID card; Deed of Incorporation of the company; Legal Person Identity Card; Minute naming the members of the statutory bodies and the form in which they will be paid; Photocopies of the taxpayer identity card of the members of the company's statutory bodies; Start of activity declaration.
- Period: Registration with Social Security within 30 days from the beginning of the activity.

12 - Request to register with the Commercial or Industrial Records Office

- Competent entity: General Directorate for Trade and Competition; Regional Office of the Ministry for the Economy in the locality of the establishment.
- Documents: A form provided by the General Directorate for Trade and Competition (in duplicate); A form from the Regional Office of the Ministry for the Economy (in duplicate) – '*Modelo 387 INCM*'.
- Period: Registration with the Commercial or Industrial Records Office must be made within 30 days from the opening of the commercial establishment or from the beginning of the labour activities.