



**TYPES OF MADEIRA COMPANIES**



## MADEIRA COMPANY INFORMATION

Madeira companies are Portuguese companies and are subject to the legal regime established in the Portuguese Companies Code and subsequent amendments thereto. The most common type of companies are described below:

### TYPES OF MADEIRA COMPANIES AND COMPANY CHARACTERISTICS

#### Private Limited Liability Companies - Lda

LDAs are widely used. This type of company has proved to be the best vehicle for corporate investments as a result of their relatively simple structure.

The business name must end with the word "Limitada" or its abbreviation "Lda". If the company has only one member, the business name must include the term "Sociedade Unipessoal" or word "Unipessoal" before "Limitada" or "Lda". The liability of quotaholders is limited to the share capital subscribed.

#### The main characteristics of a LDA are listed below:

- **Capital:** A minimum share capital of €2 is required (€1 in the case of an unipersonal company). The capital, always denominated in Euros, is represented by Registered Quotas (no share certificates or other documents are issued). While the value of each quota can vary, it may not be less than €1. A quota is in effect a part ownership of the company, evidenced only by the registration certificate from the commercial registry. This registry can be accessed by any member of the public. Members' capital contributions can be in cash or other assets over which a pledge can be constituted. Initial capital contributions in cash can be paid up until the end of the first financial year.
- **Registered Office:** The Company must be administered from its registered office which must be located in Madeira.
- **Quotaholders:** A minimum of two Quotaholders are required. However the law allows for the incorporation of an "unipersonal" company. This is a LDA with a single owner. Such companies may not own other unipersonal companies. Quotaholders may be natural or legal persons and there are no nationality requirements.

The Quotaholders of a LDA have the following rights and obligations:

- Right to a share in the profits;
- Right to participate in quotaholders meetings;
- Right to obtain information on the company;
- Right to be appointed to company bodies and supervisory bodies;
- Special rights established in the articles of association, which entitle one or more quotaholders to special benefits which are not made available to the others;
- Obligation to provide capital contributions for the initial share capital, usually through the payment of a certain amount of money at the time of incorporation;
- Obligation to share in the company's losses pro-rata to the value of the share capital represented by the relevant quota interests;
- As provided for in the articles of association, the members may be required to make ancillary or supplementary contributions or provide loans to the company.



Certain issues and acts, in addition to others which may be foreseen by law or in the bylaws of the company, require resolutions by the quotaholders taken in quotaholder meetings:

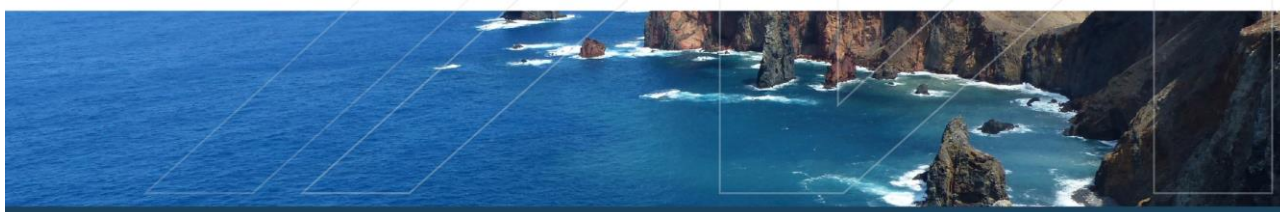
- Requesting and reimbursing supplementary contributions;
- The amortisation of quotas, the acquisition, sale and encumbrance of own quotas and consent for the division or transfer of ownership of quotas;
- The exclusion of quotaholders;
- The removal of directors and members of the supervisory body from office;
- The approval of the annual report and accounts for the financial year, distribution of profit and the apportionment of losses;
- The waiver of the liability of directors or members of the supervisory body;
- The presentation of legal action by the company against the management, quotaholders or members of the supervisory body, as well as discontinuing and transacting such proceedings;
- The amendment of the bylaws;
- Merger, spin off, transformation and liquidation of the company and the reopening for business of a liquidated company.

Should the bylaws not provide otherwise, the quotaholders are also responsible for deciding the following:

- The appointment of directors;
- The appointment of members of the supervisory body;
- The sale or encumbrance of real estate, the sale, encumbrance and leasing of premises;
- The subscription or acquisition of participations in other companies and their sale or encumbrance.

To transfer quotas of a Lda company, a quota transfer agreement needs to be prepared in accordance with Portuguese law, which is signed by the sellers and purchasers. The quota transfer must also (normally) be authorised by the company through a shareholders meeting (unless a quota transfer is to be made to another shareholder). In general, powers of attorney are required from both the sellers and buyers and a certificate of registration or personal identification documents from each, both documents to be notarised and apostilled. A Portuguese Fiscal number needs to be requested for the buyers. Once the referred formalities have been complied with, the quota transfer is registered at the commercial registry and an updated registration certificate can be obtained reflecting the new quotaholders.

- **Management:** A LDA company is managed and represented by one or more managers or directors. Corporate directors may not be appointed to LDAs. Directors can be quotaholders or third parties. The directors are appointed in the company's articles of association or elected (or removed from office) afterwards by resolution of the quotaholders. The Directors can be remunerated or non-remunerated. Management powers include all acts of management and representation that assure fulfilment of the company's object clause, in compliance with quotaholders' resolutions.
- **Binding the company:** The bylaws establish the operating rules for management, i.e. the number of signatures required to bind the company and the associated rules.



If no provision is made in the articles of association regarding this matter, then the company is bound by the signature of the majority of the directors.

- **Management liability:** Directors are held liable by the company, members and third parties for damages directly caused by acts or omissions that intentionally infringe their legal or contractual duties.

Directors assume liability before a company's creditors when the company's assets are not sufficient to cover the respective credits and when said fact results from the infringement of their legal or contractual duties. Directors are joint and severally liable. The general rule is that only the company's share capital is liable for the payment of the company's debts/liabilities and not the managers/directors' assets. For a director to be liable for a specific action, such action must have been taken in the exercise of his duties and in breach thereof. The personal assets of the director may be liable for the debts of the company, or any other kind of damages caused by his/her actions, whenever there is a breach of legal or statutory rules.

Directors are subsidiarily liable for a company's tax debts when the fact that the company's assets are insufficient to meet the debt is attributable to them or when they cannot prove that the non-payment of tax was not attributable to them.

- **Supervision:** The appointment of a supervisory board is not compulsory for a LDA. When the company has a supervisory board, this board is ruled by the regulations established for supervisory boards of stock corporations (S.A.s).

The company is obliged to appoint a statutory auditor whenever the company exceeds two of the three thresholds indicated below during two consecutive years:

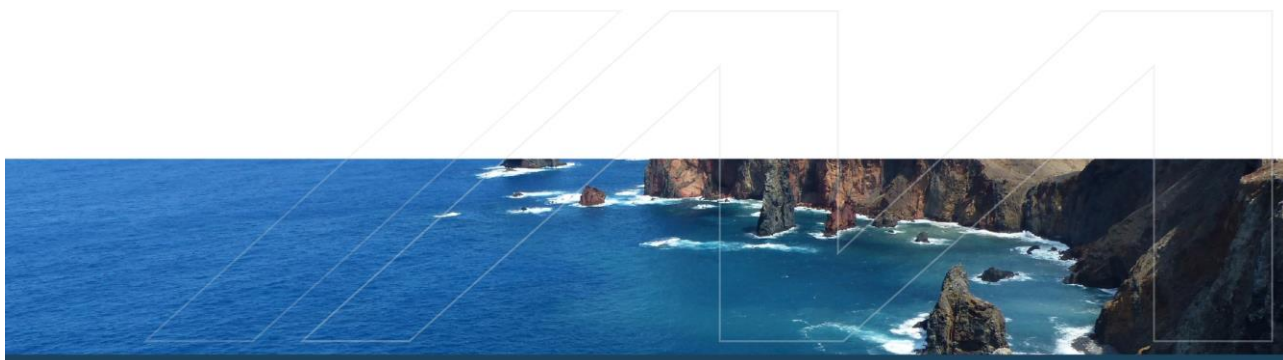
Balance Sheet Total: € 1,500,000.00;

Total net sales and other revenues: € 3,000,000.00;

Number of Employees: 50.

The appointment of a statutory auditor ceases to be necessary if two of the three requirements are not surpassed during two consecutive years.

Private limited companies may appoint a company secretary if required.



## STOCK CORPORATIONS - S.A.

S.A.'s are used whenever a client requires a more complex structure, with shares that can have different voting rights and can be freely transferred.

The business name must end with the word "Anónima" or its abbreviation "S.A.". If the company has only one member, the business name must include the term "Sociedade Unipessoal" or word "Unipessoal" before "Anónima" or "S.A.". Liability is limited to the share capital subscribed by each shareholder.

### The main characteristics of a S.A. are listed below:

- **Capital:** A minimum share capital of €50,000 is required. The capital is divided into shares with or without a nominal value, each representing the same fraction in the capital.

The minimum value of the shares or, if with no nominal value, its issue price, must not be less than one Euro. It is possible to defer the paying up of 70% of the cash contribution, although deferral cannot be longer than five years. A company cannot have simultaneously shares with nominal value and shares without nominal value.

- **Registered Office:** The Company must be administered from its registered office which must be located in Madeira.

Shareholders: A minimum of five shareholders are required. However, the law allows for the incorporation of a "unipersonal" Company S.A. with a single owner only however within the MIBC.

- **Shares:** Shares may be registered or to bearer:

#### *Registered Shares -*

Registered shares allow the issuer to know at any time the identity of its holders.

A company is obliged to have registered shares:

Whenever its capital is not fully paid up;

When the company's bylaws foresee the impossibility of the transfer of shares without the company's consent, or there is any type of restriction on transferability of shares;

When the bylaws foresees that the shareholder is obliged to make ancillary capital contributions;

When the company is a single shareholder S.A. operating within the scope of the Madeira International Business Centre.

Registered shares are easily transferred by written declaration on the title in favour of the transferee and registered with the issuer.

#### *Bearer Shares -*

Unlike registered shares, the identity of the holder is not always known.

The *inter vivos* or *mortis causa* transfer of property of bearer shares is done by handing over the title to the purchaser or a depositary appointed by the purchaser.



If the titles are already held in deposit, the transfer of property is performed by registration in the purchaser's account.

Shares may be issued as ordinary shares or preference shares. The latter confer special rights on their holders, usually greater or more extensive than those applicable to ordinary shares.

Two types of preference shares are allowed by the Companies' Code, as long as they are authorised in the Bylaws.

- Non-voting preference shares: holders of these have preferential rights to a dividend of at least 5% of the issue price of their shares. They also have priority over ordinary shareholders in the reimbursement due upon the company's liquidation. These shares also confer all the rights that belong to ordinary shares, with one exception which is the voting right. It is also important to note that the Bylaws may not provide for the issue of more than 50% of the capital in the form of non-voting preference shares.
- Redeemable preference shares: These are redeemable on a fixed date or on a date established by the general meeting. Only fully paid up shares may be redeemable. Redemption is to be effected at the nominal value of the shares, unless the Bylaws foresee the payment of a premium.

One can say that non-voting preferential shares are connected to patrimonial advantages, concerning rights to dividend payments and quotas of liquidation procedures.

As such, the Bylaws that permit these types of shares, must foresee that a part of the net distributable profits be reserved for a first payment regarding these shares and which can not be inferior to 5% of the respective nominal value. On the remaining distributable profits, these shares are treated equally to all the other shares.

In general, these shares may be of interest to captivate private savings in mainly public capitalised companies, in which the voting rights of private shareholders (minorities) has hardly any practical relevance.

- **Shareholders Meetings:** A Shareholders meeting must be held at least once every year to approve the annual accounts and can be held whenever required by law or deemed convenient by the board of directors or supervisory board, or shareholders. The meetings should decide on matters specially foreseen in the law or the company's bylaws. Management matters can also be decided on, if so required by the management.

The following matters should be decided in a shareholders meeting:

- The approval of the management report and accounts for the financial year;
- The approval of the proposed allocation of income;
- To perform a general appraisal of the company's management and supervision, to remove directors from office or express its lack of confidence in directors;
- To carry out elections under its jurisdiction;
- To resolve on whether or not to bring a civil liability claim on behalf of the company before the courts against the directors or auditors;



- To resolve on the acquisition by the company of its own equity interests;
  - To resolve on the issue of bonds;
  - To authorize the directors to carry out activities which compete with the company's activity;
  - To set the remuneration of the directors;
  - To amortization of shares;
  - The establishment of local representation offices;
  - The distribution of assets to the shareholders;
  - To consent the transfer of shares when this is required by the bylaws.
  - The amendment of the bylaws can only be approved by the shareholders, unless any other company body is legally provided with these powers.
- **Management & Supervision:** Portuguese law foresees three types of management structures, one of which is used by the vast majority.

*Board of Directors and Supervisory Board*

The number of Directors of the board is foreseen in the bylaws. A S.A. can have one Director, as long as the share capital does not exceed €200,000. In practice, a minimum of three are normally appointed. An S.A. can have a corporate director who must act through a nominated individual.

Directors may be designated in the bylaws or elected by the general meeting or first meeting, for a term of office established in the bylaws and which is no greater than four calendar years. Although appointed for a certain period, directors are kept in office until a new appointment is made. The chairman of the board can be elected by the general meeting that elected the board of directors or by the board of directors itself.

The board of directors is a corporate entity which acts per the majority of its members. The company becomes bound by the acts concluded by the majority of the board members or by a lower number, if so established in the bylaws.

The board of directors shall be responsible for managing the company's business activities, and for this is provided with ample management powers. It must submit to the resolutions of shareholders or to the intervention of the supervisory board or the audit committee only when the law or the bylaws foresee as such.

The company is supervised by:

- A supervisory board or a sole supervisor (which must be an auditor or a firm of auditors); or
- A supervisory board and an auditor or a firm of auditors that is not a member of the supervisory board.
- This second alternative is compulsory for companies issuing securities traded on regulated stock markets and for companies that exceed two of the following thresholds during two consecutive years:
  - i) Balance sheet total: €100.000.000,00;
  - ii) Total net Sales and other revenues: €150.000.000,00;
  - iii) Number of employees: 150.



If the company has a Sole Supervisor, the position should be held by an auditor (ROC) or an auditing firm and a substitute will need to also be appointed.

A supervisory board must have a minimum of 3 members and one or two substitutes.

The supervisory board members, their substitutes and the sole supervisor are elected by the general assembly for the period established in the bylaws and which cannot exceed 4 years. The first appointment can be made in the incorporation contract or at the first meeting.

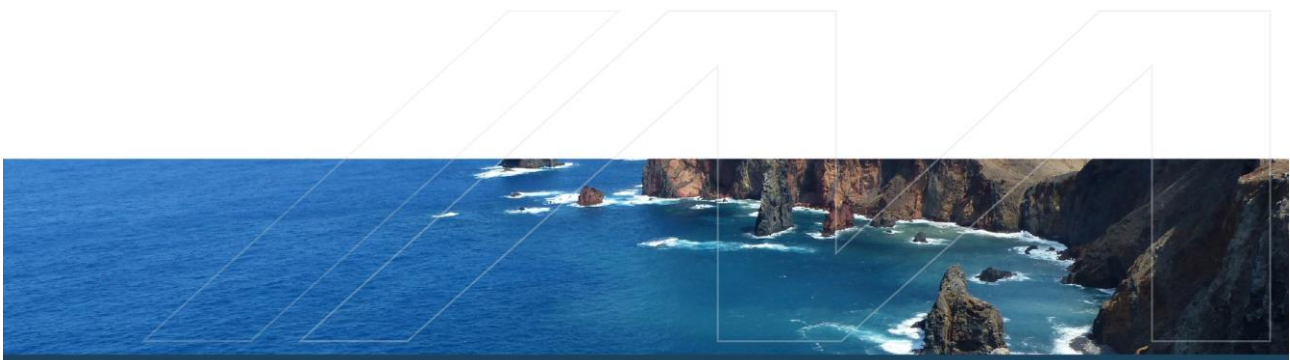
The sole supervisory and/or supervisory board have the following duties:

- To supervise the company's management;
- To ensure compliance with legislation and the incorporation contract;
- To verify that books and ledgers, accounting registers and supporting documents are in order;
- To verify, whenever deemed convenient and by the means considered appropriate, the extension of the cashbook and stock of any kind of goods or assets belonging to the company or received by way of guarantee, deposit or any other form;
- To verify the accuracy of financial statements;
- To verify that the accounting policies and valuation criteria adopted by the company lead to the correct evaluation of the assets and the profit/loss;
- To prepare an annual report on the supervision of the company and issue a statement of opinion on the annual report, accounts and proposals presented by the board of directors;
- To convene a general meeting whenever the chairman of the general meeting failed to do so, but should have;
- To supervise the effectiveness of the risk management system, the internal control system and the internal audit system, if these exist;
- To receive any communication of irregularities from shareholders, company employees or others;
- To engage the services of experts to assist one or more of its members to perform their functions. m) To comply with all other duties established in law or in the bylaws.

The other two management structures are as follows:

- Board of Directors, including an auditing committee and an auditor
- Executive Board of Directors, a General and Supervisory Board and an Auditor

As these are less used, we shall not deal with these in this report.





## RELATED COMPANY CHARACTERISTICS COMMON TO BOTH LDA'S AND S.A.'S

- Technically there are no residential, nationality, or professional qualification requirements for directors, although foreign directors must obtain a Portuguese Tax Number and either prove that they make social security contributions in their place of residence, or make minimum contributions in Madeira.
- Being a civil law jurisdiction, the names of the incorporators and of the directors of a Madeira company as well as any other pertinent information concerning them should be publicly recorded. This information is included in the incorporation contract. It should be noted, however, that the names of the incorporators of an S.A. are not subject to registration at the Commercial Registry.
- Most changes to the constitution or to the structure of a company can now be made by Private Deed executed in Madeira and registered at the Commercial Registry.
- In common with all the Portuguese companies, Portuguese legislation requires that LDAs and S.A.s maintain formal books of accounts in the approved format and in the Portuguese language at the company's registered office. It is imperative that these books of accounts are maintained on a monthly basis to reflect all the company's transactions, because quarterly VAT returns have to be submitted and there are strict controls and frequent inspections resulting in substantial fines for non-compliance. Annual accounts must be submitted to the local tax authorities even in cases where there is neither liability to taxation nor any activity. VAT can be recoverable. Companies taking advantage of Double Taxation Treaties to which Portugal is a party must pay particular attention to timely accounting in the event of verification being requested under the terms of a Double Taxation Treaty. Expenses which are not fully documented are taxed at the rate of 50%. The minute books and all accounting records and original supporting documentation must be maintained at the registered office. A team of qualified legal and accountancy professional staff are available to deal with these requirements.
- Portugal has established a series of regulations regarding invoicing and reporting requirements.
- all invoices have to be prepared by using a Portuguese certified invoicing programme, duly authorised by the Portuguese Tax Authorities and invoices should be raised up to the 5<sup>th</sup> day following the moment that tax is due (namely, in the case of transmission of goods, 5 days counting from the day the goods are placed at the disposal of the purchaser; in the case of rendering of services, 5 days after the services have been rendered).
- all companies are obliged to communicate to the tax authorities all and every invoice they have issued each month by the 25<sup>th</sup> of the following month. This communication will be made directly from the certified invoicing software, exporting the invoices made during the month in question.
- all Portuguese companies that carry out operations with non-residents, need to file monthly reports with the Bank of Portugal for statistical purposes, reporting **ALL** operations carried out with non-residents, whether the resident banking system has been used for such operations or not. The communications need to be made by the 15<sup>th</sup> working day of each month regarding all operations carried out in the previous month.



To be able to comply with the above, it is absolutely essential that we receive all information regarding all operations carried out each month, as well as bank statements from abroad during the first days of the following month.

- Madeira IBC companies are subject to advance payment on account of tax (PPC or “Pagamentos Por Conta”) and special tax payments (PEC or “Pagamento Especial por Conta”). With regards to the advance payment on account of tax – PPC, Portuguese tax rules foresee that these are calculated on the basis of the tax paid in the previous year and taking into account the company’s turnover. If the turnover is below €500,000, 80% of the tax paid in the previous year will be paid during the following year, as PPC; if the turnover is above €500,000, 95% of the tax paid in the previous year will be paid. Payment is made divided in three instalments, paid in July, September and December.
- As for the special tax payments – PEC – these are paid either in March, or half in March and half in October, being equal to 1% of the turnover regarding the previous year, with a minimum limit of €1,000 and, when superior, equal to this limit, plus 20% of the exceeding amount, with a maximum of €70,000.
- All Portuguese companies must have at least one local bank account, to be used for payment of taxes, including the annual PEC, PPC referred above and corporate income tax when due. Furthermore, according to the Portuguese law, all payments and receivables must be made through a company’s own bank account (foreign or local). All movements regarding shareholders loans and other forms of loans and transfers to shareholders, must be made through the bank account. Payments regarding invoices or equivalent documents of an amount equal or higher to one thousand euros (€1000), must be made through a means of payment which identifies the respective beneficiary, namely bank transfer, nominative cheque or direct debit. Fines can be applied due to non compliance with the above.
- Madeira companies must be formally liquidated and the Registry is not permitted to strike off delinquent companies. The tax and other effects of failing to liquidate a company can, and have been serious. For example, the cancellation of an SDM licence makes a company fiscally resident in Portugal and exposes the company and, in certain circumstances, its promoters, to Portuguese tax or investigation. Ultimately EU members must allow the enforcement of other EU tax judgements.
- The Portuguese Corporate Code expressly allows a Portuguese/Madeira company to move its registered office from Portugal to another country maintaining its corporate personality if the law of the recipient country so consents. Redomiciliations into Portugal/Madeira are also allowed, provided it is permitted by the law of the former jurisdiction.

### **Important Note**

*This document has been prepared by Madeira Management for the information of clients and associates. Whilst every care has been taken in its preparation, no responsibility can be accepted for inaccuracies. Readers are also advised that the law and practice may change from time to time.*



## KEY FEATURES

General		
Type of entity	Limitada	SA
Type of law	Civil	Civil
Shelf company availability	-	-
Our time to establish a new company	15-30 days	15-30 days
Minimum government fees (excluding taxation)	EUR 1,800	EUR 1,800
Corporate Taxation	Varies	Varies
Double taxation treaty access	Yes	Yes
Liability of Shareholders	Limited to the capital	Limited to the capital
Share Capital or Equivalent		
Standard currency	Euro	Euro
Permitted currencies	None	None
Minimum paid up	Euro 2 (€1 in the case of a S.U)	Euro 50,000
Usual authorised	Euro 5,000	Euro 50,000
Directors or Managers		
Minimum number	1	1
Local required	No	No
Publicly accessible records	Yes	Yes
Location of meetings	Anywhere	Anywhere
Members / Shareholders		
Minimum number	Normally 2 (1 is possible)	Normally 5 (1 is possible)
Publicly accessible records	Yes	Yes
Location of meetings	Madeira (by proxy)	Madeira (by proxy)
Company Secretary		
Required	No	No
Local or qualified	No	No
Accounts		
Requirement to prepare	Yes	Yes
Audit requirements	No, but larger companies must	Yes
Requirement to file accounts	Yes	Yes
Publicly accessible accounts	Yes	Yes
Other		
Change in domicile permitted	Yes	Yes

