

VENTURE CAPITAL AND "BUSINESS ANGELS"

Posted on 21/04/2008



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The activities of 'angel investors' or 'angels', commonly referred to in Europe (where they have been recognised for some time) as 'business angels', were finally given their long awaited statutory recognition in Portugal by Decree-Law n.º 375/2007 of 8 November 2007.

Los Business Angels son individuos con gran patrimonio que ofrecen su capital como préstamo a fin de impulsar la creación de

nuevos negocios,
normalmente a cambio
de deuda convertible o
participación económica
en el nuevo grupo o
empresa. Ahora bien,
tal y como explican las
abogadas Teresa
Baptista y Catarina
Silva Gomes, del bufete
Barrocas Sarmento
Neves, sus actividades
tienen reconocimiento
estatutario y están
enmarcadas dentro del
Decreto Ley portugués
375/2007, de 8 de
diciembre.

Los inversores de
capital riesgo deben ser
incorporados como
sociedades
unipersonales, por
cuota y a través del
CMVM -el CNMV
portugués.

Siendo
unipersonal por
naturaleza, el miembro
es una persona física;
no obstante, el inversor
de capital riesgo queda
regulado internamente
por los estatutos
sociales.

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In short, business angels are affluent
individuals who provide capital and
invest in business start-ups, usually in
exchange for convertible debt or equity
holdings in the company or group. Decree-Law n.º 375/2007, which
revoked Decree-Law n.º 319/2002 of 28

December 2002, was published on 8 November 2007 and regulates the activities of business angels. It sets out a framework which governs venture capital investment activities through venture capital companies, venture capital funds and venture capital investors.

The legislation seeks to simplify and streamline the activities, and thereby promote an increase in venture capital activity as a means of supporting startups, restructuring and entrepreneurial growth in the scientific and technological sectors, amongst others.

The above legislation introduces a number of investor principles which are new to Portugal, one of which is the acknowledgement of the existence of venture capital investors ('VCI's') (investidores em capital de risco, or ICR), or business angels.

Under Portuguese law, VCI's are typically special venture capital companies, which must be incorporated as single-member companies (sociedade unipessoal por quotas). This obligation arises out of the need to keep the venture capital assets separate from the remaining personal assets of the shareholder, in order to comply with applicable transparency requirements. The single member must be a natural person (i.e. an individual as opposed to a corporate entity). A VCI is, like any other company, regulated internally by its articles of association.

It is worth noting that, in order to commence its trading activities, a VCI need only comply with a single administrative formality, namely prior registration with the Portuguese Securities Market Commission (Comissão do Mercado dos Valores Mobiliários – 'CMVM'), a quick and simplified procedure. Furthermore, setting up a VCI which does not permit the public to subscribe for its shares and which is held only by qualified investors or subscribers

in an amount equal to or exceeding €500,000.00, requires only a straightforward prior notification to the Portuguese Securities Market Commission.

The CMVM is the entity responsible for supervising VCI's and which regulates all matters relating to their activities.

The main corporate object of a VCI is to make venture capital investments.

VCI's

may, while carrying out their activities, do the following:

- Invest in debt and equity capital instruments, as well as in securities or convertible instruments, which are exchangeable or which grant an option to purchase;
- Give guarantees for the benefit of the companies in which they invest;
- Use their surplus cash to invest in financial instruments such as hedging instruments, required to pursue their respective activities.

We would also highlight that VCI's are typically investors who invest in start-ups or new companies, whose financial needs are often not met by institutional venture capital.

VCI's also add value to new ventures in other ways, for example by contributing their business experience and business networks, thereby giving a significant boost to many sectors of the economy.

Finally, we note that VCI's now benefit from specific tax incentives and advantages in Portugal.

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