This Decree-Law establishes a means of setting up companies through the Internet, by introducing in our legal regime an innovative way of setting up commercial companies or civil law companies having a commercial form.

This initiative aims to continue simplifying procedures according to the SIMPLEX Programme, to contribute towards the development of the Technological Plan, and to reduce significantly context costs, improving conditions to invest and to generate wealth and jobs in Portugal.

The adopted regime for setting up commercial companies or civil law companies having a commercial form through the Internet may be used by any interested party. Both natural persons and legal entities, represented by the respective responsible persons possessing sufficient powers to bind the company, can now set up companies in this way, provided that the appropriate electronic certification means is used.

This is thus a means for setting up commercial companies with a clear connection to the Citizen Card project. In fact, by issuing a citizen identity card with an electronic certification means of identification, the use of electronic signatures by natural persons is surely made more democratic, and consequently, the use of facilities and means - such as the setting up of companies through the Internet - that depend on electronic identification recognition is also promoted.

In addition to those people who have a direct interest in setting up a commercial company through the Internet, also lawyers, solicitors and notaries may promote their constitution, certifying the identity, capacity, representation powers and the will of interested parties, using a means of electronic validation of their identity.

The adopted regime aims to be flexible, the interested party or its representative being provided with a wide range of options as regards the choice of a business name or the statutes of the commercial company to be set up.

Thus, as regards the procedure for choosing the business name, three possibilities are available: the option for a pre-approved business name, registered in favour of the State, such as the "company on the spot", the acquisition of an admissible business name chosen by interested parties through an exclusively electronic means, and the sending of a certificate accepting the business name obtained before-hand through non-electronic means.

As regards the statutes or the instrument of constitution of a commercial company or a civil law company having a commercial form, a double choice is provided: the choice for statutes or instrument of constitution of a model approved by the Director-General for Register and Notaries, or for submitting the application attaching statutes or the instrument of constitution prepared by interested parties.

The possibility of complying with fiscal duties related to the launch of company activity through an exclusively electronic means is also provided for.

Furthermore, this procedure for setting up commercial companies through the Internet is intended to be swift and inexpensive. Thus, the register of the setup company must take place immediately or at the most within two working days, whether interested parties opt for statutes or instrument of constitution of an approved model or for submitting statutes or an instrument of constitution prepared by them. The cost of setting up companies by electronic means is also lower that the cost involved in the traditional system.

A special reference must be also made to the fact that this regime for setting up companies through the Internet is provided with important and relevant security and control mechanisms, such as compulsory electronic communications to the entities responsible for
the compliance with fiscal and social security obligations and with labour duties of the set up commercial company.

Lastly, this opportunity is taken to adopt the legal mechanism that renders concrete the project “trademark on the spot”, which aims for achieving, when setting up a “company on the spot”, a pre-approved trademark, pre-registered in favour of the State, which is equivalent to the chosen business name.

The necessary arrangements for hearing the Ordem dos Advogados (National Bar) the Câmara dos Solicitadores (Solicitors Association) and Câmara dos Técnicos Oficiais de Contas (Certified Accountants Association) were promoted.

The Ordem dos Notários (Notaries Order) was heard.

Therefore:

Pursuant to point a) of paragraph 1 of article 198 of the Constitution, the Government decrees the following:

CHAPTER I
Special regime for setting up companies online

Article 1
Subject-Matter

A special regime for the online setting up of commercial companies or civil law companies having a commercial form, like private limited companies and public limited liability companies, to take place through an Internet website, and governed by an Administrative Rule issued by the Minister for Justice, is hereby established.

Article 2
Scope

The regime provided for herein shall not apply to:

a) Companies the capital of which is paid-up by means of contributions in kind, where the transfer to the company of shareholder's contributions requires a solemn form superior to the writing form;

b) European public limited liability companies.

Article 3
Competence

1 - The procedure for setting up companies under the regime referred to in paragraph 1 is incumbent upon the Registo Nacional de Pessoas Colectivas - RNPC - (National Register of Legal Entities), irrespective of the location of the company to be set up, without prejudice to the following paragraph.

2 - The RNPC may distribute among other commercial register offices the operation of the procedures for the online setting up of companies, as provided for by order of the Director-General for Register and Notaries.

Article 4
Interested parties

Both natural persons and legal entities may make use of the regime provided for herein.
Article 5
Means of certification

1 - The indication of data and the delivery of documents at the Internet website must be performed through an electronic authentication and the use of an electronic signature, the requirements and conditions of use of which shall be defined in the administrative rule referred to in article 1, in articulation with the mechanisms provided for in the State’s Electronic Certification System - Public Key Infrastructure.

2 - In the scope of the regime provided for herein, the signatures of interested parties shall be confirmed through the means of certification referred to in the preceding paragraph.

3 - Where there is more than one party interested in setting up the company, the joint, simultaneous or subsequent, access of interested parties to the respective online setting up procedure is allowed.

Article 6
Online application

1 - Parties interested in setting up the company shall submit their application online, by performing the following steps, among others that may be required:

a) Choice for an invented business name created and reserved in favour of the State beforehand, or examination as to the admissibility and acquisition of a business name, pursuant to paragraph 3 of article 45 of the RNPC regime;

b) Where the possibilities provided for in the preceding point are not opted for, indication of the business name included in the business name admissibility certificate issued by the RNPC, obtained beforehand, interested parties being bound to render it useless;

c) Choice for statutes or an instrument of constitution of a model approved by the Director-General for Register and Notaries, or for submitting statutes or an instrument of constitution prepared by interested parties;

d) Electronic completion of elements necessary to the presentation of the declaration concerning the taking up of activity for fiscal purposes;

e) Shareholders shall state, under their responsibility, that the deposit of contributions in cash shall be paid-up within 5 working days from the provision of the free of charge evidence of the company’s setting-up register, provided for in point b) of paragraph 3 of article 12, where such deposit has not yet been paid-up;

f) Payment through electronic means of any charges due.

2 - In the situations provided in the first part of point a) of the preceding paragraph, interested parties may complete the composition of the business name with any expression concerning corporate objects they choose to include between the chosen invented name and legally required additions.

3 - Interested parties shall render useless the certificate provided for in point b) of paragraph 1 by writing their name, signature and date, or in case of lawyers or solicitors, by stamping it in the space reserved for public officials for this purpose.

4 - Where appropriate, interested parties shall also submit through the Internet website the following documents, among others that may be required:

a) Documents supporting their ability and powers of representation for the act;

b) Special authorization required for the setting up of the company;
c) In the case of companies the capital of which is paid-up by means of contributions in kind, where the transfer to the company of shareholder’s contributions does not require a solemn form superior to the writing form, the report of the statutory auditor referred to in article 28 of the Code of Commercial Companies, having paragraph 5 thereof been complied with.

5 - Having the procedure been started, the online application shall be submitted by interested parties within at the most twenty-four hours.

6 - All documents submitted through an Internet website shall bear the same evidential value as the original documents, provided they have been properly digitalized and are fully apprehensible.

**Article 7**

**Intervention of lawyers and solicitors**

1 - Lawyers and solicitors who are provided with certification means according to the administrative rule referred to in paragraph 1 of article 5 shall submit through the Internet website the statutes or instrument of constitution, attaching the signatures of subscribers recognised in their presence.

2 - For the purposes of the preceding paragraph, lawyers and solicitors shall recognise the signatures of subscribers of the statutes or instrument of constitution, made in their presence, certifying their identity, and where appropriate, their ability and powers of representation, and also that subscribers have demonstrated their desire to set up the company.

3 - Statements of lawyers and solicitors on the certification mentioned in the preceding paragraph shall be made through a specific method available at the Internet website, the register in the computer system provided for in paragraph 3 of article 38 of Decree-Law no. 76-A/2006, of 29 March, not being required.

4 - Where interested parties are provided with the means of certification according to the administrative rule referred to in paragraph 1 of article 5, the lawyer or solicitor shall submit through the Internet website the statutes or instrument of constitution signed by interested parties attaching such means of certification.

5 - In case more than one lawyer or solicitor takes part in the setting up of the company, the joint, simultaneous or subsequent, access of interested parties, whether or not represented by lawyer or solicitor, is allowed, pursuant to paragraph 1 of article 5.

**Article 8**

**Representation of interested parties in the subscription of statutes or instrument of constitution of the company**

Where the intervention mentioned in the preceding article takes place, lawyers or solicitors shall not act as representatives of interested parties in the subscription of statutes or instrument of constitution of the company.

**Article 9**

**Intervention of notaries**

1 - Interested parties may request from notaries who are provided with certification means according to the administrative rule referred to in paragraph 1 of article 5, that the company is set up according to the procedure provided for herein.

2 - For this purpose, notaries shall recognise the signatures of subscribers of the statutes or instrument of constitution, made in their presence, certifying their identity, and where appropriate, their ability and powers of representation, and also that subscribers have demonstrated their desire to set up the company.
3 - Paragraph 4 of article 7 shall apply mutatis mutandis to notaries.

**Article 10**

**Validation of the application**

1 - The application for setting-up the company submitted under the provisions herein shall be deemed to be validly submitted following the issue of an electronic supporting document, through the Internet website, that indicates the date and hour the register application was concluded.

2 - Where the procedure for setting-up the company is not concluded on account of a fact for which the interested party is responsible, the right to use the business name allocated to the company to be set up under the first part of point a) of paragraph 1 of article 6 shall expire.

**Article 11**

**Time-limit to examine the application**

1 - Following the issue of the electronic supporting document referred to in paragraph 1 of the preceding article, the competent service shall examine the application for setting up the company.

2 - Where interested parties have opted for statutes or instrument of constitution of a model approved by the Director-General for Register and Notaries, and documents referred in points b) and c) of paragraph 4 of article 6 have not been submitted, the competent service, following the confirmation of the payment made by interested parties, shall immediately take the subsequent measures provided for in article 12.

3 - In the remaining situations, the competent service shall take all the subsequent measures provided for in article 12 within two working days from the confirmation of the payment made by interested parties.

**Article 12**

**Subsequent measures**

1 - The handling of indicated data and of documents delivered by interested parties, as well as the examination of the application for setting up the company shall be carried out by the competent services.

2 - The competent service shall take the following steps:

   a) To register the statutes or instrument of constitution, and to immediately communicate such register to interested parties by electronic means;

   b) To enter this fact in the central file of legal entities and economic activity code, or where appropriate, to communicate the register for this purpose;

3 - The competent service shall also take the following steps:

   a) To issue and to send to interested parties the legal entity identification card and the certificate of payment of charges due, as well as to communicate thereto the company’s identification number at the social security;

   b) To provide the free of charge evidence of the company’s setting-up register, pursuant to and through the means provided for in article 75 of the Commercial Register Code;

   c) To promote computer-based legal publications, which shall take place automatically;

   d) To provide competent services, by electronic means, with the necessary data for the control of tax obligations to tax administration, with the necessary data for the purpose of
communicating the taking up of activity of the company to the Inspecção-Geral do Trabalho (General Labour Inspectorate), as well as with the necessary data for the official entry of the company in the social security services, and, where appropriate, in the commercial records;

e) To promote all other measures established in regulations or protocols;
f) To send the company's portfolio to the commercial registry office having territorial jurisdiction, pursuant to the Commercial Register Code.

4 - For the purposes of point d) of the preceding paragraph, the tax administration services shall notify electronically the social security services of elements on the taking up of activity.

5 - The delivery provided for in point f) of paragraph 3 shall only take place where there are no conditions that ensure the access to information on the company by electronic means.

6 - Measures provided for in paragraphs 2 and 3 are incumbent upon the registrar and registry officials.

**Article 13**

**Charges**

1 - For the procedure for the setting-up of a company governed hereunder, the following charges shall be due:

a) Fees provided for in the Fee Regulation for Register and Notaries;

b) Stamp duty, in accordance with the respective table.

2 - In scope of the special regime for the online setting up of companies, no personal fees shall be due.

**Article 14**

**Business name exchange**

1 - The business name exchange established pursuant to paragraph 1 of article 15 of Decree-Law no. 111/2005 of 8 July, shall be used in the scope of the procedure for the online setting up of companies provided for herein.

2 - The exchange of reserved business names and registered trademarks in favour of the State provided for paragraph 2 of article 15 of Decree-Law no. 111/2005 of 8 July, shall apply mutatis mutandis to the procedure for the online setting up of companies provided for herein, under conditions to be established in an administrative rule issued by the Minister for Justice.

**Article 15**

**Subsidiary application**

The Commercial Register Code shall apply on a supplementary basis to the special regime of online setting-up of companies.

**Article 16**

**Protocols**

1 - Protocols between the - DGRN (Directorate-General for Register and Notaries) and several bodies of the Public Administration involved in the procedure for setting-up companies may be concluded, in order to define administrative procedures for the communications of data.
2 - The DGRN may also conclude protocols with the Direcção-Geral dos Impostos (Directorate-General for Taxes) and with the Câmara dos Técnicos Oficiais de Contas (Certified Accountants Association), in order to define administrative procedures for the completion and presentation of the fiscal declaration concerning the taking up of activity and subsequent evidence of these facts.

**Article 17**

**Regulation**

The following matters shall be governed by administrative rule issued by the Minister for Justice:

a) The designation, functioning and functions of the Internet website referred to in article 1;

b) The requirements and conditions for the use of the electronic authentication and the electronic signature in the scope of the indication of data and the delivery of documents at the referred website.

**CHAPTER II**

**Legislative amendments**

**Article 18**

**Amendment to the regime of National Register of Legal Entities**

Article 45 of the regime of National Register of Legal Entities, approved by Decree-Law no. 129/98 of 13 May, as amended by Decree-Laws no. 12/2001, of 25 January, 323/2001, of 17 December, 2/2005, of 4 January, 111/2005, of 8 July and 76-A, of 29 March, is hereby amended to read as follows:

«Article 45

[...]

1 - ...

2 - ...

3 - The issue of the business name admissibility certificate provided for in paragraph 1 may be replaced by an electronic assessment of the admissibility and acquisition of the business name, under conditions to be governed by an administrative rule of the Minister for Justice.»

**Article 19**

**Amendment to the Fee Regulation for Register and Notaries**


«Article 27

[...]

1 - ...

2 - ...

3 - Special regimes for the immediate setting-up and online setting-up of companies:
3.1 - For the performance of acts included in the special regime of immediate setting-up of companies, with or without appointment of management bodies or the company secretary - (euro) 360.

3.2 - The fee provided for in the preceding paragraph is a single value and includes the charge of the compulsory register publication.

3.3 - Of the fee provided for in paragraph 3.1, deducted the fee due to the publication provided for in paragraph 3.2, two thirds shall be allocated to the commercial register office and one third to the National Register of Legal Entities.

3.4 - For the performance of acts included in the special regime of online setting-up of companies, with or without appointment of management bodies or the company secretary, and with option for statutes or instrument of constitution of an approved model - (euro) 360.

3.5 - In the case of an online setting-up of companies, with or without appointment of management bodies or the company secretary, and with option for statutes or instrument of constitution prepared by interested parties - (euro) 380.

3.6 - The fees provided for in paragraphs 3.4 and 3.5 are a single value and include the charge of the compulsory register publication.

4 - ...

4.1 - ...

4.2 - ...

4.3 - In case of a partial approval, the fee provided for in paragraph 4.1 shall be reduced by half.

5 - ...

6 - ...

7 - ...

Article 28

[...]

1 - ...

2 - ...

3 - ...

4 - ...

5 - ...

6 - ...

7 - ...

8 - ...

9 - ...

10 - ...

11 - ...

12 - ...

13 - ...

14 - ...

15 - ...

16 - ...

17 - ...

18 - ...

19 - Fees due for the special regimes of the immediate setting-up and online setting-up of companies shall be reduced by (euro) 60 where the main activity of the company is classified
as a computer activity or computer-connected activity, or as a research or development activity, a fee participation on account of the referred reduction not being due.

20 - ...
21 - ...
22 - ...
23 - ...
24 - ...
25 - ...
26 - ...
27 - ...

Article 20
Amendment to Decree-Law no. 8-B/2002 of 15 January

Article 4 of Decree-Law no. 8-B/2002 of 15 January, as amended by Decree-Law no. 111/2005, of 8 July, is hereby amended to read as follows:

«Article 4
[...]
1 - ...
2 - ...
3 - ...
4 - Employers established by the special regimes of the immediate setting-up and online setting up of companies shall be automatically entered in the social security.»

Article 21
Amendment to Decree-Law no. 111/2005, of 8 July

Articles 1, 3, 6, 8, 11, 12, 14 and 15 of Decree-Law no. 111/2005, of 8 July, as amended by Decree-Law no. 76-A/2006, of 29 March, are hereby amended to read as follows:

«Article 1
[...]

This statutory instrument establishes a special regime for the immediate setting up of commercial companies or civil law companies having a commercial form, like private limited companies and public limited liability companies, with or without a simultaneous acquisition by companies of a registered trademark.

Article 3
[...]

The conditions for the application of this statutory instrument are as follows:

a) The choice for an invented business name created and reserved in favour of the State beforehand, whether or not associated to the acquisition of a trademark pre-registered in favour of the State, or the presentation of a business name admissibility certificate issued by the National Register of Legal Entities; and

b) ...

Article 6
[...]

1 - Parties interested in setting up the company shall make an application to the competent service, stating their option for the business name, or for the business name and trademark, and for the model of statutes or instrument of constitution.
Article 8

1 - Following the initial examination of the identity, of the ability and powers of representation of interested parties for the act, as well as the validity of the documents presented, the competent service shall take the following measures, in the order given:

a) ...

b) The computer-based allocation, in favour of the company to be set up, of the chosen business name or chosen business name and trademark and the legal entity identification number associated to the business name, in the situation covered by the first part of point a) of article 3;

c) ...
d) ...
e) ...
f) ...
g) ...
h) ...
i) ...

2 - ...

Article 11

Where the procedure is not concluded within the time limit provided for in article 5 on account of a fact for which the interested party is responsible, the right to use the business name, or business name and trademark allocated to the company to be set up, under point b) of paragraph 1 of article 8, shall expire, and shall not confer the right to the refund of the paid charges.

Article 12

1 - Following the completion of the procedure for setting up the company, the competent service shall immediately deliver free of charge to the company’s representatives:

a) A certificate of statutes or instrument of constitution and of the register of the latter;

b) A certificate of payment of charges due;

c) Where the company is set up together with the acquisition of a trademark, in addition to the mentioned documents, documentary evidence of such acquisition, in a model approved by the Instituto Nacional da Propriedade Industrial (INPI) - National Institute for Industrial Property.

2 - In the situations covered by point c) of the preceding paragraph, the INPI shall subsequently send to the company the title of the trademark, as well as a certificate of payment of fees due for the acquisition of a trademark register.

Article 14

1 - For the company set-up procedure governed by this statutory instrument, the following charges shall be due:
a) ...
b) ...
c) ...
d) Fees provided for in the Industrial Property Fees Table for the acquisition of a trademark register, where this takes place simultaneously with the company set up.

2 - The State is exempted from paying fees due for acts performed at the INPI under this statutory instrument.

3 - Without prejudice to article 11, for the refusal to provide a title and register shall not be due any charges, all amounts charged for the company set up procedure governed by this statutory instrument being in this case refunded.

4 - For the company set up procedure governed by this statutory instrument shall not be due any personal charges.

Article 15
Business name and trademark exchanges

1 - ...

2 - The RNPC and INPI hereby establish exchanges of reserved business names and registered trademarks in favour of the State, composed of invented names and to which is associated a legal entity identification number and a trademark procedure number, regardless of the location of the company headquarters, for the purpose of their allocation to companies to be set up in the scope of this statutory instrument.

3 - Trademarks comprised in the exchange mentioned in the preceding paragraph shall be registered in favour of the State, represented by the RNPC, for the products and services defined by joint order of the Director-General for Register and Notaries and the chairman of the Board of Directors of the INPI.

4 - Business names comprised in the exchanges referred in paragraphs 1 and 2 shall enjoy protection throughout national territory until they are allocated under point b) of paragraph 1 of article 8.

5 - The resort to the exchange mentioned in paragraph 2 implies the joint adoption of business names and trademarks mutually associated.

6 - The dependency provided for in the preceding paragraph ends with the conclusion of the company immediate set up procedure, point at which the business name and trademark are in force autonomously.

7 - The reservation in favour of the State of business names comprised in exchanges referred to in paragraphs 1 and 2 confers exclusive rights throughout national territory.

CHAPTER II
Final and transitional provisions

Article 22
Trial period

1 - The special regime of immediate setting up of companies together with the simultaneous acquisition of register shall run on a trial period at the RNPC, at the respective customer enquiry services in the Centros de Formalidades de Empresas (Business Formality Centres) in Lisbon, the Commercial Registry Offices in Vila Nova de Gaia and Coimbra, and at the respective customer enquiry services in the Centro de Formalidades de Empresas in Coimbra, for a four-month period from the date of entry into force hereof.
2 - Following the lapse of the trial period provided for in the preceding paragraph, the extension of the regime to other services depends on an order of the Minister for Justice.

**Article 23**

**Entry into force**

This Decree-Law shall enter into force on 30 June 2006, except for:

a) Provisions in articles 1 and 17, as regard the issue of regulations provided therein, which enter into force on the day following that of its publication;

b) Legislative amendments to Decree-Law no. 111/2005, of 8 July, which enters into force on 14 July 2006;

c) Final part of point c) of article 1 of article 6, which provides for an application for an online setting up of the company presented by interested parties to be made by sending statutes or the instrument of constitution prepared by interested parties, which enters into force on 31 October 2006.


Promulgated on 22 June 2006.

Let it be published.

The President of the Republic, ANÍBAL CAVACO SILVA.

Counter-signed on 26 June 2006.

The Prime Minister, José Sócrates Carvalho Pinto de Sousa.