



Portuguese Industrial Property Reform

New Portuguese industrial property rules, implementing the EU Trademark Harmonization Directive and the Trade Secrets Directive, entry into force this year.

In response to the need of harmonizing the industrial property rules in the European Union (EU), Decree-Law 110/2018 of 10 December 2018 approved a new Industrial Property Code (New IP Code), implementing the EU Trademark Harmonization Directive (EU Directive 2015/2436) and the Trade Secrets Directive (EU Directive 2016/943).

The New IP Code's rules on protection of trade secrets entered into force on 1 January 2019; the remaining provisions will enter into force on 1 July 2019.

As to the existing IP registration framework, the new rules do not introduce fundamental changes, albeit they have the merit of allowing easier access to the protection of industrial property rights by simplifying and clarifying the administrative procedures for obtaining, keeping and cancelling IP rights.

One of the main novelties of the New IP Code is the strengthening of know-how and trade secrets protection rules, which are now governed by a specific regime, and even more solid than the one provided for the Trade Secrets Directive.

The New IP Code comprehensively defines "trade secrets" and typifies the trade secrets infringements. Trade secret means information which meets all of the following requirements:

- It is secret in the sense that it is not, as a body or in the precise configuration and assembly of its components, generally known among or readily accessible to persons within the circles that normally deal with the kind of information in question;
- It has commercial value because it is secret; and
- It has been subject of reasonable steps to be taken by the person lawfully in control of the information, to keep it secret.

The New IP Code also includes the following changes: (i) for disputes involving reference medicines and generic medicine, the parties have the option of initiating voluntary arbitration or filing the claim before the Intellectual Property Court, (ii) electronic communication means are now available to contact with the National Institute of Industrial Property (*Instituto Nacional de Propriedade Industrial*) and (iii) the effectiveness of the fight means against industrial property infringements are reinforced at an European level.

It is foreseen that the new amendments, which have the merit of clarifying the industrial property regime, will constitute an incentive for technology businesses (start-ups) to develop their activity in Portugal.

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