

WHYPORTUGAL 2025

DOING BUSINESS IN PORTUGAL

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ABOUT US

MACEDO VITORINO IS A LEADING PORTUGUESE LAW FIRM. WE ADVISE DOMESTIC AND FOREIGN CLIENTS IN A WIDE RANGE OF BUSINESS SECTORS, INCLUDING BANKING, DISTRIBUTION, INDUSTRY AND PROJECTS. WE ARE KNOWN FOR OUR PROFESSIONAL AND CLIENT-ORIENTED APPROACH TO COMPLEX AND DIFFICULT MATTERS.

Since the incorporation of the firm, we have been involved in several high-profile transactions in all of the firm's fields of practice, including banking and finance, capital markets, real estate, M&A, complex disputes and corporate restructurings.

We have strong relationships with many of the leading international firms in Europe, the United States and Asia, which enable us to handle effectively any cross-border legal matters.

We are mentioned by The European Legal 500 in most of its practice areas, including Banking and Finance, Capital Markets, Project Finance, Corporate and M&A, Tax, Telecoms and Litigation. Our firm is also mentioned by IFLR 1000 in Project Finance, Corporate Finance and Mergers and Acquisitions and by Chambers and Partners in Banking and Finance, Corporate and M&A, TMT, Dispute Resolution and Restructuring and Insolvency.

The multidisciplinary and integrated character of our corporate and commercial group allows us to efficiently solve the legal issues of our clients, in particular:

- Commercial contracts, distribution agreements and franchising
- Competition and European law
- Copyright, intellectual property, IT, patents and trademarks
- Corporate and acquisition finance
- Dispute resolution, litigation, mediation and arbitration
- Employment
- Foreign investment, mergers & acquisitions and privatisations
- Real estate acquisition and disposal
- Tax

If you want to find out more about MACEDO VITORINO, please visit our website at www.macedovitorino.com

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FOREWORD

In 2024, investment in Portugal's tourism, real estate, renewable energy, and other long-term projects continued to be robust. Despite facing challenges, both local and international investors maintained confidence in the future prospects of these sectors.

After growing 2% in 2024, the Portuguese economy is projected to grow 2.3% in 2025 and 2026. Exports of goods and services reached 56,293 million euros by the end of June 2024, a decline of 0,9% compared to the same period in 2023.

In 2024, investment in tourism, real estate, renewable energy, and other longer-term projects remained strong in Portugal. Despite the difficulties, local and international investors remain confident in the longer-term prospects in tourism, energy, and real estate.

It is expected that the «Recovery and Resilience Plan» (*Plano de Resiliência e Recuperação*, PRR), supported by the European Union, will improve the performance of Portugal's economy in the near future. The government plans to invest in 85 infrastructure projects, with €22.200 million in the transportation sector, mainly in upgrading or building new railroads and subway infrastructure, €13,060 million in renewable energy, and €7,418 million in environment-related investments. In 2023, new public funds totalling 400 million euros were established, mostly to invest in *start-ups*.

Portugal's commitment to energy transition and technological developments is attracting international and local investors in solar and wind power projects. Investors are waiting for the government to open up public tenders to develop offshore wind power projects on the coast of Portugal.

In a world of many uncertainties, with wars raging in Ukraine and the Middle East, Portugal remains a safe harbour for international investors. According to the Institute for Economics & Peace's "Global Peace Index 2023", Portugal is one of the safest countries in the world, ranking 7th in the most peaceful countries in the World and 4th in Europe.

This guide reviews the main aspects foreign investors consider when looking at Portugal as a place to invest, such as how to set up a business, government incentives, employment rules, taxation, intellectual property protection, real estate, and the judicial system.

For more information, go to www.macedovitorino.com/en/Why-Portugal

GENERAL INFORMATION

TERRITORY, POPULATION AND LANGUAGE

Portugal is situated on the southwest coast of Europe, bordering only with Spain. With a territory of 92,152 Km², Portugal has the largest maritime zone in Europe. Its continental platform borders the American platform.

Portugal's total population is approximately 10 million. Most of the country's population lives in the mainland; less than 5% live in the Azores and Madeira islands

Portugal has an 800-year history, and its European borders have been established for over 500 years. Because of this, the country has a homogeneous population, sharing similar values despite slight regional differences.

During the '50s, '60s and '70s of the last century, emigration to other European countries and America was common, especially to Germany, France, Luxembourg, Switzerland, the United States and Canada.

More recently, depending on economic cycles, we have seen many Portuguese move out of the country, this time with better working skills. Portugal also welcomes many foreign investors and retirees.

Portuguese is one of the «Roman» languages that evolved from Latin.

Portuguese is the sixth most spoken language in the world, spoken by 270 million people in Portugal, Brazil, Angola, Cape Verde, Mozambique, Guinea Bissau, São Tomé and Príncipe and Timor.

English is widely spoken in Lisbon, Oporto, Algarve, and other tourist destinations. Although most Portuguese nationals do not speak Spanish, most people can understand it. French is less spoken since English replaced it as a second language in schools, but some people still speak it.

POLITICAL SYSTEM

Portugal underwent major political, social, and economic changes in the last quarter of the XX century.

Portugal is a parliamentary republic. The legislative power lies with a national parliament (*Assembleia da República*), with 230 seats. The members of parliament are elected by universal vote for four-year terms. The Government depends on the parliament's support, which has the power to overthrow it.

The cabinet of ministers is led by a Prime Minister, who holds the executive power. Currently, the country's Prime Minister is Luís Montenegro, the leader of the Social Democratic Party (in Portugal, the social democratic party is a centre party).

The President of the Republic has limited powers but has the power to influence the Parliament's and the Government's decisions and dissolve the Parliament in extraordinary circumstances. Marcelo Rebelo de Sousa is currently the President of the Republic, elected in January 2021 for a second five-year term.

The President of the Republic promulgates laws approved by the Parliament and decree-laws approved by the Government. The President may veto or request the Constitutional Court to verify the conformity of laws and decree-laws with the Constitution.

One-fifth of the members of the parliament may also submit laws and decree-laws for constitutional review. The Constitutional Court's decisions are binding for all courts and public authorities.

Portugal has been a member of the EU since 1986, a founding member of the Euro and the Portuguese-speaking Countries Community (*Comunidade dos Países de Língua Portuguesa, CPLP*), which groups all Portuguese-speaking countries. Portugal is a member of the United Nations, NATO and the OECD.

The current Secretary General of the United Nations, António Guterres, is Portuguese.

CURRENCY AND BANKING SYSTEM

Portugal is one of the founding members of the «Euro», the currency of 20 European countries. The Euro is the second most traded currency in the World after the US Dollar.

The currency symbol is «€». The Euro circulates with seven banknotes and eight different coins: banknotes of 500, 200, 100, 50, 20, 10, and five euros, and coins of two and one euro and 50, 20, 10, five, two and one cent. The 500 euro banknote is no longer in production because it is not accepted in all EU countries and was preferred by organised crime.

The Bank of Portugal (*Banco de Portugal, BdP*) is the central monetary authority that oversees the banking system and is a member of the European System of Central Banks (ESCB).

The main banks operating in Portugal are:

- Caixa Geral de Depósitos, owned by the State;

- Millennium BCP, listed in Euronext Lisbon;
- Santander Totta, 100% owned by the Spanish giant Santander;
- BPI, now controlled by the Spanish bank, LaCaixa; and
- Novo Banco, which succeeded to Banco Espírito Santo, then Portugal's oldest bank, following its resolution in 2014. Novo Banco now belongs to Lone Star, an international private equity firm.

Portugal's banking system is efficient and offers advanced financial products, despite the upheaval that followed the international financial crisis of 2008 and the Portuguese sovereign debt crisis of 2011, which led to the change in ownership of some banks and to the collapse of Banco Espírito Santo, Banif, BPN and BPP.

Credit is available throughout the system at competitive rates, and banks are willing to lend to corporations and individuals. However, credit conditions have tightened as a result of stronger regulatory pressure.

Portuguese capital markets follow domestic legislation codified in the Securities Code (*Código de Valores Mobiliários*, CVM) and European regulations and directives. The Portuguese Stock Exchange, Euronext Lisbon, is part of the Euronext Group.

Portugal established one of the first countrywide open-bank ATM networks, Multibanco, which allows cash withdrawal, money transfers, and other services nationwide.

Debit and major credit cards (especially Visa and MasterCard) are accepted in most business establishments in Portugal.

INVESTMENT INCENTIVES

OVERVIEW

Portugal offers national and foreign investors investment through financial incentives, repayable or non-refundable, tax benefits and co-financing. Exceptional subsidies may also be granted, such as reimbursement of employers' costs with the training of employees.

The incentives may include:

- Incentives granted under the «Portugal 2030» programme established through an agreement with the EU covering the period from 2021 to 2027;
- Incentives granted under the «Recovery and Resilience Plan» (*Plano de Resiliência e Recuperação*, PRR) from 2021 to 2026;
- Tax incentives granted under the Tax Investment Code (*Código Fiscal do Investimento*), which aim to promote the competitiveness of the Portuguese economy; and
- Incentive programmes designed for specific situations, such as creating jobs, which may include temporary reductions of the employer's social security contributions, financial support for hiring young people, unemployed, etc. and co-funding of training costs.

The Portuguese Government also set up a system for monitoring, facilitating and reducing bureaucracy in implementing projects considered to be of «potential national interest», the so-called «*projetos de interesse nacional*» or PIN projects.

PORTUGAL 2030

«Portugal 2030» is an investment program amounting to 23 billion euros, which implements the Partnership Agreement signed between Portugal and the EU on 14 July 2022.

The main goals of this program are as follows:

- To improve innovation, technological development, and competitiveness in Portugal;
- To address the goals outlined in the Paris Agreement by investing in the green transition, renewable energy, and the fight against climate change and global warming;
- To enhance the public transportation network;

- To promote better education, employment, social inclusion, and equality in access to public healthcare; and
- To implement development strategies with local governments and create "green" cities.

These goals align with the four agendas of the 2030 Strategy:

- People First: Aiming for a better demographic balance, greater inclusion, and reduced inequality;
- Digitalization, innovation, and qualification;
- Climate transition and sustainability of resources; and
- Enhancing Portugal's international competitiveness and promoting social cohesion.

«Portugal 2030» is structured into twelve programs, which were approved in December 2022:

- Five regional programs corresponding to Intercity Communities and Metropolitan Areas (NUTS II), including separate ones for the Azores and Madeira;
- Four programs covering demographics, skills and inclusion, innovation and digital transition, climate action and sustainability, and the sea; and
- Programs for European Territorial Cooperation.

The aim of Portugal 2030 is to achieve measurable results. For a project to be approved, beneficiaries must commit to financial execution and achieve the agreed-upon results. Progress is subject to audits and monitoring.

As of mid-2024, Portugal 2030 allocated 35.7% of its available funds, approving 2,092 projects and issuing 554 calls for proposals. By 31 July, €8.209 billion out of a total €22.995 billion had been either awarded or were pending tenders. The program funding sources include the European Regional Development Fund (ERDF) with 42%, the European Social Fund+ (ESF+) with 37%, and the Cohesion Fund with 17%. To date, 255 tenders have been closed, releasing over €4 billion in funding. 2,092 projects have been approved, with €2.381 billion in funds awarded and €715 million already executed. By the end of July 2024, Portugal 2030 had issued 554 calls for proposals, with €8.209 billion available for public tenders.

From September to December 2024, the release of 249 funding calls is planned, with a total budget of €2.6 billion. The announced priorities include calls focused on the Business Research, Development, and Innovation System (RDI), the expansion of the Porto metro, and funding for Professional Training Programs, among others.

You may learn more about Portugal 2030 at www.Portugal2030.pt.

RECOVERY AND RESILIENCE PLAN (PRR)

The «Recovery and Resilience Plan» is a program approved by the European Commission for implementation in Portugal. It aims to restore sustainable economic growth and strengthen European convergence over the next decade. The PRR is funded by the European Union's "NextGenerationEU" initiative, with a total investment of €16,644 million covering the period from 2021 to 2026: €13,944 million in grants (84% of the total) and €2,700 million in loans (16%).

The main objectives of the PRR are:

- Resilience (61% of the PRR): This portion will be used to enhance economic recovery and improve the capacity to respond to future crises and challenges. It focuses on social, economic, and productive sectors and territorial resilience.
- Climate transition (21% of the PRR): This part aims to promote more sustainable resource use, boost renewable energy production, and support the decarbonization of the economy and society.
- Digital transition (18% of the PRR): This portion focuses on promoting digital inclusion through education and training in digital skills and facilitating the digital transformation of businesses and government operations.

These three key areas are implemented through 20 components, 37 reforms, and 83 investments, using a result-oriented approach based on milestones and targets.

Applications for PRR grants and loans are submitted via an online platform called "Recuperar Portugal," which simplifies the process. Implementing PRR measures or investments will be formalized through contracts between the Mission Unit "Recuperar Portugal" and direct or intermediary beneficiaries.

PIN PROJECTS

The Project Recognition and Monitoring System is a monitoring mechanism for projects recognised as having potential national interest (*Potencial Interesse Nacional*, PIN).

The PIN recognition system does not constitute a fund allocation program *per se* but a monitoring program for the applications and execution of the investment projects that benefit from or are intended to benefit from the incentives.

For projects to be recognised as PIN's, they must meet the following cumulative requirements:

- Represent an overall investment of €25 million or more;
- Create 50 or more direct jobs; and

- Be presented by reputable and reliable sponsors.

Exceptionally, projects that meet two of the following criteria may be recognised as PIN, even if they do not meet the first two requirements described above:

- Internal Research and Development (R&D) activity of at least 10% of the company's turnover;
- A significant part of the company's business is related to its patents;
- Demonstrable interest in environmental compliance: this may be made by the adoption of internal measures to reduce its carbon footprint or other environmental burdens, the production of recyclable/green products, etc.;
- The company must have a minimum of 50% of its turnover originated from international markets; or
- Production of outstanding tradable goods and services.

To operationalise this system, the government created a support commission for investors (*Comissão Permanente de Apoio ao Investidor, CPAI*).

The project developer must file an application that fulfils the requirements for PIN recognition according to a model previously approved by the CPAI.

The recognition of the project as a PIN must take place in a maximum of 30 days, counting from the reception date of the application.

A process manager responsible for monitoring the administrative procedures is assigned for the projects recognised as PIN.

When a project is recognised as a PIN it will have a priority in the licensing procedures. PIN projects also benefit from a special administrative procedure, which involves:

- Simultaneous processing of the central government's administrative procedures;
- Reduction and simultaneous completion of the internal procedures determined by the administrative authorities that are responsible for issuing the necessary licenses;
- A single period to consult the relevant administrative procedures;
- Simplification of the procedures related to the zoning plan instruments relevant to the project;
- Tacit positive reports and tacit deferral under the various applicable procedures; and
- Simplification of procedures to obtain construction permits.

TAX INVESTMENT CODE

The investment projects that engage in certain activities may, until 31 December 2027, benefit from tax incentives for up to ten years starting from the completion of the investment project, provided that the amount invested is equal to or greater than €3 million. Such projects regard, among others, (i) extractive and manufacturing industry activities, (ii) tourism, (iii) agricultural and forestry activities, (iv) defence, environment and energy, or (v) research activities.

The tax benefits may include:

- Tax credits;
- Reduction of or exemption from real estate taxes, such as IMI (*Imposto Municipal sobre Imóveis*), during the term of the agreement, regarding the buildings used by the project developer when executing the project; and
- Exemption from stamp duty regarding all acts or contracts required to carry out the project.

In addition to these tax benefits, municipalities may grant total or partial exemptions from IMI or IMT (*Imposto Municipal sobre as Transmissões Onerosas de Imóveis*) for specific investments made in the Municipality.

Projects that demonstrate technical, economic, and financial viability, provide for the creation or maintenance of jobs, and meet at least one of the following conditions may qualify for contractually defined fiscal benefits granted to productive investments:

- Contribute to the strategic development of the national economy;
- Significantly reduce regional disparities; and
- Promote technological innovation, advance national scientific research, enhance environmental sustainability, or improve competitiveness and productivity.

To access these benefits, the investor must submit an electronic application to one of the State investment agencies, AICEP or IAPMEI.

Investment incentives may be revoked under the following circumstances:

- If the project developer fails to meet contractually defined obligations;
- If the project developer does not comply with tax obligations; or
- If the project developer provides false information or presents manipulated data during project presentation, evaluation, or monitoring.

If the contract is terminated, the project will lose its tax benefits, and the developer will be required to repay the uncollected tax revenue plus interest.

Tax incentives for business research and development (*R&D*) may also be granted. Corporate income tax taxpayers residing in Portugal who engage in agricultural, industrial, commercial, or service activities, or non-residents with a permanent establishment in Portugal, can deduct R&D expenses from their corporate income tax, provided these expenses are not co-funded by the State through non-refundable grants. These deductions apply to taxation periods between 1 January 2014 and 31 December 2025.

To qualify for these tax deductions, investors must meet the following conditions:

- The taxable profit must not be determined by indirect methods; and
- The applicant must not have any outstanding tax liabilities or unpaid Social Security contributions.

Investment incentives may take one of the following forms:

- A contract between the State and the investor, known as contractual incentives;
- Autonomous incentives, which apply to specific protected situations; or
- Incentives granted through State-funded programs.

RESIDENCE PERMITS

WHEN IS A VISA NOT REQUIRED?

Citizens of non-European Union countries that are part of the Schengen Area (Iceland, Liechtenstein, Norway, and Switzerland), as well as citizens from certain third countries such as the United States, Singapore, and the Hong Kong and Macao Special Administrative Regions, do not require a visa for short stays in Portugal. British citizens can also visit Portugal for holidays or short trips of up to three months without needing a visa, as long as they hold a valid passport that covers their entire stay in Portugal. Citizens from these countries are only required to present an ID or passport issued by their country of origin upon entry.

EU citizens who wish to reside in Portugal for more than three months must apply for a registration certificate at the local municipality in their area of residence within 30 days after their initial three-month stay.

Those holding a registration certificate and residing in Portugal for more than five consecutive years must apply for a permanent residence certificate, which is issued by AIMA, I.P. (Agência para a Integração, Migrações e Asilo).

WHEN IS A VISA REQUIRED?

To enter Portugal, non-EU citizens must obtain a valid travel visa, possess a recognized travel document, and not be subject to any alerts from the AIMA, I.P.

Citizens of third countries wishing to reside in Portugal must apply for a residence visa through the Portuguese consular services in their country of residence. A residence visa is a long-term visa, allowing the holder to stay in Portugal for up to four months, during which they can apply for a temporary residence permit issued by AIMA, I.P.

There are several subtypes of residence visas, namely:

- Visas for the exercise of subordinate professional activity;
- Visas for the exercise of independent professional activity or entrepreneurial emigrants;
- Visas for teaching, highly qualified or cultural activity;
- Visas for research, study, exchange of higher education students, secondary school students, internship and volunteering; and

- Visas for family reunification.

Foreign citizens who do not have sufficient means of subsistence, or cannot acquire those means lawfully, are not permitted to enter the country, either for the period of stay or for travel to the country where their admission is guaranteed.

GOLDEN VISA

The Residence Permit for Investment Activity (ARI), commonly called "golden visa", is designed for investors from non-EU countries seeking residence in Portugal. "Golden visa" grant holders the right to free movement within Portugal and other Schengen countries.

This program allows residence permits for individuals who make significant investments in Portugal and meet specific criteria. In addition to the general requirements for residence permits, obtaining a golden visa requires a mandatory investment in one of the following areas:

- Creating at least ten job positions, with the investment evaluated every two years to assess its impact on job creation;
- Transferring €500,000 to public or private scientific research institutions within the national scientific and technological system. This investment is also evaluated every two years to measure its impact on scientific and cultural activities;
- Transferring €250,000 to support artistic productions or the preservation of national cultural heritage;
- Transferring €500,000 for the acquisition of shares in non-real estate collective investment funds; or
- Transferring €500,000 to create a new company or contribute to an existing one, plus creating at least five permanent jobs or maintaining at least ten jobs (with a minimum of five permanent positions for at least three years). This investment is evaluated every two years to assess its impact on foreign direct investment and job creation.

Real estate investments are no longer eligible for the golden visa program. However, this change does not affect the renewal of residence permits for investments made before the new law came into effect on October 7, 2023. It also does not impact applications already submitted and pending decisions requested before that date.

None of the investment activities can be directly or indirectly related to real estate investments.

Non-EU citizens may have their residence permit applications refused, or existing permits canceled, if they are subject to EU sanctions.

The residence permit is renewed every two years, provided that the applicant continues to meet the investment requirements.

The investment can be made in the applicant's name or through a single-member limited company registered in Portugal, where the applicant is the sole owner.

HOW TO OBTAIN A GOLDEN VISA

In addition to one of the investments already listed, to obtain a «Golden Visa», the applicants must also:

- Be physically present in Portugal, have or rent a residence in the country and have sufficient means to support themselves;
- Be registered with the Portuguese Social Security Authorities if the activity in question is subject to registration in Portugal;
- Not have been convicted of criminal offences, punished with imprisonment for a year or more or with entry ban in Portugal;
- Not have been flagged in the Schengen Information System and in the Portuguese authorities' information system to bar their entry into the country;
- Hold a valid Schengen visa (if not exempt by any *visa waiver*); and
- Apply for the legalization of the stay in Portugal within 90 days after the first entry.

The application for ARI («golden visa») must be submitted online (<http://ari.sef.pt>) for prior validation by AIMA, I.P. Once the application has been validated, the applicant is then allowed to make the appointment to go to AIMA, I. P. facility, since the submission of documents related to the investment and the collection of biometric data is *mandatory to be done in person*.

The administrative cost of a residence permit application is approximately €6,045 and €8,060 for each renewal. If all requirements are met at the outset and the services require no further due diligence, the authorization is normally granted within 120 days of submitting the form and its documents.

Following the changes to the income tax laws, the holder of a “golden” visa will no longer benefit from special taxes applicable to non-habitual residents but may benefit from lower taxes since investment in funds does not involve heavy taxes and duties like the investment in real estate.

In addition, holders of “golden” visas are entitled to apply to extend the residency visa to family members, who are eligible to obtain permanent residence for themselves and their families after five years of holding a temporary residence permit in Portugal, with a stay requirement of only seven days per year.

STARTING A BUSINESS

INVESTMENT VEHICLES

Investors who wish to do business in Portugal may do so through corporate or contractual structures.

The most common forms of organisation are branches or companies in which the investors intend to develop their activity directly or through cooperation agreements with other companies, done through joint venture agreements, the incorporation of a complementary grouping of companies or a European economic interest grouping (EEIG).

BRANCHES

A branch is an extension of the parent company. Branches are not legal persons and do not own assets.

The only formality required to incorporate a branch is the registration of the parent company's resolution approving the establishment of a branch in Portugal. There is no equity requirement for a branch, although the parent company may choose to allocate capital to the branch for operational needs.

The branch's appointed legal representative has the power to manage the business; no corporate bodies are required.

COMPANIES

Companies are legal entities created for a commercial purpose. The most commonly used types of limited liability companies in Portugal are quota companies (*sociedades por quotas*, abbreviated «Lda.») and joint stock companies (*sociedades anónimas*, abbreviated «S.A.»).

Quota companies have a simpler governance structure and are more suited for smaller or short-term investments. In contrast, joint stock companies are more commonly used for larger or long-term investments.

The capital of joint stock companies is divided into shares (*ações*) with a minimum value of €0.01. In contrast, the capital of quota companies is, as a rule, divided into as many shares (*quotas*) as the number of shareholders, representing the part each of them owns in the company. There is no

minimum mandatory share capital in quota companies, but the value of each share must be equal to or higher than one euro. In joint stock companies, the minimum share capital is €50,000.

Joint stock companies require a minimum of five shareholders, while quota companies require a minimum of two shareholders. It is possible to incorporate a sole shareholder company. Still, in this case, the liability of the sole shareholder is not limited, as she/he is personally and unlimitedly liable in the case of the company's insolvency if the company's assets are not kept separately from the shareholder's personal assets.

Unlike the shares of quota companies, which are registered with the National Registry of Companies (*Registo Nacional de Pessoas Coletivas*, RNPC), the shares of joint stock companies are designed to ensure that they can be freely transferable privately or in stock exchanges and do not need to be registered with the National Registry of Companies.

However, the differences between the two have become blurred, as it is now mandatory that the company or the bank where the shares are deposited keep a record identifying the shareholders and the number of shares that they own. In both types of companies, the transfer might be limited, but it is more difficult to do so in joint stock companies, where the rule is that restrictions must be set out in the articles of association.

ORGANISATION OF QUOTA COMPANIES

Quota companies are managed by a board of directors with two or more members or by a single director.

The shareholders' meeting may resolve various management matters, such as:

- The disposal or subscription of holdings in other companies; and
- The disposal or encumbering of real estate.

The supervision of quota companies is entrusted to a supervisory board or an external auditor. It is mandatory to set up a supervisory board whenever at least two of the following thresholds are exceeded in two consecutive years:

- The balance sheet exceeds €1.5 million;
- The turnover exceeds €3 million; and/or
- The average number of employees during the year exceeds 50 employees.

ORGANISATION OF JOINT STOCK COMPANIES

In general, joint stock companies must adopt one of the following models:

- Board of Directors and Supervisory Board or sole supervisor. The supervisory board is mandatory for listed companies and other companies that exceed two of the following thresholds:
 - (i) The company's balance sheet exceeds €20 million;
 - (ii) The turnover exceeds €40 million;
 - (iii) The average number of employees during the year exceeds 250 employees.
- Board of Directors, Audit Committee and external auditor; and
- Executive Board, General and Supervisory Board and external auditor.

No board is required when the company's share capital is less than €200,000, and only a single manager may be appointed. A Board of Directors must be appointed when the company's share capital is equal to or higher than €200,000.

The board of directors is responsible for managing the company's business and can decide any management matter concerning the company without the approval of the shareholders, such as:

- Acquisition, sale and encumbering of real estate;
- Providing collateral or guarantees by the company;
- Prepare and submit the management report and financial statements;
- Establish or cease partnerships or other forms of cooperation with other companies;
- Opening or closing important businesses or relevant fractions of the company; and
- Major changes in the organisation of the company, including the acquisition of other companies, the reduction of its activity and the preparation of mergers.

The articles may allow the appointment of directors entrusted with the management of specific areas of the business, such as finance, operations, etc.

The general meeting may not resolve management matters except when specifically requested by the board of directors. It is the responsibility of the general meeting to resolve the matters set out in the law or in the articles of association that are not included in the attributions of other corporate bodies. As a rule, the shareholders' meeting resolves on the following matters:

- Changes to the articles of association;
- Increase and reduction of share capital;
- Approval of the company's annual accounts;
- General assessment of the management's performance;
- Election and remuneration of the members of the corporate bodies;
- Removal of directors, members of the supervisory board or the audit committee, and

- Mergers, spin-offs or changes of the business form of the company.

INCORPORATING A COMPANY

«ON-THE-SPOT COMPANIES» (*EMPRESA NA HORA*)

The so-called «on-the-spot» process is a simplified procedure for setting up a company.

The founders only need to go to an authorised office to incorporate the company, present the documents that prove their identity, capacity and powers to execute the deed, and choose one of the pre-approved names and one of the pre-approved form articles of association.

In the same process, the founders may appoint a chartered accountant or choose one from the list of chartered accountants available.

The company founders have 15 days to file a declaration of commencement of the activity with the tax authorities.

The company's equity capital must be deposited within five business days after incorporation.

At the time of incorporation of the company, the company is registered, and the founders receive:

- A certificate of the articles of association;
- The access code to the permanent certificate of commercial registry;
- The access code to the electronic card of the company; and
- The company's social security number.

In the act of constitution, the communications of incorporation of the company to the Tax Authorities, Social Security, and the authority for the working conditions are carried out by the administration *ex officio*.

The procedures are started and completed on the same day and cost €360.

ONLINE INCORPORATION

Companies can be incorporated online by filling out an online form and submitting the documents through <https://registo.justica.gov.pt/empresa>.

The founders may submit the application online, choosing a pre-approved name and one of the previously approved articles. In the same act, the founder must provide the necessary elements to submit the declaration of commencement of activity.

In cases where the company has a share capital, it is not necessary to prove the deposit of the capital at the time of incorporation. It is sufficient that the shareholders declare that they will deposit the money in the five days following the request.

The founder must submit an online application until 24 hours after starting to apply. The registration of the company will take place immediately or in two business days if the founders submit their own draft articles of association.

The cost of the incorporation is €220 if the articles of association have one of the pre-approved forms and €360 when founders propose their own articles of association.

TRADITIONAL METHOD OF INCORPORATION

The steps required to incorporate a company using the traditional method are:

- Requesting the company's name certificate with the National Registry of Companies (at www.portaldaempresa.pt, at www.irn.mj.pt or in person);
- Executing the articles of association through a public or private deed;
- For joint stock companies, depositing the minimum initial share capital in a bank;
- Registering in the Commercial Registry Office;
- Publishing the articles of association and the list of members of the company's corporate bodies; and
- Registering the company with the tax authorities, the social security and the employment authorities (*Autoridade para as Condições do Trabalho*).

ANNUAL ACCOUNTS

Three months after the end of the year (which coincides with the calendar year), the General Assembly must approve the company's annual accounts and register them by the fifteenth day of the seventh month after the end of the year (15 July if the corporate year coincides with the calendar year). Registration must be completed electronically at «Portal das Finanças».

THE SIMPLIFIED INFORMATION SYSTEM

The simplified corporate information system (*Informação Empresarial Simplificada*, IES) allows companies to comply with the following reporting obligations in a single document:

- Registering the annual accounts and tax information;

- Registering the financial statements;
- Submitting statistical information to the Portuguese National Statistics Institute (Instituto Nacional de Estatística, INE); and
- For statistical purposes, the annual financial statements must be submitted to the banking authority (*Banco de Portugal*, BdP).

This single statement must be electronically submitted each year until the 15th day of the 7th month after the end of the relevant financial period, which for most companies will take place on 15 July of each year. Meeting this timeline is essential for companies to avoid penalties and ensure compliance with Portuguese tax and regulatory authorities.

OTHER FORMS OF BUSINESS ORGANISATION

UNINCORPORATED JOINT VENTURES

Unincorporated joint ventures or consortia are set up through a contract where two or more parties agree to pursue a given activity jointly.

The unincorporated joint venture is used when the parties wish to undertake a limited and temporary project. The unincorporated joint venture has no legal personality and cannot have common funds.

Unlike other cooperation agreements, the unincorporated joint venture members act separately, acting jointly only when necessary to pursue a specific objective or develop an activity.

Unincorporated joint ventures are called “internal” when its members do not act together in relationships with third parties. Unincorporated joint ventures are said to be “external” if members present themselves to third parties as acting in partnership.

In internal unincorporated joint ventures, the members benefit from broad freedom in determining their obligations; in external unincorporated joint ventures, the parties must designate a steering body, a supervisory board and a leader.

The leader has powers of an internal nature, such as the organisation and implementation of cooperation among all parties, and of an external nature, including the power to represent the joint venture before third parties.

COMPLEMENTARY GROUPING OF COMPANIES

The complementary grouping of companies (*Agrupamento Complementar de Empresas*, ACE) is a form of association of two or more companies, endowed with legal personality, with the purpose of

improving the conditions for jointly developing an specific activity or extract benefits from the activities developed separately by each of its members.

The ACE has its own organisational structure, with three main bodies: general meetings, a board (management and representation body), and a supervisory body.

The ACE may own assets made up of members' contributions. Each member is personally and jointly responsible for the debts of the ACE, meaning that they share liability for any financial obligations incurred by the grouping

EUROPEAN ECONOMIC INTEREST GROUP

The European Economic Interest Group (EEIG) is the European equivalent of the Portuguese ACE. EEIGs are created by a contract where the parties that carry out activities in the European Union form an international legal entity with the purpose of improving the conditions for the exercise or the results of the activities that the founders develop separately.

The main differences compared to the ACE are:

- The EEIG may have natural persons as members, which is not allowed in ACEs;
- The EEIG must be composed of companies whose headquarters (or individual persons whose main activity) are located in at least two European Union member states.

The EEIG is composed of an Assembly of Members that acts collectively and a manager or managers with powers of representation, as well as other powers set by the members.

TAXATION

OVERVIEW

The main taxes in Portugal are the personal and corporate income taxes and the value-added tax (VAT), which is levied on transactions in goods and services. There are also real estate transfer taxes and property ownership, customs duties and some excise duties, such as the car tax and the tobacco tax.

The largest source of state revenue comes from VAT, income taxes and social security contributions.

Tax rates in Portugal are, to a great extent, in line with the rates of most EU countries.

The corporate income tax rate is 20%. A municipal surcharge of up to 1.5% and a State surcharge ranging from 3% to 9% applied only to companies with an income worth more than €1.5 million.

Personal income tax rates range from 13% to 48%. Social security contributions are 34.75% of the income, of which 23.75% is paid by the employer and 11% by the employee.

VAT rates range from 6% to 23% in the Portuguese mainland and 4% to 22% in regions of Azores and Madeira.

Income obtained abroad by Portuguese residents and in Portugal by non-residents might be taxed in Portugal.

To avoid double taxation, Portugal has double taxation agreements with more than 85 countries, such as the United States of America, Poland, Russia, China, Canada and Germany.

The tax system in Portugal is monitored by the Tax and Customs Authority (*Autoridade Tributária e Aduaneira*), which is responsible for the management of taxes according to the rates defined by the tax legislation approved by the Parliament.

General tax rules are applied nationwide, but the autonomous regions of Azores and Madeira enjoy fiscal autonomy, which is why the rates of some taxes are lower in these regions than the rates applicable in mainland Portugal. Municipalities can obtain their own revenues through municipal taxes regarding the provision of certain municipal services or for the use of municipal assets.

COMMERCIAL COMPANIES' TAXATION

CORPORATE INCOME TAX

Commercial companies with headquarters or effective management in Portugal and companies with a permanent establishment in Portugal are subject to corporate income tax.

In Portugal, an establishment is considered “permanent” when a foreign company carries out its activity in Portugal through a branch, office or other establishment, as well as if a person acts on behalf of the company in Portugal and has broker powers and powers to enter into transactions in the name of the company. Since 2021, if the company provides services by using employees or other persons hired in Portugal for this purpose for at least 183 days in a 12-month period, such company will also be deemed to have a permanent establishment.

The general CIT rate in the mainland is 20%, which is levied on the company's taxable income. If it is a permanent establishment of a foreign company, only the taxable profit attributable to the activity in Portugal will be taxed. In Madeira and Azores, it is 14.7%.

In the case of a small or medium-sized enterprise, the rate to be applied to the first €50,000 of the taxable income is 17% in the mainland and 11.9% in Madeira and Azores.

In general, business costs and expenses are tax deductible if they are properly documented and are essential to obtain taxable income or to maintain the source of production. However, there may be limitations on the deduction of certain costs, including, without limitation, interest expenses.

Corporate income tax is self-assessed and paid by companies when filing their annual income tax returns, which must be submitted by June 30 of each year if the tax year is the calendar year.

Presently, Portugal's corporate tax rate (20%) is higher than the EU average (19.19%) but below the global average (23.85%).

MUNICIPAL SURCHARGE

Corporate income tax is added to the municipal surcharge levied on the taxable amount that is not exempt from IRC at the specific rate approved by each municipality (maximum limit of 1.5%). A reduced rate of surcharge may be applied to companies with a turnover of less than €150,000 in the previous year.

Most municipalities apply the maximum rate of 1.5%, such as Lisbon, Loures, Oeiras, Setúbal, Oporto, Braga, Guimarães and Portimão. Cascais, with 1.25%, is an example of a municipality near Lisbon with slightly lower rates.

STATE SURTAX

The taxable profit over €1.500,000 is subject to the state surtax, which is calculated according to the following rates:

- From €1.5 million to €7.5 million: 3%;
- From €7.5 million to €35 million: 5%; and
- Over €35 million: 9%.

AUTONOMOUS TAXATION

Companies might also be subject to autonomous taxation of certain expenses, in particular:

- Undocumented expenses: 50% to 70%;
- Charges with vehicles: 8.5% to 32.50%;
- Representation expenses: 10%; and
- Unbilled allowances to customers: 5%.

FOREIGN COMPANIES' TAXATION

Non-resident companies that do not have a permanent establishment in Portugal may also be subject to corporate income tax if their income is obtained in Portugal and can be taxed in Portugal under the applicable double taxation agreements (e.g., dividends, capital gains, interest and royalties).

In general, income (excluding capital gains) deemed to be obtained in Portugal will be subject to a withholding tax at a rate of 25%, although that rate might be reduced to 15%, 10% or 5% under double taxation agreements.

The payment of dividends to companies established in another Member-State of the European Union that hold shares representing at least 10% of the share capital of the company established in Portugal during an uninterrupted minimum period of one year is exempt, provided that the company is an eligible company under the Parent Companies Directive. Interest and royalties may also be exempt from withholding tax if the payment is made to an affiliated company in another Member State of the European Union, provided that the relevant holding requirements are fulfilled.

Capital gains obtained by non-resident companies and without a permanent establishment in Portugal resulting from the sale of real estate located in Portuguese territory are subject to corporate income tax. Capital gains arising from the sale of shares and other securities issued by companies resident in Portugal might be corporate income tax exempt unless:

- The seller has its headquarters in a jurisdiction subject to a more favourable tax regime;

- More than 25% of the company is, directly or indirectly, owned by resident companies or persons, unless the shareholder is resident in an EU Member State, an EEA country, or a country that is a party in a double taxation agreement with Portugal and the stake fulfils some of the participation exemption requirements (e.g., a minimum 10% stake and a minimum holding period of one year); or
- More than 50% of the target company's assets are real estate properties located in the Portuguese territory or, if the target is a holding company, more than 50% of any controlled company's assets include real estate property located in Portugal.

TAXATION OF INDIVIDUALS

PERSONAL INCOME TAX

Personal income tax is levied on the annual value of the income of the following categories after the corresponding deductions have been made:

- Category A: dependent work income;
- Category B: business and professional income;
- Category E: capital income;
- Category F: property income;
- Category G: assets increase; and
- Category H: pensions.

In general, income is subject to progressive rates, ranging between 13% and 48%.

To taxable income over €80,000, the following additional solidarity charges are applied:

- From €80,000 to €250,000: 2.5%; and
- Over €250,000: 5%.

Work income is subject to withholding taxes, which are different according to the income and employee's family situation. Some benefits may be exempt from income tax up to certain limits (e.g., meal allowances, subsidies).

In general, the determination of business and professional income is based on the taxpayer's accounts. When the amount of income does not exceed €200,000, taxpayers may apply for the simplified tax scheme under which taxable income is determined by the application of coefficients.

Health expenses, education and training expenses, household expenses and real estate expenses can be deducted, up to certain thresholds, from the taxpayer's taxable income.

Certain incomes are subject to a flat rate of 28%, such as:

- Capital income (e.g., dividends, interest, royalties);
- Positive balance of capital gains and losses resulting from the sale of shares;
- Positive balance of capital gains and losses resulting from the sale of real estate; and
- Property income (e.g., rents).

Withholding tax might be applied to capital and property income. In any case, taxpayers may opt for the inclusion of such income.

Gains obtained from the transfer of real estate are not taxed when the permanent residence is sold, and the product of the sale is reinvested (after deducting the repayment amount of any loan for acquisition) in the acquisition of another permanent residence in Portugal between the 24 months before the sale and the 36 months following the sale.

Unlike residents who are taxed on their overall income obtained in Portugal and abroad, non-residents are taxed only on their income obtained in Portugal when such taxation is allowed under applicable double taxation treaties.

NON-HABITUAL RESIDENTS' FRAMEWORK

Until 31 December 2023, non-residents moving to Portugal could choose to apply to the non-habitual resident status (NHR) and benefit from a more favourable tax regime for a 10-year period without the need to make any investment in the country.

The main tax advantages of the NHR status were the following:

- Employment and self-employment income obtained in Portugal was subject to a 20% flat rate if related to «high value-added» activity;
- Pensions obtained outside of Portugal were exempt from personal income tax or subject to a flat rate of 10%; and
- Other foreign source income was tax-exempt under certain conditions.

Following the approval of the 2024 State Budget, the NHR regime was revoked with effect as of 1 January 2024 and will no longer be available with the following exceptions:

- Residents that have obtained the NHR status until 31 December 2023;

- Non-residents that, as of the date the 2024 State Budget proposal was submitted to the Parliament (10 October 2023), were already in the process of becoming residents in Portugal and can provide evidence thereof (e.g. signed lease agreement);
- Non-residents that had an employment agreement or a residency permit/application as of 31 December 2023; and
- Non-residents who became residents for tax purposes by 31 December of 2024 and submit their application for NHR registration until 31 March 2025.

NEW R&D-RELATED INCENTIVES

Despite the revocation of the NHR regime, the 2024 State Budget approved incentives for non-residents who have not lived in Portugal in the last five years and who wish to work in Portugal on R&D-related activities.

The incentives include a flat rate of 20% applicable to employment and self-employment income obtained in Portugal during a 10-year period, provided that the non-residents fall in one of the following categories:

- Professors at colleges and investigators in scientific and technological system entities;
- Employees or members of corporate bodies in entities recognized as technology and innovation centres;
- Members of corporate bodies in companies that benefit from investment contractual benefits;
- "Highly qualified" employees in (i) companies with relevant investments that benefit or have benefited from investment tax benefits and (ii) industrial and service companies that export at least 50% of their turnover;
- Qualified employees and members of corporate bodies in entities that carry out economic activities recognized as relevant to the national economy;
- Personnel whose costs are eligible under the R&D tax incentive system;
- Employees and members of corporate bodies in start-ups; and
- Employees or other professionals developed in the autonomous regions to be defined by the respective regional governments.

SOCIAL SECURITY CONTRIBUTIONS

Income from employees, self-employed workers and members of corporate bodies are also subject to social security contributions, with the following rates being applied:

- Employees: 11% paid by the employee and 23.75% paid by the company;

- Self-employed workers: 21.4% paid by the worker and 10% paid by the client when the economic dependence exceeds 80%, and 7% when the economic dependence is lower than 80% but exceeds 50%; and
- Members of corporate bodies: 11% paid by directors and managers, 9.3% in the remaining situations and 20.3% or 23.75% paid by the company, respectively.

Some benefits are excluded from contributions, such as:

- Allowances up to the limits established for personal income tax purposes;
- The compensation for termination of the employment contract in case of collective dismissal; and
- Possible subsidies for medical care and medicine for employees and their families.

Portugal has entered into several social security conventions, establishing exemptions for workers who are temporarily working in Portugal, such as from the United States of America and Canada.

TAXATION ON TRANSACTIONS OF GOODS AND SERVICES

VALUE ADDED TAX

Value-added tax (VAT) is levied on the following transactions:

- Transfers of goods and services rendered for consideration;
- Importation of goods; and
- Intra-community transactions carried out in the national territory.

Natural or legal persons who carry out an economic activity or who, by carrying out a single taxable transaction, fulfil the assumptions of the actual incidence of personal income tax or corporate income tax are taxpayers subject to VAT.

Transfers of goods which are in Portugal at the moment of shipping to the purchaser or, if there is no shipment, that are in Portuguese territory when the goods are made available to the new purchaser are, as a general rule, subject to VAT in Portugal. Intra-community acquisitions are also subject to VAT in Portugal.

However, some transfers of goods are exempt from VAT:

- Intra-community transfers of goods;
- Exports, transactions assimilated to exports and international transport; and

- Transfers of goods intended to be placed in customs and fiscal warehouses to be subsequently exported to other countries.

Usually, the provision of services is subject to VAT in Portugal when:

- The purchaser is established in Portugal, in case the purchaser is subject to VAT; or
- The provider is established in Portugal if the acquirer is not subject to VAT.

However, some services are always subject to VAT in Portugal when they are executed in Portugal, such as:

- Real estate services (regarding real estate located in Portugal);
- Passenger transport by distance travelled in Portugal;
- Access to cultural, artistic, scientific, sporting, recreational, educational and similar events; and
- Short-term lease of a means of transport made available in Portugal.

There are other exceptions to the above-mentioned location rules (e.g., telecommunications services, broadcasting, and electronic services when the acquirer is a person who is established or living outside of the country).

The normal VAT rate applicable in mainland Portugal is 23%. Certain goods and services are subject to an intermediate VAT rate of 13% or a reduced rate of 6%.

In the Azores, the general VAT rate is 16%. The intermediate rate is 9%, and the reduced rate is 4%. In Madeira, the VAT rates are 22%, 12% and 4%, respectively.

VAT is levied on the value of the consideration obtained or to be obtained from the purchaser. From this amount, default interest, discounts, rebates, and bonuses that may be granted are excluded.

VAT is due at the moment when the services are provided or when the goods are in the purchaser's disposition.

In addition to the above-mentioned transactions, the following transactions are also exempt from VAT:

- Medical and educational services;
- Transfer and renting of real estate;
- Certain financial operations; and
- Insurance and reinsurance operations.

As a rule, there is no tax deduction when the taxable person practices transactions exempt from VAT. However, in certain cases and subject to certain requirements, the law allows the deduction of

VAT (e.g., Intra-Community transfers) or waiver of exemption (e.g., transfer and renting of real estate).

OTHER TAXES ON CONSUMPTION

In addition to VAT, other consumption taxes may be applied to products that entail environmental and public health costs. The following are Portugal's main excise duties:

- Tax on alcohol, alcoholic beverages and beverages containing added sugar or other sweetening matter;
- Tax on petroleum products and energy; and
- Tax on tobacco.

The authorised warehouse keeper and the registered consignee are considered taxable persons.

These taxes are due to the taxable person at the moment of consumption or in the determination of losses to be taxed.

Embassies or consulates, international organisations recognised by the Portuguese State and the forces of a State party to the North Atlantic Treaty Organisation Products are exempt from subject excise duties.

CUSTOMS TAXES

As a member of the European Union, Portugal only imposes customs duties on imports of goods from countries that are not members of the EU Customs Union. Customs tariffs are set as a percentage of the price of the imported good and of the related costs which are included in the Common European Customs Tariff.

PROPERTY TAXES

MUNICIPAL REAL ESTATE TRANSFER TAX

The municipal real estate transfer tax (*Imposto Municipal sobre as Transmissões Onerosas de Imóveis*, IMT) is a municipal tax that taxes the onerous transfers of property rights over real estate assets located in Portugal. As a rule, IMT is levied on the value of the contract through which the asset was transferred or on its taxable value, whichever is higher.

The acquisition of more than 75% of the share capital of a real estate company may also be subject to IMT if certain conditions are met (e.g. real estate represents more than 50% of the assets and is not allocated to a business activity).

Normally, IMT is paid prior to the transfer of the property. Before executing the deed of sale, the notary will require proof of the IMT payment, which must be done through the Tax Authority's official website (*Portal das Finanças*).

IMT rates vary according to the type of asset:

- Land: 5%;
- Urban buildings used as primary residence: between 0 and 7.5%;
- Urban buildings used as secondary residences: between 1% and 7.5%;
- Other urban buildings and other onerous acquisitions: 6.5%; and
- Buildings (urban or land) or other acquisitions, the purchaser of which is resident in a country, territory or region subject to a clearly more favourable tax regime: 10%.

Some transactions are exempted from IMT, such as the acquisition of real estate by investment funds for rental housing and the acquisition of buildings for resale by real estate companies.

MUNICIPAL PROPERTY TAX

The municipal property tax (*Imposto Municipal sobre Imóveis*, IMI) is levied on the asset value of buildings located in Portugal. The owner, usufructuary or surface right holder of the building must pay IMI until April of every year.

IMI rates are different according to the type of real estate:

- Urban buildings: 0.3% to 0.45%;
- Land: 0.8%; and
- Buildings held by entities incorporated in offshore financial centers: 7.5%.

Urban buildings used for commerce, industry or services are not subject to IMI.

IMI is paid in a single instalment in May when the amount is equal to or less than €100, in two instalments paid in May and in November when the tax amount is over €100 and equal to or less than €500 or three instalments paid in May, August and November when the tax amount exceeds €500.

There are situations where exemptions or reductions might apply, such as urban buildings for personal and permanent residence, buildings of taxable persons with dependents, and urban buildings that have been allocated for touristic use. The exemption for personal use buildings only applies if the building's taxable value does not exceed €125,000 and the owner's taxable income in the year prior to the acquisition is less than €153,300. If these requirements are verified, the exemption will apply for three years. The buildings integrated into enterprises with a touristic purpose benefit from an exemption for seven years.

The Municipal Assemblies may apply a reduction of the IMI rate to the urban building for personal and permanent residence of the taxable person or her/his household, according to the number of dependents she/he is responsible for.

Natural and legal persons and undivided inheritances who are owners, usufructuaries' or owners of a surface right located in Portugal are subject to an additional property tax at the following rates: (i) 0.7% on the value of properties exceeding €600,000 for natural persons (€1,200,000 for couples) and (ii) 0.4% of the value of the property for companies.

STAMP DUTY

The Stamp Duty is levied on various legal acts, documents, contracts and other transactions that are exempt from VAT, which are described in the General Stamp Tax Table, such as:

- Onerous acquisition of real estate: 0.8%;
- Donations: 10%;
- Lease and sublease: 10%;
- Business acquisition: 5%; and
- Health insurance contracts: 5%.

There are certain facts that may benefit from stamp duty exemption under special conditions, such as:

- Premiums and commissions related to life insurance; and
- The interest charged on loans for the acquisition, construction, reconstruction or improvement of one's own housing.

EMPLOYMENT LAW

OVERVIEW

The Portuguese labour market, like most other EU markets, remains relatively rigid when compared with benchmark countries.

In 2009, a new Labour Code was approved that simplified labour legislation and paved the way for significant reforms. In the second decade of the century, reforms were introduced that reduced the compensation due for collective dismissal for new employees, which ranges from 30 to 14 days of basic and daily pay for each year of seniority.

Other aspects of the legislation have been revised since the adoption of a new Labour Code in 2009, which adopted more employer-friendly legislation as regards the organisation of its workforce. As an example, working schedules and the transfer of the workplace may now be managed in a more flexible way.

The 2009 Labour Code has been subject to changes improving labour standards, particularly as regards the work organisation. Working hours can be changed with a certain degree of flexibility by the employer without increasing labour costs. The Labour Code allows the employer to unilaterally change the workplace (geographical mobility) as well as the functions exercised by the employee (functional mobility).

In April 2023 an amendment to the Labour Code was approved covering a wide number of matters, including, among others, the employment status of digital platforms employees, parental leave, fixed-term employment contracts, teleworking, the outsourcing of services and collective bargaining rules.

According to data provided by Eurostat, in January 2024, the unemployment rate (seasonally adjusted) estimated for Portugal was 6.5 per cent, remaining constant in relation to the percentage recorded in the previous month (6.5 per cent). For the Eurozone, Eurostat estimates that the unemployment rate in January 2024 stood at 6.4 per cent, down 0.1 p.p. on the previous month (6.5 per cent) and down 0.2 p.p. year-on-year (6.6 per cent). Portugal is the fifth European Union (EU) member state with the highest percentage of workers working long hours (9.0 per cent), with the average in Europe being 7.1 per cent in 2023.

The average level of qualification of Portuguese employees with a bachelor's degree, master's degree or doctorate degree has been increasing.

HIRING EMPLOYEES

Hiring in Portugal is subject to the mandatory rules and statutory limits set out in the law on several matters, such as remuneration, working hours, vacation rights or duration of contracts.

The contract duration, working hours, remuneration, leave entitlement, absences, and termination of contracts are the most important matters to be agreed upon by the parties, albeit subject to mandatory rules set out in the Portuguese Labour Code.

In general, employment contracts do not need to be written. The law only requires a written document for some specific types of contracts, such as fixed-term contracts, temporary contracts, part-time contracts, secondment contracts and contracts with foreign employees.

The employer has the duty to inform employees of the relevant aspects of the employment relationship, including, among others:

- Place of work;
- Employee's job position;
- Brief description of employee's tasks;
- Effective date of the employment contract;
- Prior termination notice; and
- Collective bargaining agreements, if any.

The information on the employee's identification, place of work, frequency and form of payment and the start of the activity must be provided in writing by the employer and delivered to the employee by the seventh day following the contract execution. The remaining information may be communicated to the employee within one month from the start of the contract execution.

The terms of the employment relationship are also subject to collective bargaining agreements, when applicable, and to the practices between the parties.

Since 1 January 2024, the minimum monthly wage in Portugal is €820. Salaries must be paid on a regular and permanent basis and may be fixed, variable or mixed, including fixed and variable components, which may be linked to productivity, commission based on sales or other objective and determinable factors.

In addition to the monthly salary, employees are entitled to receive a Christmas bonus equal to one month of remuneration payable until 15 December of each year and a holiday bonus equal to one month of remuneration payable before the holiday period.

The maximum regular working period is eight hours per day and 40 hours per week. Employees are entitled to a minimum rest period of eleven consecutive hours between two successive daily work periods, as well as to one day of rest per week.

An additional weekly rest (in all or in certain weeks of the year) may also be given other than the rest day required by law.

Employers and trade unions may agree to increase the work schedule up to 12 hours per day and 60 per week, provided the work schedule is reduced in other periods so that at the end of a reference period up to 12 months, the average working hours is equal to 8 hours per day and 40 hours per week.

Employees are entitled to 22 business days of paid holiday per year. Employees are also entitled to 13 national public holidays. Under the collective bargaining agreements, employers may be obliged to grant two optional public holidays.

TYPES OF EMPLOYMENT CONTRACTS

The most used types of employment contracts are:

Open-ended or “permanent” contracts. The general rule is that contracts without a specified term are deemed permanent, which means that the employer may only terminate the contract in the cases allowed by law;

Fixed-term contracts. Term contracts are in force for a pre-established period set according to the employer’s temporary needs, which must be specified in the contract, and expire at the end of the agreed term unless they are renewed. Fixed-term contracts cannot be renewed more than three times, have a maximum duration of two years, and are only allowed under specific legal requirements;

Unfixed term (permanent) contracts. Permanent contracts are not subject to a pre-established period, but expire after the completion of the employer’s project or when the reason for which the employee was hired ceases to exist; unfixed-term contracts have a maximum duration of four years. They may only be used to satisfy the employer’s temporary needs; and

Temporary employment contracts. Temporary employment contracts are contracts with temporary work agencies which hire employees to subsequently second them to the user company. Temporary employment contracts may only be used to satisfy the employer’s temporary needs and be renewed up to a maximum of two years.

PROBATION

Probation periods, during which either party may unilaterally terminate the contract without prior notice and without cause, are allowed.

The length of the probation period depends on the contract in question, with the possibility of reduction by collective bargaining instrument or by written agreement between the parties.

The maximum probation periods are:

- For open-ended contracts: (i) 240 days for employees with management or senior positions, (ii) 180 days for employees with job positions of technical complexity, high degree of responsibility or that require special qualifications, and for employees in positions that involve a higher degree of trust and confidence, as well as those seeking first employment and long-term unemployed and (iii) 90 days for other employees;
- The 180-day probation period for first-time jobseekers and long-term unemployed persons is reduced or excluded depending on whether the duration of a previous fixed-term contract with a different employer is 90 days or more.
- For fixed and unfixed-term contracts: (i) 30 days for contracts with a duration equal to or higher than six months and (ii) 15 days for contracts with a duration of less than six months.
- The probationary period is reduced or excluded depending on whether the duration of the professional traineeship with positive evaluation for the same activity and different employer was equal to or greater than 90 days in the last 12 months.
- The probationary period provided for in any of the previous points is reduced or excluded, depending on whether the duration of a previous fixed-term contract for the same activity, a temporary employment contract performed in the same job, a service contract for the same purpose, or a professional internship for the same activity, was less than or equal to or greater than the duration of that contract, provided that in any case they are concluded by the same employer.

In case of termination of the employment contract during the probation period, employees are not entitled to any compensation unless otherwise agreed in writing by the parties.

WORKING HOURS

The maximum regular working period is forty hours per week, eight hours per day.

Employees are entitled to a minimum rest period of eleven consecutive hours between two successive daily work periods, as well as to one day of rest per week. An additional half or full day of rest (in all or in certain weeks of the year) may also be given in addition to the rest day required by law.

Insofar as the statutory rules above are not contravened, collective bargaining agreements may provide alternative working time regimes.

Work exceeding the limits above is deemed overtime. Overtime gives the employee the right to additional pay and, in certain circumstances, to an additional rest period. Employees' overtime is subject to certain limits imposed by the Portuguese Labour Code.

REMUNERATION

Employees are entitled to a minimum monthly salary set by law each year. Collective bargaining agreements may also determine a minimum remuneration for different jobs and professions, which can never be less than the minimum monthly remuneration set by the Portuguese Government.

The remuneration must be paid on a regular and permanent basis and may be fixed, variable or mixed (comprising fixed and variable components).

In each year, employees are entitled to receive twelve monthly remunerations. In addition, employees are also entitled to receive:

- A Christmas bonus equal to one-month remuneration payable until 15 December of each year; and
- A holiday bonus equal to one-month remuneration payable before the holiday period.

The amount of both Christmas and holiday bonuses is proportional to the time of service rendered by the employee in that calendar year (i) in the year of hiring of the employee, (ii) in the year of termination of the contract of employment and (iii) in the event of suspension of the contract of employment, unless the suspension is due and determined by employer's reasons.

TELEWORK

Teleworking is the provision of work under the legal subordination of the employee to an employer at a location not determined by the employer, using new information and communication technologies.

The teleworking scheme must be the subject of a mandatory written agreement between the parties and may be included in the initial contract or be separated from it.

The agreement must include, in particular, the identification of the parties, the frequency and method of personal contact, the working hours, the place where the employee will usually work and the employee's salary, and the additional and complementary benefits must be specified. The change of place of work set out in the agreement can be altered by written agreement.

The employment contract and the applicable collective labour regulation instrument must establish the amount of compensation due for additional expenses when the agreement for teleworking is concluded.

The teleworking agreement may be established for either a fixed or an indefinite duration.

In the first case, the duration cannot exceed six months and is automatically renewed for equal periods unless one of the parties declares in writing that they do not wish to renew up to 15 days before the deadline; in the second situation (permanent contracts), either party can do so by giving 60 days written notice.

In any situation (agreement for a fixed or indefinite duration), during the first 30 days of performance, either party may terminate the agreement.

Once the teleworking period has come to an end, within the scope of an employment contract for an indefinite duration, or whose term has not yet been reached, the employee returns to work in person, without prejudice to their category, seniority and any other rights recognised for in-person employees with identical duties and working hours.

The employer must be responsible for the equipment and systems needed to carry out teleworking. The written agreement must state how this duty is to be fulfilled if the employer provides it directly to the employee or if the employee acquires it.

The payment of all additional expenses, proven by the employee, that result from the acquisition of a computer or other equipment or systems necessary to carry out the work, including the additional costs of energy and communications, as well as the maintenance of such equipment and systems, must be fully paid or reimbursed by the employer.

Regarding the formula for calculating expenses, only the need to make a "comparison based on the employee's expenses in the same month in the last year prior to the application of this agreement" is mentioned.

VACATION AND TIME OFF DAYS

VACATION

Employees are entitled to 22 business days of paid holiday per year. Employees are also entitled to 13 national public holidays: 1 January, Good Friday, Easter Sunday, 25 April, 1 May, 10 June, 15 August, 5 October, 1 November, 1 December, 8 December and 25 December.

Under certain collective bargaining agreements, employers may be obliged to grant two optional public holidays: Carnival/Shrove Tuesday and the local municipal holiday.

TIME OFF FOR ILLNESS OR INJURY

Employees are entitled to time off from work due to illness or injury. In cases of illness or injury, employees are entitled to receive sick pay from the Social Security. For this purpose, employees must file a specific form and submit a statement from a hospital, health centre or doctor giving evidence of their illness or injury to the Social Security.

Sick pay is calculated based on the employee's reference remuneration under the social security criteria and could range between 55% and 75% of the employee's remuneration, depending on the length of the illness or injury.

Employees are also entitled to time off in case of illness of a child or dependent or to provide care for family members in a hospital located outside their area of residence. In some cases, the absence entails a loss of remuneration for the employee.

In case of absences are not foreseeable, the employee must inform the employer of the time off as soon as possible. If absences are foreseeable, the employee must notify the employer five days in advance, stating the reasons for the absence.

Collective bargaining agreements may also establish specific rules on employee's time off days.

PARENTAL LEAVE

Employees are entitled to parental leave for a child's birth, which may be shared between both parents after the birth of the child. The initial parental leave is granted for a period of up to 120 or 150 consecutive days, depending on the parent's choice. A bill for increasing parental leave to 180 or 210 days is now under discussion in Parliament.

The initial parental leave can be increased by 30 days if one of the parents takes exclusively one period of 30 consecutive days or two periods of 15 consecutive days after the mother's compulsory period of six weeks of leave following childbirth.

The following daily values are applied to the amounts of the allowances according to the period of concession:

- For (i) 120 days and (ii) 150 days of shared leave: 100% of reference pay;
- For 180 days of shared leave where each person takes consecutively 30 days or two periods of 15 days: 83% of the reference remuneration;
- For 180 days of leave where the father takes consecutively 60 days or two periods of 30 days, in addition to the father's exclusive period: 90% of the reference pay;
- For 150 days of leave: 80% of the reference pay.

The amount of the allowance cannot be less than €13.58.

In the case of shared parental leave, employees must also inform their employers of the start and end dates of each of their leave periods through a joint written statement up to seven days after the child's birth.

Notwithstanding the rules above, female employees are always entitled to 72 days of leave, of which a maximum of 30 days are taken optionally before the birth, and 42 days (6 weeks) are mandatory and taken immediately after the birth.

The father must take mandatory parental leave of 28 working days (consecutive or not), of which seven consecutive days immediately after the birth of the child and 21 days in the 42 days following the birth of the child, taken in minimum periods of seven days. Fathers are also entitled to an additional and optional period of seven days (consecutive or not), provided that this leave period is enjoyed at the same time as the mother's leave period.

Employees are also entitled to leave to travel to a hospital located outside their island of residence to give birth.

After the 120-day leave period, parents can accumulate the remaining period of the initial parental leave with part-time work.

In this case, the remaining period is registered as half-days, and the period of subsidised leave is split, i.e. a period of 30 days is split into 60 half-days.

If the parents choose to share the initial parental leave and each takes exclusively, i.e. not at the same time, a period of 30 consecutive days or two periods of 15 consecutive days after the mother's compulsory six weeks, the period of leave of 120 or 150 days and the respective pay, depending on the option, is increased by 30 days.

TRANSFER OF BUSINESS

In the event of a transfer of business, all of the employer's rights and obligations under the employment contracts are automatically transferred to the new employer. During the two years following the transfer, the former employer will remain liable, jointly and severally with the new employer, for all the obligations that became due before the date of the transfer of business. The transfer of an undertaking cannot itself be a reason for the dismissal of employees.

TERMINATION OF EMPLOYMENT CONTRACTS

The termination of employment contracts can only happen under the terms and conditions set forth in the Labour Code, and dismissals without just cause are prohibited. Employment contracts may only be terminated in the following cases:

- Expiration of term contracts;
- Unilateral termination during the probationary period;
- Collective dismissal;
- Redundancy;
- Dismissal for ineptitude; and
- Dismissal due to a fact attributable to the employee.

Employers and employees are also free to terminate the employment contract by mutual agreement at any time.

EXPIRATION OF TERM CONTRACTS

The employment contracts expire when it expires, upon prior notice to the employee, which must be sent:

- In fixed-term contracts, by the employer or the employee, 15 or eight days before the contract expires, respectively;
- In unfixed-term contracts, seven, 30 or 60 days before the contract expires, as the contract lasted for up to six months, from six months to two years or for a longer period.

Upon the termination of the employment contract, the employee is entitled to receive the outstanding credits, if any, and the compensation.

TERMINATION OF THE PERMANENT EMPLOYMENT CONTRACT FOR IMPOSSIBILITY

Permanent employment contracts terminate due to the supervening, absolute and definitive impossibility of the employee providing her/his work or of the employer receiving or renewing the employee due to old age or disability.

REVOCATION BY AGREEMENT

The employer and the employee can terminate the employment contract by agreement setting out the terms and conditions of the termination. The revocation does not include any severance compensation.

TERMINATION BY THE EMPLOYEE

The employee can terminate the contract with just cause in the cases specified in the law, in which case she/he will be entitled to receive compensation.

Regardless of the existence of just cause, the employee can terminate the employment contract with prior notice of 30 or 60 days, depending on whether the contract lasted for less than or more than two years, respectively.

COLLECTIVE DISMISSAL

Collective dismissal is possible when the employer intends to dismiss a minimum of two employees (in companies with less than 50 employees) or five employees (in companies with 50 or more employees). A collective dismissal procedure does not necessarily imply the full and permanent closing of a department or a division of a company and may only involve a reduction of the workforce allocated to specific areas.

The collective dismissal must be based on the following grounds:

- Market structure reasons (e.g., the reduction of the company's business activity arising from a predictable decrease in the demand for goods or services);
- Organization-related and economic reasons (e.g., the existence of economic and/or financial operational deficits, changes to the activity or restructuring of the company's productive organization); and/or
- Technological reasons.

The collective dismissal procedure must:

- Serve an initial notice of dismissal to the work council, if any, or to each of the employees;
- Appoint an employee committee by the employees within five business days after initial notice is served (optional);
- Set a consultation meeting between the employer and the relevant employees (or the employees' committee, if any) with the purpose of reaching an agreement on the proposed collective dismissal and to decide whether or not any measures should be applied to minimise the dismissal effects; a representative of the Ministry of Economy and Labour will also attend the consultation meetings; and
- Serve a notice, in writing, to each employee about the final decision of dismissal once the parties reach an agreement or 15 days after the delivery of the initial notice of dismissal.

Upon the termination of the employment, the employee is entitled to receive the outstanding credits and severance compensation.

REDUNDANCY

In case the number of employees is not enough for a collective dismissal, termination due to the extinction of the job post could be an alternative. However, the dismissal must be based on the same justifications legally required for collective dismissal, and it must meet the following requirements:

- The economic, structural or technological reasons for the termination of the employment agreement do not relate to an intentional behaviour of the employee or the employer; and
- The tasks included in the position to be extinct are not being executed by employees hired by the employer under a term employment agreement.

If more than one employee faced the same justification for dismissal, the employer must comply with specific criteria in the following order:

- Lower performance;
- Lower academic and profession qualifications;
- Higher cost to the company for maintaining the employee's contract;
- Lower experience in the position; and
- Lower seniority in the company.

The dismissal due to the extinction of the job position must follow the following steps:

- The employer must notify, in writing, the relevant employees (and the work council, if applicable) of the dismissal grounds;
- Within 15 days of this communication, the employee or the employee's representative organisation may send the employer its justified opinion on the reasons for the dismissal. ;
- Within five business days from the reception of the termination notice, the employee may request the intervention of the Ministry for Economy and Labour for the purposes of verifying compliance with the statutory requirements; and
- Within five days of the period to challenge the dismissal, the employer may issue a final decision of termination of the employment agreement.

With the termination of the employment, the employee is entitled to receive the outstanding credits and severance compensation.

The reasons for the termination cannot be related to the intentional behaviour of the parties, and the employer cannot hire another employee to perform the same functions as the dismissed employee.

DISMISSAL FOR INEPTITUDE

The employer may terminate the employment contract when the employee is no longer suited to perform the duties assigned to him/her for not being able to adapt to technical changes.

Employment ineptitude may be caused by several reasons, such as:

- Continued reduction of productivity or work quality;
- Repeated breakdowns in the means assigned to the workstation; and
- Risk to the health and safety of the employee, other employees or third parties.

Ineptitude can also occur when an employee assigned to a position of technical complexity or management does not meet the goals previously agreed upon in writing as a result of the way in which the employee performs her/his duties, and it is practically impossible for the employment relationship to persist.

Employers seldom use ineptitude as a dismissal ground because its requirements are difficult to prove.

Upon termination of the employment, the employee is entitled to a severance compensation, which takes into account the time of the employment.

DISMISSAL DUE TO A BREACH OF CONTRACT ATTRIBUTABLE TO THE EMPLOYEE

The employer may dismiss the employee with “just cause”, following a disciplinary process, in case of breach of her/his legal or contractual duties, without the obligation to pay any compensation.

The employer may terminate the employment with just cause. The following, among others, constitute just cause for dismissal:

- Failure to comply with superior’s orders;
- Infringement of other employees’ rights and guarantees;
- Repeatedly provoking conflicts with company employees;
- Repeated lack of interest in fulfilling the obligations inherent to the position or job;
- Justification of absences with false reasons;
- Unjustified absences (five consecutive or ten intermittent days off); or
- Intentional failure to comply with safety, health and hygiene labour rules.

Dismissal with just cause may only take place after conducting a disciplinary procedure against the employee, which must be initiated within 60 days after the employer becomes aware of the actions

that, in her/his view, constitute a breach of the employee's duties. The proceedings are conducted by a senior person at the company, usually in the human resources department or legal department.

The proceeding starts with a written notice specifying the reasons for the procedure and informing the employee of the employer's intention to dismiss the employee. After receiving this notice, the employee has ten days to submit her/his defence and request probationary actions (e.g., to inquire witnesses) she/he deems necessary.

Upon completion of the procedure, the employer will receive the report of the inquirer describing the evidence gathered and suggesting the dismissal or another disciplinary sanction, if any. The employer has 30 days to issue a final decision of dismissal, which must be notified to the employee. The employee may challenge the dismissal decision within 60 days and request suspension of the dismissal within five business days after receiving the dismissal decision.

The termination of the contract in any of the mentioned conditions must comply with the required legal formalities to be effective.

The employees dismissed with just cause are not entitled to receive any severance compensation.

SEVERANCE COMPENSATION

The compensation paid for redundancy due to a fact that cannot be attributed to the employee varies according to several factors, such as the type of contract (with or without term) and the date of execution of the contract.

For permanent employment contracts executed before 1/11/2011, the severance pay is calculated as follows:

- Until 31 October 2012: one monthly base salary and seniority allowance per each year of employment;
- Between 1 November 2012 and 30 September 2013: 20 days of monthly base salary and seniority allowance per each year of employment; the amount of the monthly base salary and seniority allowance may not be higher than 20 times the minimum monthly salary (presently €16,400);
- After 1 October 2013: 18 days of monthly base salary and seniority allowance per each year of employment in the first three years of the contract, and 12 days of monthly base salary and seniority per each year of employment in the following years; and
- From 1 May 2023, the amount of compensation will be 14 days of monthly base salary and seniority for each full year of seniority.

If the compensation calculated for the period until 31 October 2012 is equal to or higher than 12 monthly base salaries and seniority allowance or 240 of minimum salary (Relevant Threshold), the

period after 31 October 2012 will not be considered. If that compensation is less than the Relevant Threshold, the total compensation may not exceed the Relevant Threshold. The minimum compensation is three monthly base salaries and a seniority allowance.

The total amount of the compensation may not be less than three months of remuneration and seniority payments.

For fixed-term employment contracts, severance pay is calculated as follows:

- For contracts entered into between 1 October 2013 and 30 April 2023: 18 days of monthly base salary and seniority for each full year of seniority in the first three years of the contract and 12 days' salary and seniority for each full year of seniority in the following years; and
- For contracts entered into after 1 May 2023: 24 days of monthly base salary per year.

The minimum compensation is three monthly base salaries and a seniority allowance.

The same limits on the Relevant Threshold that apply to permanent employment contracts apply to the fixed-term contract.

The severance compensation is calculated in accordance with the New Rules, and the severance compensation may not exceed the Relevant Threshold. No minimum severance compensation amount is imposed by law.

UNEMPLOYMENT BENEFITS

The termination of employment contracts by the employer (collective dismissal, redundancy, ineptitude or expiration) entitles the employee to receive unemployment benefits from the Social Security, which do not entail any costs to the employer.

In case of termination by mutual agreement, the employment benefits may be granted to the employee, without any additional costs to the employer, if the following requirements are met:

- The termination of the employment contract is justified by reasons that would allow the termination under a collective dismissal procedure or dismissal due to job extinction; and
- No more than three employees or 25% of the company's workforce (for companies with up to 250 employees) and no more than 62 employees if the company has more than 250 employees.
- In companies with more than 250 employees, when 62 employment contracts are terminated, or up to 20% of the workforce, with a maximum limit of 80 employees in each three-year period.

If those requirements are not met, the employer will be obligated to reimburse the Social Security for all the amounts paid to the employee as unemployment benefits, but the employee will not lose the right to the employment benefits that she/he received.

If these requirements are not met, the employer will have to reimburse Social Security for all amounts paid to the employee.

To access unemployment benefits, the employee must:

- Reside in Portugal;
- Have had her/his employment terminated;
- Have been unemployed against her/his will;
- Not to be employed. If the employee works part-time or as an independent worker, the employee is entitled to partial unemployment benefits when the remuneration for such work is less than the unemployment benefit;
- Be registered in the Employment Service;
- Have applied for the unemployment benefit within 90 consecutive days from the date of the termination of the employment; and
- Have paid social security contributions for the period of time required by law.

INTELLECTUAL PROPERTY

OVERVIEW

Intellectual property is an important component of any business. The company's trademark identifies the company in the market and is an important asset that must be preserved. Inventions, utility models, computer programs, and others are often the basis of the company's business.

The law recognizes and protects two types of intellectual rights: (i) «industrial property rights» (*propriedade industrial*), which cover utility patents, designs and trademarks and (ii) «copyrights» (*direitos de autor*), which protect literary, artistic and musical works, multimedia creations, videogames and phonograms, computer software and databases.

Portuguese legislation on intellectual property and industrial property is codified in two main codes, the Industrial Property Code (*Código da Propriedade Industrial*) and the Intellectual Property Code (*Código do Direito de Autor e dos Direitos Conexos*), which follow European directives and guarantee the same protection as most EU countries.

Portugal is a member of the World Intellectual Property Organisation and a party to several international agreements, including the Berne Convention, the Universal Copyright Convention, the European Patent Convention and the Patent Cooperation Treaty.

COPYRIGHT

Copyright grants its owner the right to exploit literary and artistic works, music, movies and multimedia creations, software, databases, television and radio works, phonograms and videogames, advertising slogans and architecture and engineering works.

Authors are also granted the so-called “moral” or “personal” rights over their works, i.e., the right to protect the work or the right to be recognised as the author of her/his works. Personal rights cannot be assigned or transferred, even with the author's consent. Personal rights cannot be waived and do not lapse with the passing of time.

Economic rights can be assigned by the author or the copyright owner.

Copyright does not require an official registration. Protection is automatic and acquired immediately after the work completion. However, it is possible and sometimes advisable to register at *Inspeção-Geral das Atividades Culturais* (IGAC) to prove the authorship of the work.

National laws ensure protection within the country. International treaties and conventions (such as the Berne Convention) extend copyright protection beyond Portuguese borders.

Copyright owners may delegate the managing right of the work to a share-divided, collective management corporation, such as the Portuguese Authors' Association (*Sociedade Portuguesa de Autores*) and the Portuguese Software Producers' Association (ASSOFT).

Copyright lasts 70 years after the author's death, even if the original work was published or came up after the author's death. When the copyright's term expires, the work enters the public domain and can be used freely. Falling in the public domain does not affect the moral rights, which are protected indefinitely.

Databases are protected as copyright when they are considered intellectual creations as defined in Decree-Law 122/2000 of July 4, which implemented Directive 96/9/EC on the legal protection of databases. When a database is not protected by copyrights, its owner benefits from special protection when there has been a substantial investment in obtaining, verifying or presenting the database contents. The exclusivity lasts for 15 years, starting from the end of the calendar year in which the database was created.

The Portuguese Intellectual Property Code (*Código de Direito de Autor*) ensures protection against civil, criminal, and administrative offenses concerning copyright. Regarding civil protection, the Intellectual Property Court has jurisdiction, and the owners of intellectual property rights can take legal action to:

- Recognize copyright in the event of a dispute with third parties;
- Put an end to the illegitimate use by third parties of the respective rights, as well as demand compensation for damages and profits gained by the infringer;
- Appeal decisions regarding the registration of literary and artistic works by the General Inspection of Cultural Activities; and
- Seek protective measures to prevent imminent infringements or to prohibit ongoing infringements.

In criminal matters, the law permits the court to order the seizure of the movable and immovable property of the alleged offender, including their bank account balances. The court may also order access to banking or commercial data, and information concerning the offender.

Without prejudice to the protective measures set out in procedural law, the intellectual property rights owner may request from the police and administrative authorities of the location where the rights are violated, the immediate suspension of the performance, recitation, execution, or any other form of exhibition of the protected work occurring without proper authorization, as well as the seizure of the proceeds of the infringing practice.

The criminal protection of copyright, which falls under the jurisdiction of the criminal courts, addresses several practices as criminal offenses:

- Misuse: using a work without the author's authorization.
- Counterfeiting: presenting a work as one's own creation.
- Violation of moral rights: infringement of the right to paternity and the right to the genuineness or integrity of the work.
- Use of a counterfeit or usurped work: commercialization or distribution to the public, in any form, of a usurped or counterfeit work.

Except for violations of moral rights, other offenses are public offenses, meaning that criminal proceedings may be started *ex officio* and do not require a complaint from the owner of the intellectual property rights.

Regarding administrative offenses, certain practices are classified as serious economic offenses (Article 205 of the Intellectual Property Code):

- Failure of importers, manufacturers, and sellers of material supports for phonographic and videographic works to report quantities imported, manufactured, and sold.
- Failure by manufacturers and duplicators of phonograms and videograms to report quantities they press or duplicate.
- Unauthorised communication to the public of previously commercially released phonograms and performances incorporated therein, without the authorization of the respective author, producer, or their representatives, either via public performance or audiovisual broadcasting.
- Unauthorized communication to the public of videograms through television broadcasts or retransmissions, as well as works and performances incorporated therein, without the necessary authorizations.

Failure to properly identify the author of the work by name, pseudonym, or other identifying signs adopted by them, or the works the adaptation is based on, constitutes a minor economic offense.

The General Inspection of Cultural Activities is responsible for processing administrative offenses, and the respective inspector-general is charged with imposing fines (Article 206 of the Intellectual Property Code). The Legal Framework for Economic Administrative Offenses (*Regime Jurídico das Contraordenações Económicas*) applies to the sanctioning framework.

Accessory sanctions may also be applied, including (Article 210-J of the Intellectual Property Code):

- Forfeiture of seized assets in favour of the State.
- Temporary ban on carrying out an activity.

- Temporary deprivation of the offender's right to participate in fairs or markets.

SOFTWARE

In Portugal, Decree-Law 252/94 of 20 October, which transposed Directive 91/250/EEC, establishes the rules applicable to the legal protection of software (computer programs) through the remission of this protection to the copyright regime. Furthermore, since 1991, we can count on the Portuguese Software Association (ASSOFT), which is an entity for the collective management of copyright and related rights regarding Software products.

To be protected, computer programs cannot be copied from another program. Software gets the same legal protection as literary works. This means that the software owner has the powers that come with the economic exploitation of the work, including the right to use or copy the software distribution by any means and in any form, dispose of the software (licensing or provide the right to use software) and modify it in any way.

The owner of the software may put into circulation originals or copies of the program and has the right to lease the copies. The copyright owner can also register the program at the literary property register.

Software created by a company is presumed to be collective work. When software is created by an employee during the performance of her/his duties or under the instructions of the employer, the program belongs to the employer unless otherwise explicitly stipulated.

A person who has the right to use a copy of the software can use the program for various purposes, such as creating a backup copy in connection with such use or studying and testing the program's functioning.

The licensee or another person with the right to use the program or acting on behalf of a person authorised to do so can decompile parts of a program to ensure the interoperability of that software with other programs.

The unauthorised economic exploitation of software by an individual or legal person might be considered a violation of the Software Protection Law and is considered a criminal offence under the Cybercrime Law.

Personal rights, which belong to the author of the software, give him/her the right to mention the software's name and the right to claim authorship.

PATENTS AND UTILITY MODELS

Patents ensure exclusive use and the right to prevent others from manufacturing, offering or storing an invention that has industrial use without the owner's consent, even if the invention is applied to a product consisting of or containing biological material or to a process that creates, treats or uses biological material. Inventions may include products, processes and new processes for obtaining already known products and substances.

The invention must be a novelty, destined for industrial use and cannot be obvious to a person with average knowledge in the technical field in question.

Discoveries, scientific theories and mathematical methods, materials or substances existing in nature, nuclear materials, aesthetic creations, schemes, rules and methods for intellectual pursuits, games or businesses, and information presentations are not patentable.

Inventions contrary to law, public policy, public health and best practices cannot be patented.

The duration of a patent is 20 years following the application date. The patent validity can be shortened if the annual fees are not paid. For pharmaceutical and plant protection products, it is possible to apply for a supplementary protection certificate, which extends the patent protection for an additional five years.

The patentholder must exploit the patented invention. The exploitation has to begin within four years, counting from the application date or three years, counting from the date of the patent grant, whichever is longer. Patents may be licensed or sold.

Portuguese patents must be registered at the National Institute of Industrial Property (*Instituto Nacional da Propriedade Industrial*, INPI).

European patents, which are valid in the European Patent Convention contracting States, must be registered at the European Patent Office or at INPI. Patents last for 20 years. European patents are valid in the 26 European Union countries (except for Spain and Croatia) without the need for national verification and the payment of any fees in the contracting countries. The European Patent Office is responsible for granting European patents. The application must be in one of its official languages: English, French or German.

The World Intellectual Property Organisation is responsible for granting and protecting international patents in more than 150 countries. The applicant must be a national or resident of a Patent Cooperation Treaty contracting State. National laws govern the registration process in each country.

Utility models are product or procedure inventions with industrial applicability and cannot cover biological materials. Utility models have a simplified approval procedure and are subject to examination by INPI, the entity responsible for granting and registering industrial property rights in Portugal.

Utility models are subject to the same object constraints as patents. Utility model rights last six years from the application date. The protection period can be extended for a maximum of 10 years from the day of application.

The fees charged for the registration and maintenance of utility models are generally lower than those charged for the registration and maintenance of patents.

It is also possible to protect an invention without gathering all the documentation required for that purpose. Portuguese law allows filing a provisional patent application (*Pedido Provisório de Patente*, or PPP) by simply submitting a document describing the invention in detail. After that, there is a period of 12 months to convert the provisional application into a definitive patent application.

It is possible to apply online for patents, register utility models and apply for provisional patents at <https://inpi.justica.gov.pt/>.

DESIGNS

Owners of designs of the product's shape, lines, contour, colours, textures or materials have the exclusive right to use it and to prevent its use by unauthorized third parties.

To be protected, designs do not need to be entirely a novelty but must include at least a new feature or layout of already used elements but presented differently.

Rights over registered designs last five years following the application date and can be renewed for consecutive equal periods of time up to a maximum of 25 years. When registered, the design is protected by copyrights since its creation date.

Registration is made at INPI or at the European Union Intellectual Property Office. The application procedure is simple, and it is required to pay a single set of fees. Registration covers all Member States.

However, once registered, a design cannot be altered, not even by the owner. It can only be enlarged or reduced.

The registration of alterations to the essential characteristics of a design, provided that they are new and unique, requires the registration of a new design.

Unregistered Community designs are automatically protected for a period of three years following the design's publication within the EU. Protection allows the owner to prevent commercial use of the design by third parties.

The World Intellectual Property Organisation's international registration means the acknowledgement of intellectual property rights in 65 countries. The applicant must be a national or

live or have an established business in an EU country. Nevertheless, national laws regulate the registration in each country.

TRADEMARKS

Trademarks are distinguishing marks used in trade to identify products and services. Trademarks grant their holders a 10-year exclusive right of use that is partially or fully renewable for equal periods of time, as well as the right to represent the trademark graphically - through words, names of persons, drawings, letters, numbers and sounds, the form of the product or respective packaging –, distinguishing the products and services. Trademarks may also consist of advertising slogans for products or services.

Marks must have a distinctive character and be represented in a way that third parties can clearly and precisely determine the protected object. Marks representing the usual name of a product or service or the ones that have descriptive elements are not accepted as trademarks.

The trademark should be registered at the INPI, and its protection is limited to the national territory.

Trademark protection in the EU can be obtained by registration of an EU trademark at the European Union Intellectual Property Office. The registration covers the territory of all Member States, and any natural or legal entity from any country in the world may apply for the registration.

International trademark registration enables protection in more than 100 countries by filling out an application. The applicant must have an established business, be a national or live in a member country part of the Madrid System (International Trademark Registration Treaty). However, national laws govern the registration in each country. Therefore, the same application may be accepted in some countries and rejected in others.

Once the trademark products are made available in the European Economic Area by the owner or with her/his consent, the owner's rights are considered expired. The trademark holder cannot disallow its use on the products. Furthermore, the trademark has to be used for five consecutive years; if not, the registration expires.

In Portugal, it is possible to register trademarks online at <https://inpi.justica.gov.pt/>.

Well-known and prestigious trademarks enjoy a special degree of protection, even if they have not been registered. A trademark application will be refused not only if it is a reproduction or imitation of a well-known Portuguese trademark but also if it is applied to identical or similar products or services that could be mistaken for a well-known trademark. A trademark application will also be refused if it is identical or similar to another previously well-known trademark in Portugal or the European Union, especially when it takes unfair advantage of the distinctive character or prestige of

the other trademark, or if it could jeopardize that trademark, even if associated with different products or services.

The owner of a trademark registration holds the right of ownership and exclusivity regarding the goods or services it is intended to signify. This enables the owner to prevent third parties from using signs similar to their own on goods or services that are identical or similar to those covered by the registered trademark. If a trademark registration consists of a reproduction or imitation of another, previously registered trademark, signalling identical or similar goods or services, and is likely to mislead or confuse the average consumer, it must be refused.

For a trademark to be considered misused or imitated, the following requirements must be met: (Article 238 CPI)

- **Priority.** The registered trademark must have priority over another. Priority is determined by the date on which the trademark was filed; hence, the trademark whose registration was filed first takes precedence.
- **Affinity between products and/or services.** Imitation or usurpation requires that both trademarks mark goods and/or services that are identical or similar. Affinity relates to the principle of specialty, expressing protection for the distinctive function of the trademark but only for the goods or services for which the trademark was actually registered. To verify the existence of affinity, it is important to consider whether we are dealing with relations of (i) competition, (ii) substitution, (iii) complementarity, (iv) accessoriness, and (v) derivation.
- **Error or confusion.** Trademarks must be similar in a way that misleads or confuses the consumer, who can distinguish them only after careful analysis or comparison or understand a risk of association.
- **Risk of confusion.** Confusion may occur directly when the consumer confuses two brands, thinking they are the same, or indirectly when the consumer considers one brand a modification of another. There is also confusion in a broad sense if the consumer believes that the companies owning the brands have some economic or organizational relationship.
- **Risk of Association.** The likelihood of confusion includes the likelihood of association, where the consumer considers the sign and the trademark similar, remembering the trademark but not confusing them.
- **Graphic, phonetic, visual, and conceptual similarity.** Graphic similarity exists when the words are written identically or similarly. Phonetic similarity occurs when the sound resulting from reading the signs is identical or similar. Visual similarity exists when the appearance of the signs is identical or similar. Conceptual similarity arises when the signs express concepts or ideas that are identical or similar.
- **Easily mislead or confuse the consumer.** Portuguese law requires that the risk of confusion be significant, easily misleading or confusing the consumer. To assess this, one must consider the

average consumer, i.e., the consumer without a high level of attention, and determine whether, in the specific case, that consumer would be in error or would become confused.

The National Institute of Industrial Property (INPI) can, on its own motion, refuse trademark registrations based on certain grounds for refusal outlined in the Industrial Property Code. These grounds include the reproduction of a trademark previously registered by someone else for identical goods or services. (Articles 230, 231 e 232 CPI) However, there are grounds for refusal dependent on a prior complaint and cannot be identified ex officio by the INPI.

The owner of a trademark right can also request the cancellation of a trademark registration within ten years from the date the registration was granted, through a reasoned request filed with the INPI. There are no grounds for cancellation if the earlier trademark does not meet the condition of genuine use. (Articles 4, N5, 266 e 263 CPI)

It is important to consider the system of forbearance preclusion, which stipulates that if the owner of a registered trademark, aware of the fact, has tolerated the use of a later registered trademark for five consecutive years, they lose the right to request cancellation of the later trademark or to oppose its use. (Article 261 CPI)

The court with jurisdiction over this type of action is the Intellectual Property Court. Even if the interested party has not appealed against the INPI's decision, they are not barred from bringing an action for a declaration of cancellation of a trademark registration. These rights are not absolute and there are limitations established by law.

Firstly, the owner of a registered trademark cannot prohibit the use of that trademark on products they themselves have marketed or authorized to be marketed within the European economic area. (Article 253 CPI) Despite having trademark registration in their favor, this registration does not allow the owner to prevent third parties from using, in their economic activity, as long as they comply with the rules and honest practices: (i) their own name and address, if the third party is a natural person; (ii) non-distinctive signs or indications that refer to the kind, quality, quantity; (iii) signs or indications that are not distinctive and refer to the kind, quality, quantity, destination, value, geographical origin, time and means of production of the product or provision of the service or other characteristics of the products or services; and (iv) the trademark to identify or refer to products or services as being those of the trademark owner, especially when necessary to indicate the purpose of a product or service. (Article 254 CPI)

TRADE SECRETS

Any confidential business information that provides a competitive advantage can be considered a trade secret.

Trade secrets can include know-how, technical knowledge (potentially patentable or not) or business and commercial data such as lists of customers, business plans and manufacturing processes.

Disclosure, acquisition or use of the competitor's trade secrets, without her/his/its consent, is considered illegal if the information: (i) is secret, meaning that it is not generally known or easily accessible, (ii) has commercial value because of its secrecy and (iii) has been subject to considerable diligence by the person responsible for the information control in order to keep it secret.

It is also unlawful to disclose or use a trade secret when the recipient of information knew or should have known when first hearing about it that such secret had been obtained directly or indirectly from another person who was using or disclosing it illegally.

It is lawful to access a trade secret when that results from an independent discovery, from an employee's rightful access to the information in accordance with accepted practices or the law. It is also legal to study, disassemble or test a product or object that has been made available to the public or when such access complies with honest commercial practices.

Whenever there is a breach or well-founded fear that others may cause serious damage to the trade secret, the court may, at the request of the interested party, order the appropriate precautionary measures.

In the event of a trade secret breach, the court decision can order the offender to refrain from using or disclosing the trade secret and prohibit the offender from producing, offering, placing on the market, importing, exporting or storing the product of such secret.

When unfair competition, abuse of rights and other legal rules protecting business secrets do not apply or do not offer sufficient protection, it is advisable to enter into a non-disclosure agreement before exchanging confidential and sensitive information to business partners, shareholders, employees, suppliers and customers.

Unlike for patents or trademarks, protection is not time limited. Furthermore, this protection does not involve any formalities with competent authorities, and there is no registration fee, which means that its effect is immediate.

INDUSTRIAL PROPERTY PROTECTION

The Industrial Property Code guarantees civil, criminal and administrative offence protection for intellectual property rights.

About civil protection, the Intellectual Property Court also has jurisdiction. As an alternative to resorting to judicial means, the parties can resort to an arbitration court if an arbitration agreement has been signed.

Actions can be brought to:

- Appeal against decisions of the National Institute of Intellectual Property granting or refusing any industrial property right, as well as any other acts affecting industrial property rights;
- Put an end to the illegitimate use by third parties of the respective right, as well as compensation for damages and the infringer's profits; and
- Request protective measures to inhibit imminent infringements or prohibit the continuation of ongoing infringements.

In the case of commercial offences, the law allows the court to order the seizure of the alleged offender's movable and immovable property, including their bank account balances, and the Judge can order the communication of or access to banking or commercial data and information concerning the offender.

The following practices are deemed criminal offences:

- Manufacture of artefacts or products, as well as the use of processes and consequent distribution, in violation of the exclusive patent, utility model or topography of semiconductor products;
- Reproduction or imitation, as well as the exploitation and consequent importation or distribution of registered designs;
- Infringement of name and insignia rights;
- Infringement of the exclusive right to a logo;
- Reproduction or imitation of a designation of origin or geographical indication;
- Obtaining patents, utility models and design registrations in bad faith;
- Registration obtained or maintained through abuse of rights; and
- Registration of a non-existent act or one carried out to conceal the truth.

All these offences are semi-public crimes, i.e. they depend on the holder of the right in question lodging a complaint.

As for administrative offences, very serious economic offences include unfair competition and violation of a protected trade secret. The range of serious economic offences is more extensive and includes:

- Unlawful invocation or use of a reward;
- Preparatory acts which include manufacturing, importing, exporting, acquiring or keeping, for oneself or others, signs constituting names, insignia, logos, designations of origin or registered geographical indications;
- Use of illicit trademarks;

- Improper use of a name, insignia or logo; and
- Invocation or improper use of private rights.

The penalty framework is regulated in the Legal Framework for Economic Administrative Offences.

REAL ESTATE

OVERVIEW

Property and property-like interests (the so-called rights *in rem*) set out in the Portuguese Civil Code and other legislation are subject to registration with the land register and may only be constituted, mortgaged or transferred through a public deed executed before a notary.

The public records of properties are available online. The registration of the acquisition, mortgages and other liens and encumbrances over immovable assets may be made online.

The Portuguese housing market continues to attract many local and international investors, as well as foreign nationals who wish to move to Portugal.

According to the National Statistics Office (*Instituto Português de Estatística*, INE), house prices increased 6.6% in the second quarter of 2024. The average price of housing in Portugal in the second quarter of 2024 was €1,736 per square metre.

In the second quarter of 2024, the average house price per square metre in the Greater Lisbon area was €4,958. Prices for apartments in the centre of Lisbon remain above €5,000 per square metre. In the prime areas of Lisbon, Chiado, Príncipe Real and Avenida da Liberdade and in Cascais, prices may exceed €10,000 per square metre.

PROPERTY RIGHTS

The most important forms of property interests in Portugal are:

- **Freehold** (*direito de propriedade*). Freehold gives the owner the right to use, exploit and dispose of a certain immovable asset. These rights include the right to build on a property subject to the applicable licensing requirements and planning restrictions;
- **Joint ownership** (*compropriedade*). It is possible for more than one person to own a property, where each owns a proportional and intangible share of the property. Each co-owner can dispose of her/his share of the property without the consent of the other co-owner(s), who will have a right of first refusal.
- **Condominium ownership** (*propriedade horizontal*). Portuguese law allows buildings or building developments to be divided into fractions (*frações*) or units where each unit, which may be an

apartment, a store, or an office, is owned by a single owner and the common areas of the building, including the staircases, outside area, roof, etc., are co-owned by the owners of the building's units. The owners together constitute the community of owners of the commonly owned property (*condominium*). Each owner may freely dispose of or encumber her/his fraction of the property, including her/his share in the condominium.

- **Building rights** (*direito de superfície*). Building rights give their holders the right to construct and maintain a building or plantation on the property or beneath it. The building right may be temporary or permanent and may or may not be transferable; and
- **Usufruct** (*direito de usufruto*). Usufruct rights give their holder the right to use and collect the fruits (*frutos*) of the property, which include the rents, crops and other periodic revenues that may be generated by the property.

No property rights or similar rights can be created by contract other than in the manner specified in the law.

LEASE RIGHTS

Commercial leases are the most common arrangement for the use of offices and retail stores in Portugal. Under a commercial lease agreement, the lessor grants the lessee the right to temporarily use the leased property with the obligation to return it at the term of the contract.

Portuguese law allows the parties to stipulate the main terms and conditions of the lease, such as the rent, rent review conditions, cost allocation, duration, renewal conditions, termination, etc.

The maximum term of commercial leases is thirty years. There is no statutory term, and the parties can specify the applicable term. In the absence of a contractual term, the implied statutory term is five years. Typically, commercial leases for office space and stores have a duration of five to ten years.

The rent is usually payable monthly, but different payment terms may be agreed upon. Rent-free periods and rents, including a variable component, are common in Portuguese office and factory leases. In most contracts, rents are updated annually in accordance with the consumer price index (excluding housing) published by the National Statistics Institute (*Instituto Nacional de Estatística* INE), but the parties are free to use other criteria for reviewing rents.

Only premises licensed by the relevant municipality may be leased. The purpose of the lease must be in accordance with the usage license.

The transfer of the position of the lessee included in the transfer of a business establishment (*traspasse*) does not require the consent of the property owner. The statutory rules on the termination of lease agreements by default of the tenant are mandatory.

In the case of non-commercial leases, tenants have a preference right in case of sale of the property after the second year of lease agreement. Eviction of defaulting tenants is enforced through a special eviction procedure (*procedimento especial de despejo*), which is an exclusive procedure of National Lease Offices (*Balcão Nacional do Arrendamento*).

Leases of stores in shopping centres, retail parks and other similar developments where the owner or manager also provides certain management and operation services to the lessee are not subject to the statutory rules on leases, allowing the parties to freely determine the terms and conditions of the lease, subject only to general contract law rules and principles.

Typically, the main rules on the operation of the development are set out in a regulation approved by the development owner or manager. Rent-free periods, stepped-up rents and rents with variable components are common in shopping centre leases.

The costs of utilities, services, maintenance and improvement works are normally borne by the lessee in the form of common service charges, which include management fees, other common areas-related services and, sometimes, marketing costs.

Service charges are based on the area of the shops leased to each of the tenants in proportion to the overall area of the development.

Although parties are free to agree to the terms and conditions of the lease, it is common for agreements to be set out in standard contracts that are not subject to negotiation.

ACQUISITION OF PROPERTY

PROMISSORY AGREEMENT OF SALE AND PURCHASE

Typically, the process of buying a property starts with the execution of a promissory sale and purchase agreement.

It is not mandatory for the parties to enter into a promissory agreement. Promissory agreements aim to ensure that the sale will be completed when the seller cannot deliver the property immediately, *i.e.*, the building has not been completed, the property is being used by the seller or a tenant, or the buyer has not yet obtained financing for the building or lacks a document needed to complete the purchase.

Typically, with the execution of the promissory agreement, the buyer makes a down payment to the seller of a percentage of the sale price, normally somewhere between 10% and 20% of the price.

Promissory Agreements can be given priority against third parties' rights that must be registered in the Land Registry Office, ensuring that the property cannot be sold to another person. The

registration is valid for six months and may be renewed for an equal period and until one year after the date set by the parties for the execution of the Deed of Sale and Purchase.

PUBLIC DEED OF SALE AND PURCHASE

The purchase of property must be made through a deed of purchase and sale, which must be executed before a notary.

The acquisition of property is subject to property transfer tax at a variable rate, stamp duty and notary's costs, which must be paid in advance of the execution of the public deed of purchase.

When the parties have registered a sale and purchase promissory agreement, the provisional registration in the land registrar will become definitive after the registration of the deed of sale and purchase.

If the promissory sale and purchase agreement has not been registered, the purchaser must register the deed of purchase as soon as possible after the execution of the deed.

It is possible to carry out these formalities online through the website www.casapronta.pt.

VEHICLES USED IN THE ACQUISITION OF PROPERTY

Investments in property in Portugal may be carried under any of the following structures:

- Direct ownership by the investors;
- Indirect ownership by way of the incorporation of a foreign special purpose vehicle (SPV); and
- Indirect ownership by way of the incorporation of a Portuguese SPV.

If the investors choose to incorporate a Portuguese SPV to carry out transactions in Portugal, they may opt between one of the following forms:

- A joint stock company;
- A real estate investment fund;
- A real estate investment company; or
- A real estate investment trust.

JOINT STOCK COMPANIES

Typically, joint stock companies are well suited for investing in real estate because transferring a company's shares is easy and does not need to be registered at the Commercial Registry Office.

REAL ESTATE INVESTMENT FUNDS AND COMPANIES

The incorporation of collective investment entities in Portugal is subject to the rules established in Decree-Law 27/2023 of 28 April 2023.

Collective investment entities are divided into two types: (i) Entities for Collective Investment in Transferable Securities and (ii) Alternative Investment Entities (such as the Real Estate Alternative Investment Entities).

Collective investment entities may assume the form of a real estate investment fund (thereinafter, FIs) or a real estate investment company (*Organismo de Investimento Coletivo sob a Forma Societária*).

FIs may be open-ended, closed-ended or even mixed entities depending on whether the participation units issued are variable or fixed. FIs may acquire any property rights over immovable assets for leasing, reselling or any other economic purpose and any shareholdings in real estate companies, subject to certain limitations.

The incorporation of FIs and real estate investment entities must be authorised by CMVM. However, the incorporation of an Alternative Investment Entity only requires prior notification to CMVM in the case of private subscription AIF in the form of a heterogeneous fund or company.

The following is a summary of the main rules governing the incorporation and management of OIs:

- **Types of companies.** Real estate investment companies must be joint stock companies.
- **Management.** If not self-governed, Real Estate investment companies must be managed by professional fund managing companies. If the management is not entrusted to a fund managing company, OIs will have to comply with the fund managing companies and FI minimum capitalisation requirements described above.
- **Share capital.** Real Estate Investment Companies must be incorporated with a minimum share capital of €50,000 or €300,000, depending on the management type. The share capital of Real Estate Investment Companies must be represented by nominative shares.
- **Office.** Real Estate Investment Companies authorised by CMVM must have their head offices in Portugal and be managed from Portugal.

REAL ESTATE INVESTMENT TRUSTS

The Portuguese Real Estate Investment Trusts (REIT) have been established as a new form of property investment company (*Sociedades de Investimento e Gestão Imobiliária, SIGI*).

SIGIs are established and regulated by Decree-Law 19/2019 of 28 January, which entered into force on 1 February 2019. SIGIs are also governed by the rules applicable to quota companies of the Portuguese Commercial Companies Code (*Código das Sociedades Comerciais, CSC*).

To be qualified as SIGI, a company must be incorporated as a joint stock company (*sociedade anónima*) with a minimum subscribed and fully paid-up share capital of €5 million. Furthermore, they must have their registered office and effective management in Portugal.

SIGIs also must adopt the supervisory bodies in accordance with the CSC, implementing a supervisory board and an official chartered accountant. Their corporate name must include the reference «*Sociedade de Investimento e Gestão Imobiliária, S.A.*» or the abbreviation «*SIGI, S.A.*».

Their main corporate purpose is the acquisition of:

- Property rights;
- Shares of other SIGI or similar companies located in another Member-State; and
- Participation units or shares of real estate investment funds for urban leasing, real estate investment companies for urban leasing and collective investment undertakings (with dividend rules similar to a SIGI).

SIGIs can directly manage the properties whose rights they own or contract third parties for that purpose. In addition to leasing, such properties may be used for construction and rehabilitation projects or allocated to stores or spaces in shopping centres or office premises.

SIGIs are subject to rules on the composition and holding of assets, the obligation to distribute dividends as a percentage of their profits, and the obligation to comply with a maximum indebtedness cap.

The assets of a SIGI must be primarily composed of property ownership rights, surface rights or other similar property rights for leasing or destined to other forms of economic exploitation.

Rights over real estate properties and equity must represent at least 80% of the total assets' value. The value of real estate assets subject to leasing or other forms of economic exploitation must represent at least 75% of the total assets' value. Such assets must be held for at least three years after their acquisition.

The abovementioned asset composition requirements must be met at any time starting from the second year after the incorporation of a SIGI. Finally, SIGIs also must comply with a maximum indebtedness cap of 60% of the total value of their assets.

Within nine months after the closing of the financial year, a SIGI must distribute:

- At least 90% of the profits related to that period resulting from the payment of dividends and profits of units distributed by the referred entities; and
- At least 75% of the remaining distributable income under the terms of the Portuguese Companies Code.

- At least 75% of the net proceedings of the sale of assets related to the corporate purpose of a SIGI must be reinvested in other assets related to that purpose until three years after the sale.

A SIGI's legal reserve may not exceed 20% of its share capital, and it is not allowed to set up other unavailable reserves.

It is possible, upon a decision of the general meeting, to convert existing companies or property investment undertakings with a corporate form into a SIGI.

The decision to convert a company into a SIGI must be taken by the majority of votes required to adopt the amendment of the articles of association.

To be converted, they should comply with the requirements of the Decree-Law 19/2019, of 28 January, approving the necessary amendments to the articles of association in the referred general meeting. The conversion takes effect on the first day of the taxation period following the date of registration of the alterations to the articles of association.

The conversion resolution and the amended articles of association must be immediately notified to the Portuguese Securities Market Commission for publication on its website.

SIGIs benefit from the taxation rules applicable to all real estate investment undertakings. For the purposes of corporate income tax, as a rule, their rental income, real estate capital gains, capital income and dividends are not taxed.

Income distributed by SIGI to resident individuals is taxed at a rate of 28%. The capital gains resulting from the sale of the shares are also subject to a tax rate of 28%.

Companies resident in Portugal which receive income from SIGI are subject to withholding tax at the rate of 25%.

Non-resident investors, including private individuals or companies without a permanent establishment in Portugal, are subject to withholding tax at the rate of 10%.

TAX ISSUES

The transfer of immovable property is taxable under the Municipal Property Transfer Tax (*Imposto Municipal sobre as Transmissões Onerosas de Imóveis*, IMT).

IMT is calculated based on (i) the tax value of the property or (ii) the declared purchase price, whichever is the highest. IMT rates are the following:

The table below summarises the IMT rates applicable to the acquisition of urban property intended exclusively for housing purposes in mainland Portugal.

Value (€)	Rates	Deduction
Up to 101,917	0%	0
From 101,917 to 139,412	2%	(0,537.9)
From 139,412 to 190,086	5%	(1,727.4)
From 190,086 to 316,772	7%	(3,836.1)
From 316,772 to 633,453	8%	-
From 633,453 to 1,102,920	6% (single rate)	
Above 1,102,920	7.5% (single rate)	

The table below summarises the IMT rates applicable to the acquisition of urban property for non-housing purposes in mainland Portugal.

Value (€)	Rates	Deduction
Up to 101,917	1%	1
From 101,917 to 139,412	2%	(1,268.9)
From 139,412 to 190,086	5%	(2,263.6)
From 190,086 to 316,772	7%	(4,157.8)
From 316,772 to 607,528	8%	-
From 607,528 to 1,102,920	6% (single rate)	
Above 1,102,920	7.5% (single rate)	

The IMT rate will be 10%, irrespective of the value, in case of properties owned or controlled, directly or indirectly, by legal entities resident in a state, territory or region with a clearly more favourable tax regime.

Typically, real estate transactions are exempt from VAT. Notwithstanding, under certain conditions, the seller or the lessor may opt to renounce such exemption to be able to deduct the input VAT.

Ownership of immovable property is subject to the Municipal Property Tax (*Imposto Municipal sobre Imóveis*, IMI). IMI is levied on an annual basis, is payable in up to three instalments on the value of urban property and land property located in Portugal and is owed by the property or usufruct owner or the holder of the surface right of a real estate unit at the following rates:

- 0.8% on land and attached facilities (*prédios rústicos*);
- Between 0.3% and 0.45% on urban properties (*prédios urbanos*); and
- 7.5% on properties owned or controlled, directly or indirectly, by entities resident in a state, territory or region with a clearly more favourable tax regime.

The applicable rate within these ranges will be determined by the municipalities on a yearly basis and increase threefold in the case of urban property left vacant for more than a year or of buildings in a state of ruin.

The urban buildings and apartments will be deemed not to be in use if the owner has not contracted the provision of essential public services or there has been no consumption of water, electricity, gas, and telecommunications for a period of one year.

Real estate assets (excluding assets allocated to commercial, industrial and service activities) may also be subject to Additional IMI (*Adicional ao IMI* - AIMI).

For individuals, the taxable value up to €600,000 will be AIMI exempt. Above this amount, the following rates will apply:

- 0.7% on the taxable value from €600,000 to €1 million;
- 1% on the taxable value up from €1 million to €2 million; and
- 1.5% on the taxable value above €2 million.

For companies, the AIMI is lower (0.4%), but there is no exemption. However, if the real estate is used as a residency of the shareholder or a corporate body member, AIMI will apply at the following rates instead:

- 0.7% on the taxable value up to €1 million;
- 1% on the taxable value from €1 million to €2 million; and
- 1.5% on the taxable value above €2 million.

DISPUTE RESOLUTION

OVERVIEW

The Portuguese judicial system includes judicial courts, which judge civil and criminal matters, and administrative and tax courts. The courts are organized in three degrees.

The constitutionality of the laws is judged by the Constitutional Court, which is assigned the function of judging the conformity of the laws or their interpretation with the Portuguese Constitution.

Arbitration is recognized in Portuguese law as a means of resolving disputes in civil, commercial and tax matters, provided that the dispute does not belong to the exclusive jurisdiction of the judicial courts and is a right of an asset nature.

CIVIL COURTS

The Supreme Court of Justice is the supreme court and has national jurisdiction over civil, criminal, commercial and labour disputes. The Supreme Court of Justice decides the appeals of the lower courts, knowing only matters of law.

The Courts of Appeal are second-degree civil courts whose jurisdiction extends to several districts. Appeal Courts rule on appeals of the decisions of the courts of first degree.

The courts of first degree decide civil, criminal, commercial and labour actions.

There are 23 courts of first degree in the national territory, which unfold in judgments of generic jurisdiction and specialized jurisdiction (civil centre, civil place, criminal centre, criminal place, place of small crime, criminal instruction, family and minors, work, trade and execution), depending on the matter and the value of the action.

Also included in the courts of extended territorial jurisdiction, which have specialized jurisdiction and are responsible for certain types of disputes: (i) the Courts of Execution of Penalties, (ii) the Maritime Court, located in Lisbon, (iii) the Intellectual Property Court, located in Lisbon, (iv) the Court of Competition, Regulation and Supervision, located in Santarém, and (v) the Central Court of Criminal Investigation, located in Lisbon. In the judicial system, there are also Justices of Peace, which are extrajudicial courts that adopt a simplified procedure aimed at a swift resolution of disputes.

The jurisdiction of Justices of Peace extends, especially to civil property issues whose value does not exceed €15,000.

TAX AND ADMINISTRATIVE COURTS

The resolution of issues arising from administrative and fiscal relations falls under the purview of the administrative jurisdiction.

The Administrative Courts of Circle and Tax Courts are the first-instance courts responsible for proceedings concerning administrative disputes between private individuals or companies and the State and other entities with administrative and public powers.

The Central Administrative Courts operate as the second-tier courts within the administrative jurisdiction. They have regional jurisdiction and are as follows: the Central Administrative Court South (located in Lisbon), the Central Administrative Court North (located in Porto), and the Central Administrative Court Centre (situated in Castelo Branco). Central Administrative Courts have jurisdiction to deal with the appeals of decisions of the administrative courts of the circle and the appeals of decisions of the tax courts. Exceptions are cases where, cumulatively, (i) the parties allege only questions of law, (ii) the value of the case is greater than the jurisdiction of the central administrative courts, and (iii) the amount of the loss is greater than half the jurisdiction of the court appealed against, in which case appeals against decisions on the merits handed down by Tax Courts fall within the jurisdiction of the Supreme Administrative Court.

The Supreme Administrative Court is the highest authority within the administrative and fiscal courts and is composed of two chambers: one for administrative litigation matters and the other for tax-related litigation.

POWERS OF THE COURTS

In general, courts have the power to issue decisions regarding any matter to be determined in the proceedings, which include the powers to order the payment of sums of money (in any currency), grant injunctions against the parties, order the performance of contractual obligations, order the rectification, setting aside or cancellation of deeds or other documents, declare divorces, order the division of assets caused by the death of her/his owner, etc.

Courts may also, following a request of an interested party or on their own accord:

- Know exceptions that prevent the court from knowing the merits of the case or that consist of invoking facts that prevent, modify or extinguish the legal effect of the facts articulated by the author;
- Declare protective orders;
- Inspect things or persons in order to clarify any fact that is of interest to the decision of the case and may go to the place of the question or order reconstitution of the facts when it deems it necessary; or;

- Requiring a party to make an interim payment on account of the claim or to pay the costs of the process.

JUDICIAL PROCEDURE

THE CLAIM AND THE DEFENCE

Litigation begins when the plaintiff files a petition to the court (*petição inicial*), detailing what the defendant has done or failed to do that caused damage to the plaintiff, specifying the basis, factual and legal, for her/his claim against the defendant.

After being served with a plaintiff's claim, the defendant has, in general, a 30-day deadline to respond to the plaintiff. The defence is always provided in writing in the form of a briefing addressed to the court (*contestação*).

THE PRELIMINARY HEARING

After the claim and defence are filed in court, the judge will schedule a «pre-trial» meeting to attempt a settlement between the parties and consider any delaying objections alleged and, if possible, the merits of the case.

If the settlement fails, the «pre-trial» meeting will serve to discuss the facts and matter of law of the case, where the judge may decide on procedural questions or immediately on the merits of the case, determine the terms of the dispute and schedule the final hearing.

THE TRIAL

The final hearing starts with the judge inviting the parties to settle their dispute. If the settlement fails, the final hearing continues with the submission of evidence, which may include the depositions of the parties, expert testimonies and the deposition of witnesses.

Within 30 days after the final hearing, the court will rule on the case.

CHALLENGING THE DECISION

Judgments of the courts may be appealed depending on the value and subject matter. Decisions in actions regarding the status of a person or in actions for allocation of the house of family dwelling are always subject to appeal.

Common reasons for challenging a court's decision are errors in the interpretation or application of the law by the court or disregard of evidence.

Depending on the circumstances, the Court of Appeal will either confirm the ruling, reverse the ruling, or order the court of first instance to conduct a new trial.

After a ruling is given by the Court of Appeal, the parties may also appeal to the Supreme Court of Justice (*recurso de revista*), except in cases where the Court of Appeal confirms the decision of the Court of First Instance.

COURT FEES

Judicial or procedural costs are generally equivalent to the amount spent by the public service of justice enforcement by the courts.

The Constitution of the Portuguese Republic guarantees access to the courts for all citizens, but this does not imply the gratuity of the justice services, only that the cost to pay is not so high that it considerably hinders access to justice. This does not mean, however, that the procedural costs correspond to or allow the actual costs of the proceedings to be covered.

Court costs must be paid for each legal action brought to court, the amount of which depends on the value of the case.

The *ex-parte* costs are the legal costs incurred by the winning party and which will be borne by the other party if the plaintiff so requests. The amounts must be itemised and contain all the essential elements relating to the proceedings and the parties.

For court cases worth more than €250,000, the cost of the case, including court fees and parties court awarded costs are approximately 1.8% of the claim value; appeals to the Court of Appeal and the Supreme Court of Justice cost another 1.8%, with the total cost of around 3.6% of the value of the claim value. If the first judicial decision is not confirmed by the appeal court(s), the unsuccessful party is responsible for all costs of the proceedings.

M A C E D O ■ V I T O R I N O

M A C E D O V I T O R I N O ■ C O M